

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.2343/98



New Delhi this the 3rd day of December, 1999

HON'BLE MR.JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

S.D. Prasad,
Son of Shri Lachhu Sao,
Chief Engineer,
(Electrical), Northern Zone,
Central Public Works Department,
R/o Q 3-2, Sector XIII,
Rama Krishna Puram,
New Delhi-110 066.

Applicant

(By Advocate: R.P. Kapur)

Versus

1. The Union of India,
Ministry of Urban Affairs & Employment,
Department of Urban Development,
Through its Secretary,
Nirman Bhawan, New Delhi-110 011.

2. The Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi-110 011.

Respondents

(By Advocate: Shri D.S. Mahendru)

O R D E R

BY MRS.SHANTA SHAstry, MEMBER (A)

The applicant is aggrieved by the Office Memorandum dated 29.8.1997 whereby he has been denied arrears of pay and allowances from 15.5.1991 i.e. the deemed date of promotion upto 30.8.1996, the actual date of promotion.

2. The applicant was initially appointed as Assistant Executive Engineer in the Central Electrical Engineering Service (Class I) in the Central Public Works Department. Thereafter, he was promoted as Executive Engineer (Senior Scale) on 8.2.1971 and as Superintending Engineer (Junior Administrative Grade) on 18.2.1977. Subsequently a revised seniority list of Superintending



Engineers was issued on 20.11.1991 based on the revised seniority list of Executive Engineers (Electrical) in pursuance of a judgement of the Hon'ble Supreme Court (A-4). In the revision the applicant who was earlier at Sl.No. 32 in the seniority list was placed at Sl.No. 35. Two other officers Shri VAD Kutty and Shri A.K. Saraf who were earlier junior to him were shown above him at Sl.Nos. 32 and 33 respectively. Thereafter both Shri VAD Kutty and Shri A.K.Saraf were promoted as Chief Engineers on 25.1.1993 and 14.6.1994 respectively. The applicant was not promoted at that time . Later on another judgement of the Supreme Court led to further revision of the seniority lists of various grades. The revised seniority list of Superintending Engineers was issued on 25.11.1994 by holding another review DPC. The applicant was restored his due seniority over and above, Shri VAD Kutty and Shri A.K. Saraf. The applicant was then promoted as Chief Engineer on 30.8.1996. Due to restoration of his seniority he was assigned deemed date of promotion on 15.5.1991. He was allowed notional pay fixation vide O.M. dated was allowed notional pay fixation vide O.M. dated 29.8.1997, the impugned order. However, no arrears have been allowed for the period from 15.5.1991 to 30.8.1996, on the ground of 'no work no pay'.

3. The learned counsel for the applicants submits that the applicant has throughout had a clean record and nothing adverse against him. Yet he was denied his due seniority and was promoted belatedly. It is not the fault of the applicant that he could not work in the promoted post from 15.5.1991 till his actual date of promotion i.e.

15

30.8.1996. It is entirely attributable to the actions of the respondents and therefore he should be paid the arrears of pay and allowances for the said period. The learned counsel for the applicant relies upon the decision dated 5.11.1983 of the Tribunal, Ernakulam Bench, in O.A. 760/92 in the case of P. Narayanan Nair Vs. Chief General Manager Telecom, Kerala Circle, Thiruanantapuram and Others. In this case it was held by the Tribunal that "the doctrine of 'no work no pay' applies to a situation where work has not been done by an officer for reasons due to him but not for reasons entirely due to respondents. But where an official was willing and work was denied to him by the Government he cannot be denied wages. The applicants in the case were allowed pay and allowances from the date of notional promotion as if they had performed the duties of the post. The learned counsel is further drawing support from the judgement of the Supreme Court in Union of India Vs. Janaki Raman (AIR 1991 SC 2010)

4. The learned counsel for the respondents submits that the applicant could not be given promotion earlier because of revision of seniority list of Superintending Engineers in pursuance of the Judgement of the Hon'ble Supreme Court. The respondents have treated the applicant fairly by restoring his seniority and promoting him in 1996. He has been allowed notional pay fixation from the deemed date of promotion. The counsel, however, contends that the applicant is not entitled to any arrears of pay as per instructions of DOP&T contained in Part VI of OM No. 22011/5/86-Estt.(D) dated 10.4.1989 in regard to the review DPC which reads as follows:

(16)

"If the officers placed junior to the officer concerned have been promoted, he should be promoted immediately and if there is no vacancy the junior most person officiating in the higher grade should be reverted to accommodate him. On promotion, his pay should be fixed under F.R. 22 the stage it would have reached, had he been promoted from the date the officer immediately below him was promoted but no arrears would be admissible".....

The respondents have strictly followed these instructions and settled the applicant's case rightly by denying him the arrears.

5. The learned counsel for the respondents has also raised the issue of limitation on the point of seniority. If the applicant was aggrieved by the change in his seniority in 1991, he should have challenged the same immediately then itself.

6. The respondents have further denied that the judgements cited by the learned counsel for the applicant are relevant.

7. Heard both the counsel for the applicant and the respondents.

8. The only point at issue is whether the applicant is entitled to the arrears of pay and allowances from the deemed date of promotion i.e. 15.5.1991.



9. The arrears have been denied to the applicants on the principle of 'No work no Pay'. We find that the sole reason for the applicant not being promoted earlier at the relevant time is the alteration of his seniority on account of revision of the seniority list of various grades in pursuance of the judgements of the Hon'ble Supreme Court passed from time to time. It was not the fault of the applicant. Had there been any thing adverse against him the respondents certainly would not have restored his seniority and promoted him. The applicant's case is aptly covered by the order dated 5.11.1993 passed by the Ernakulum Bench of the Tribunal in O.A.No. 760/92 in the case of P. Narayanan Nair and Ors. Vs. Chief General Manager, Telecom, Kerala Circle, Thiruvananathapuram & ors. Even in the case of Union of India Vs. K.V. Janaki Raman (Supra), it was held that where an employee has been fully exonerated he has to be given the benefit of the salary of the higher post from the date from which he would have been normally promoted but for the disciplinary/criminal proceedings. The applicant's promotion was not held up due to any disciplinary proceedings or criminal proceedings. It was purely due to reasons beyond his control. Therefore all the more reason that in all fairness the applicant should be entitled to the payment of arrears. We are inclined to grant the prayer of the applicant.

(18)

10. The respondents have also raised the point of limitation in regard to the seniority of the applicant. According to us, this objection does not survive as the applicant has already been given his due seniority.

11. In view of the above discussion, the respondents are directed to grant the arrears of pay and allowances to the applicant from 15.5.1991 i.e. the deemed date of promotion within a period of 3 months from the receipt of a copy of this order.

12. The O.A. is accordingly allowed. No costs.

Shanta S-

(Mrs. Shanta Shastry)
Member (A)

Rajagopala Reddy

(V. Rajagopala Reddy)
Vice Chairman (J)

Mittal