

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 453/1998/19

(10)

DATE OF DECISION : 25.9.1998.

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER (A)

Surinder Kumar Sharma

... Applicant(s)

-Versus-

U.O.I. & Ors.

... Respondent(s)

Advocates :

Mr./Ms. R.P.Agarwal for Applicant(s)

Mr./Ms. Vijay Pandita for Respondent(s)

1. Whether to be referred to Reporter? *yes*

2. Whether to be circulated to other Benches?

Km

(K. M. Agarwal)
Chairman
25.9.98

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
O.A. No. 453/1998.

NEW DELHI, THIS THE 25th DAY OF SEPTEMBER, 1998.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.R.K.AHOOJA, MEMBER(A)

Surinder Kumar Sharma
S/o Shri Siri Ram,
R/o Type II, Qr. No.7, HMD Colony,
P.O.Jhilmil, Delhi-110095.

...APPLICANT.

(BY ADVOCATES SHRI R.P.AGGARWAL AND M.K.GAUR)

versus

1. The Lt. Governor,
Through the Chief Secretary,
Govt. of N.C.T. of Delhi,
5, Sham Nath Marg, Delhi.
2. The Secretary (Services)
Govt. of N.C.T. of Delhi
5, Sham Nath Marg, Delhi.
3. The Director,
Institute of Human Behaviour and Allied
Sciences,
Shahdara, Delhi-110095
(Previously known as:-
The Medical Superintendent Hospital for Mental
Diseases, Shahdara, Delhi-95)
4. The Director,
Directorate of Training,
UTCS, Vishwas Nagar,
Near Karkar Dooma Court,
Delhi-110032.

....RESPONDENTS

(BY ADVOCATE SHRI VIJAY PANDITA)

ORDER

JUSTICE K.M. AGARWAL:

By this O.A. the applicant has mainly made a prayer for directing the respondents to consider him for promotion to Grade II of DASS from the date when his immediate junior was promoted along with all consequential benefits including arrears of pay and allowances from that date.

2. On 3.9.1998, the learned counsel for the respondents produced before us the order of the Government dated 10.8.1998 which showed that the applicant was given promotion with retrospective effect as claimed by him. Accordingly it was submitted that the application has become infructuous. However, the learned

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counsel for the applicant submitted that though promotion was granted to him with retrospective effect, the promotion was notional in character and pay fixation was made on the basis of that notional promotion. According to him, consequential benefits of arrears of salary etc. claimed by him with retrospective date was not granted by the Government and accordingly to that extent the O.A. survived. We, therefore, postponed the hearing of the case on 3.9.1998. It was finally heard on 24.9.1998.

3. It would appear from the pleadings and various documents on record that the applicant was denied his due promotion on frivolous grounds. First by order dated 16.5.89, he was put under suspension on the ground that a disciplinary proceeding against him was under contemplation. That suspension order was subsequently revoked by order dated 25.5.1992. In 1993, the applicant was not considered for promotion although his juniors were considered and also promoted from Grade III to Grade II of DSSS (Delhi Administration Subordinate Service). This was perhaps on the ground that some case against him was under investigation by the Anti Corruption Branch of Delhi Police. It was revealed that he did not figure in anti corruption case under investigation by the Delhi Police. His name also did not appear in any FIR on which basis any investigation for any criminal offence against him could be made. Under these circumstances, the present O.A. was filed for the said reliefs. One of the reliefs, that is, promotion with retrospective effect has been granted to the applicant as claimed in the application. However, treating the retrospective promotion as notional, his pay fixation was made with the result that he could get no difference of salary for the retrospective period of his promotion.

4. After hearing the learned counsel for the parties, we are of the view that in the facts and

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circumstances of the case, the applicant is entitled to arrears of pay from retrospective date of his promotion. In U.O.I v. K.V. JANKIRAMAN, AIR 1991 SC 2010, the Supreme court observed and held:

"We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases."

In the present case also, we find that for no reason or fault, the applicant was denied his due promotion, although his juniors were so promoted. This is also not a case where the applicant could be said to have expressed his unwillingness to work on the post of promotion. In fact he was deprived of working on a post of promotion by the authorities for no fault of his. Accordingly we are of the view that the applicant is entitled to the difference of his salary from the date of his retrospective promotion vide order dated 10.8.1998 of the respondents.

5. In the result, this O.A. succeeds and it is hereby allowed. The applicant has already been promoted w.e.f. 27.5.1993 by Order No.F.1(1)(113)/92-Trg/, Admn/-3851-56 dated 10.8.1998. We now direct that he shall also be entitled to the pay and allowances of the promotional post w.e.f. 27.5.1993. Accordingly all arrears of his pay (i.e. actual pay of the lower post drawn and the pay entitlement for higher post pursuant to this order) shall be paid to the applicant within a period of two months from the date of receipt of a copy of this order. He shall also be entitled to a cost of

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Rs.1000/- (Rupees one thousand only) from the respondents, which may be paid to him within a period of two months from the date of receipt of a copy of this order.

Km
(K.M. AGARWAL)
CHAIRMAN

R.K. Ahooja
(R.K. AHOOJA)
MEMBER (A)