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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH.

OA No. 638/96

New Delhi: this the 7<sup>th</sup> day of March, 2000.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Mrs. Sudhi Goel,  
W/o Sh. Janak Raj,  
1/46 Ramesh Nagar,  
New Delhi - 15

.... Applicant.

(By Adv. Sh. Anil Mittal)  
Versus

1. Union of India,  
through Customs & Central Excise Collectorate,  
Inder Prastha Estate,  
New Delhi.
2. The Dy. Collector (Personnel & Estt.).  
Central Excise Collectorate,  
New Delhi.
3. The Administrative Officer (HQ),  
Central Excise Collectorate,  
New Delhi. .... Respondents.

(By Advocate: Shri R. R. Bharti)

ORDER

Mr. S. R. Adige, VC(A).

Applicant impugns respondents' order dated 22.10.93 (Annexure-B); letter dated 15.3.95 (Annexure-C); and office order dated 27.3.95 (Annexure-D); to the extent that it declares applicant's promotion w.e.f. 26.6.84 as only notional and disentitles her to arrears of salary from 26.6.84 to 25.10.93. Letter dated 26.10.95 (Annexure-F) rejecting her request for arrears is also challenged.

2. Admittedly applicant was appointed as Steno (OG) in Delhi Central Excise Collectorate w.e.f. 20.12.77 and was promoted to officiate as Inspector (OG) vide order dated 27.12.83 on DPC's recommendations held on 14.12.83. However, on receipt of Board's letter dated

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8.6.84 (Annexure-R1) all the promotees including applicant were reverted by order dated 16.6.84.

3. Preparatory to holding a review DPC a physical standard test was held in which applicant was found unfit on account of not possessing the minimum height requirements and she was not called for the interview held on 19.6.84. Her request for relaxation of physical standards was rejected on 29.8.84.

4. Thereupon applicant represented on 28.3.89 requesting that her case be referred to the Medical authorities, and accordingly her case was referred to RML Hospital Delhi on 25.5.89 who reported that applicant's height was in accordance with the prescribed standards. On the basis of this report, applicant's case was considered by DPC on 8.9.89 to review the decision of the DPC dated 19.6.84, but this DPC also found her not fit, and hence she was not promoted. The physical test for the DPC of Inspector held by respondents on 7.9.90 again found her short in height and she was not called for interview.

5. Meanwhile applicant filed OA No.588/87, inter alia challenging her reversion. That OA was disposed of by order dated 8.1.93 with a direction to respondents to convene a DPC to consider applicant's case for promotion as Inspector on the basis of her record upto 1984, and if found fit she should be promoted from the date her next junior was promoted.

6. In compliance with the above order, by letter dated 7.9.93 (Annexure-RII) respondents held a review

DPC and by letter dated 15.3.95 (Annexure-RII) applicant was promoted as Inspector notionally w.e.f. 26.6.84 but actual benefits were given to her only w.e.f. 26.10.93 when she began to perform the duties of Inspector. Applicant's prayer for arrears of pay and allowances from 26.6.84 to 26.10.93 was rejected by letter dated 26.10.95 upon which she has filed this OA.

7. We have heard Shri Mittal for applicant and Shri Bharati for respondents.

8. Shri Mittal has stated that denial of salary for the period 26.6.84 to 26.10.93 is illegal and arbitrary, because applicant was available and willing for promotion but was denied the same on 26.6.84 owing to respondents' high handedness. It is contended that if applicant had not been reverted she would have continued as Inspector w.e.f. 26.6.84 and the principle of 'no work, no pay' would not be applicable because of respondents' own fault. In this connection various rulings have been cited by him including UOI & Ors. Vs. K. V. Janakiraman & Ors. 1991(5) SLR 602; B.S.Kadian & Ors. Vs. State of Haryana & another 1994(4) SLR 424; and V.Jayaraman Vs. Govt. of Tamil Nadu & another 1994(6) SLR 531 in support of his contention that salary for the aforesaid period cannot be denied by respondents to her by invoking FR 17(1) or the principle of 'no work, no pay', when she herself was available and only for promotion.

9. Shri Bharti however asserts that applicant's claim is hit by Order 2 Rule 2 CPC and relies upon the Hon'ble Supreme Court's rulings in UOI Vs. Shri Punni Lal & Ors. SCSLJ 1997(1) page 12 and CAT PB order dated 20.1.99 in OA No.419/98 Shri Virchand Vs. UOI & Ors.

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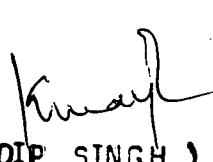
10. We have considered the matter carefully.

11. IN OA No.588/87 applicant could very well have prayed for salary from 26.6.84 onwards, but a perusal of para 2 of the order dated 8.1.93 disposing of that OA, which lists the various reliefs claimed makes it clear that applicant had not claimed salary from 26.6.84 onwards. Under the circumstance there is merit in respondents' contention that the claim for wages from 26.6.84 till 26.10.93 is now barred by Order 2 Rule 2 CPC in the light of the Hon'ble Supreme Court's ruling in Punni Lal's case (supra) and it is also hit by Section 11 Explanation IV CPC.

11. Sri Mittal has sought to reply to these contentions by citing the case of D.R.Jerry Vs. UOI AIR 1974 SC 130 and a judgment of the Rajasthan High Court dated 8.12.78 titled Div. Personnel Officer Western Railway Vs. Shri Shankar 1980 (2) SLR 280..

12. In our view the Hon'ble Supreme Court's ruling in Punni Lal's case (supra) is conclusive on the point that applicant's claim is hit by Order 2 Rule 2 CPC. If there was any doubt on that point, the same is set at rest by the Hon'ble Supreme Court's ruling in Commissioner of Income Tax, Bombay Vs. T.P.Kumaran 1996(5) SLR 675, which makes it clear that applicant's claim is barred not only by Order 2 Rule 2 CPC but also by the principle of Constructive Res Judicata under Section 11 Explanation IV CPC.

13. The OA is therefore dismissed. No costs.

  
(KULDEEP SINGH )  
MEMBER(J)

  
( S. R. ADIGEKAL )  
VICE CHAIRMAN (A)