

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 140/2001
T.A No.

(1)

Date of Decision 6-9-2001

V. S. Vasishtha

..Petitioner

Sh. M. K. Gupta

..Advocate for the Petitioner(s)

Versus

UOI & Ors

..Respondent

Sh. Rajeev Bansal

..Advocate for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

Central Administrative Tribunal
Principal Bench

O.A. 140/2001

(2)

New Delhi this the 6th day of September, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri Govindan S. Tamai, Member (A).

V.S. Vasishtha,
S/o Shri M.L. Vasishtha,
R/o E-276, Narain Vihar,
New Delhi-110028. ... Applicant.

(By Advocate Shri M.K. Gupta)

Versus

1. Union of India through
its Secretary,
Department of Defence Production
and Supplies,
Ministry of Defence, DHQ Post Office,
New Delhi-110 001.
2. The Director General,
Director General of Quality Assurance,
Army Headquarters,
DHQ PO, New Delhi-110011 ... Respondents.

(By Advocate Shri Rajeev Bansal)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant is aggrieved by the action of the respondents in regard to implementation of the Hon'ble Supreme Court orders in A.N. Pathak & Ors. Vs. Union of India & Ors. (1987 (Supp) SCC 763), in which he states that he was also one of the petitioners.

2. Shri M.K. Gupta, learned counsel for the applicant, has submitted that in the impugned order dated 1.11.1999 (Annexure R-1 of the counter affidavit) as well as in paragraph 3 of the order dated 6.6.2000, the respondents have denied the applicant arrears of pay and allowances on account of retrospective grant of Non-Functional Selection Grade (NFSG) which were admissible

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to him from the date of issue of the order dated 1.11.1999. By order dated 1.11.1999, the respondents have stated that the competent authority has approved the placement of the applicant, in the JAG (NFSG) in the Defence Quality Assurance Services (DQAS) in the pay scale of Rs.4500-5700 (pre-revised) w.e.f.1.11.1989. Para 2 of this order reads as follows:

"Shri V.S. Vasishth will accordingly be entitled for the JAG (NFSG) from 01 Nov 89 provided he was not on leave on that date. The arrears of pay and allowances on account of grant of NFSG would, however, be admissible to the officer from the date of issue of this letter i.e. 01 Nov 99".

3. During the hearing, Shri M.K. Gupta, learned counsel, has submitted that in the prayer clause, what has been sought to be set aside in Paragraph 2 of the above order, is the second sentence, namely, the action of the respondents denying arrears of pay and allowances on account of grant of NFSG which was otherwise admissible to the applicant from 1.11.1989.

4. Learned counsel for the applicant has drawn our attention to the averments made by the respondents themselves in their reply. We note that the respondents have stated that consequent upon changes in the seniority of Senior Scientific Officers (SCOs) Grade-I, following the judgement of the Apex Court in A.N. Pathak's case (supra), the applicant became eligible for consideration for promotion to the next higher grade of Principal Scientific Officer (PSO) in a vacancy of 1984-85 which has been filled in the past on the result of the regular DPC held in June, 1986. It is relevant to note that the date of judgement of the Hon'ble Supreme Court is

12.2.1987. The respondents have stated that the aforesaid DPC of June, 1986 was accordingly reviewed in September, 1998. On the basis of the recommendations of the review DPC, the original panel for promotion to the grade of PSO for the years 1984/85 was revised vide orders dated 11.1.1999, in which the name of the applicant figured above the name of one Shri Syed Noor Mohammed. This was followed by promotion-cum-posting/transfer orders dated 17.2.1999 on the basis of which, the applicant assumed charge of the higher post of PSO in Senior Quality Assurance Establishment (Electronics) on 19.2.1999. Thereafter, orders were also issued on 5.7.1999 to the effect that the notional date of promotion of the applicant to the grade of PSO was fixed as 16.12.1996, i.e. the date of promotion of his immediate junior in the revised pay scale, namely, Shri Syed Noor Mohammed. It was also mentioned in the order dated 5.7.1999 that the applicant would be entitled to only notional fixation of pay from the date of his promotion and no arrears on account of pay fixation would be payable to him, except from the actual date of promotion, i.e. 19.2.1999. Thereafter, according to the averments made by the respondents themselves, they issued order dated 1.11.1999. The applicant was considered for promotion to NFSG and granted the same w.e.f. 1.11.1989 by order dated 1.11.1999. With regard to non-payment of arrears of pay in the higher post w.e.f. 1.11.1989, the applicant had made a representation which has been rejected by the impugned order passed by the respondents dated 6.6.2000.

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5. The main contention of the learned counsel for the applicant is that the respondents cannot deny the arrears of pay in the promoted post when they have themselves promoted the applicant with retrospective effect on the NFSG post because they have delayed holding the review DPCs in spite of the Hon'ble Supreme Court orders in 1987 in A.N. Pathak's case (supra). The learned counsel for the respondents has submitted that the arrears of pay in the promoted post, which the applicant got with retrospective effect, are not due to him as he has not shouldered any higher responsibility during the intervening period, i.e. 1.11.1989 to 1.11.1999. We are unable to agree with the contentions of the learned counsel for the respondents because the applicant could not have shouldered the higher responsibility in the NFSG post from 1.11.1989 because the respondents themselves had not given him the promotion on that date. It is also relevant to mention that realising their own mistake that the applicant should have been placed in the feeder grade senior to Syed Noor Mohammed, in the review DPC held in 1998, the mistake had been corrected. Thereafter, they have given the subsequent promotion on NFSG to the applicant by order dated 1.11.1999 retrospectively from 1.11.1989. Apart from this, another relevant factor is that a NFSG post does not involve assumption of higher duties and responsibilities and this ground taken by the respondents cannot, therefore, be accepted. The very terminology "NFSG" clarifies this position. Therefore, with regard to the impugned paragraph 3 (and not 2) of the order dated 6.6.2000, we see force in the submission made by Shri M.K. Gupta, learned counsel for the applicant that the

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respondents cannot deny the applicant arrears of pay and allowances on account of the retrospective grant of NFSG, which are otherwise admissible to him w.e.f. 1.11.1989 till the date of his actual assumption of office in that grade on 1.11.1999.

5. With regard to the other claims made by the applicant, they are not on the same footing as given with regard to the NFSG post and they are accordingly rejected. It is apparent from the documents on record that the applicant was well aware right in 1989 that he had been denied the arrears of pay in the post of PSO during the relevant period from 1986 to 1989. In the facts and circumstances of the case, that claim cannot be granted as it suffers from laches and delay and is barred by limitation as pointed out by the learned counsel for the respondents.

7. In the result, for the reasons given above, the O.A. partly succeeds and is allowed with the following directions:

(i) Paragraph 3 of the order dated 6.6.2000 read with the second sentence of paragraph 2 of the order dated 1.11.1999 is quashed and set aside;

(ii) Consequently, the respondents are directed to pay the difference in pay and allowances in the higher post of NFSG from the relevant period from

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1.11.1989 to 1.11.1999. In the circumstances of the case, there will be no interest on the payment of arrears;

(iii) The above action shall be taken by the respondents within two months from the date of receipt of a copy of this order to make the due payments to the applicant.¹⁸

No order as to costs.

(Govindaraj S. Tampli)
Member (A)
SRD

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)