

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1644 of 1997

New Delhi, this the 12th day of August, 1997

Hon'ble Mr. Justice K.M. Agarwal - Chairman
Hon'ble Mr. N. Sahu, Member (A)

Sunil Kumar Sinha, S/o Late Shri M.P. Sinha,
aged 48 years, R/o 1111, Sector-IV, R.K.
Puram, New Delhi, And employed as Assistant
Central Intelligence Officer, Grade I
(General).

- APPLICANT

(By Advocate Shri B.B. Raval)

Versus

1. Union of India through the Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi.
2. The Director, Intelligence Bureau, Ministry of Home Affairs, North Block, New Delhi - RESPONDENTS

ORDER

By Mr. N. Sahu, Member (A) -

The applicant prayed for the following reliefs -

- "(i) Repromotion to the rank of ACIO-I(G) with effect from November, 1988 soon after joining in the reduced rank of ACIO-II(G) on reinstatement on November 17, 1988.
- (ii) Antedating his seniority by nearly four years of past service as ACIO-I from March 20, 1981 to March 12, 1985 until removal from service.
- (iii) Promotion to the next higher rank of DCIO by a review DPC according to the revised seniority, from retrospective effect with all consequential benefits like pay fixation payment of arrears etc. with 24% interest till realisation.
- (iv) Interest @ 24% on the arrears drawn on refixation of his pay at the maximum pay scale of the reduced rank of ACIO-II(G) wef November 17, 1988 and on repromotion to ACIO-I(G).
- (v) Payment of the wrongfully deducted income tax Rs. 38,789/- with 24% interest till the date of realisation.
- (vi) Heavy damages of rupees ten lakhs for harassment, loss damages, heavy expenses on a series of litigations in Tribunal and the Supreme Court, including the present one and

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damages for sabotaging the prosperous career in the Central Bank as a Vigilance Officer.

(vii) Payment of the arrears of HRA, SDA, for the dies non period with 24% interest.

or

If the inadmissibility of the HRA, SDA and ACA for the dies non period under the FRs as contended in the impugned Annexures-'C' is upheld, then the dies non order is set aside as bad in law for violating the FRs.

(viii) Fix up accountability of concerned officials and exemplary punishment to them as named above for their misconduct and omissions and commissions.

(ix) A high-level probe into the affairs of IB and the gross abuse and plunder of its Secret Service Fund (SS Fund).

(x) Any other relief or reliefs order or orders, and direction or directions as deemed fit in view of the facts and circumstances of the case alongwith exemplary cost of not only this OA but also for more than a decade long avoidable litigation leading upto the Supreme Court thrust upon the applicant."

2. Original Applications Nos. 2238 of 1989 and

401 of 1991 filed by the applicant were disposed of by a common judgment dated 17.4.1995 by a Division Bench of this Tribunal. The Bench held that the disputes in these O. As. were already decided by a co-ordinate Bench at Patna and, therefore, the principle of res judicata will operate in this case. Section 11 of the Civil Procedure Code lays down that no Court shall try any suit or issue in which the matter directly or substantially in issue has been adjudicated upon in a former suit between the same parties. The CAT Patna Bench remanded the case back to the respondents because the applicant had not been heard on account of ex parte enquiry. The order of the appellate authority was quashed and the Director, IB was asked to discharge his obligations envisaged in Rule 29(v of the CCS(CCA)Rules. Fresh orders were passed by the Director, IB. The Director IB on remand held the view that charges from 1 to 4 had already been proved by documentary evidence. The Director held that he was taking a lenient

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view of the case and reduced the punishment from removal from service imposed on the applicant to reduction to a lower post of ACIO-II (G) until he is found fit by the competent authority to be restored to higher post of ACIO-I (G). On the basis of these orders the applicant was reinstated in the lower post of ACIO-II (G) from the date he reported for duty at IB Headquarters, New Delhi and his pay was to be fixed at the maximum of the pay scale of ACIO-II (G). On repromotion to the higher post of ACIO-I (G) his seniority would be decided from the date of repromotion. The Tribunal virtually confirmed the orders of the IB and held that the applicant should be given the maximum of the pay scale admissible to him along with three stagnation increments in the maximum of that pay scale. It directed constitution of a review DPC for consideration of his promotion. The respondents were also directed to consider his case for repromotion to the post of ACIO-I (G) on the basis of his record of service by reconstituting a review DPC. His previous service which he rendered as ACIO-II (G) and ACIO-I (G) would be counted for purposes of his seniority. There was delay in constituting a DPC for which a Contempt Petition No. 21 of 96 was filed. This was disposed of by an order dated 12.8.1996. After notices of the Contempt Petition were received, the respondents convened a review DPC and promoted the applicant. The Bench disposing of the Contempt Petition expressed its unhappiness over the delay but did not take any further action on the ground that the order was complied with though belatedly. By an order dated 12.2.1996 the applicant was reinstated in the reduced rank of ACIO-II (G) with effect from 17.11.1988 with pay of

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Rs. 2900/- per month plus three stagnation increments. By an order dated 30.3.1996 the applicant was repromoted to the grade of ACIO-I(G) with reference to the date of promotion of Shri M.C. Malviya his immediate junior with effect from 29.11.1990. He was assigned seniority no. 1283 (A).

3. In the light of the above, we do not consider it appropriate to admit this Original Application. Repromoting to the grade of ACIO-I(G) with effect from November, 1988 and ante dating his seniority by nearly 4 years would run counter to and nullify the entire proceedings earlier initiated against him which resulted in his reduction in rank; appeal against the said order; remand by the Tribunal; reconsideration by the disciplinary authority; and a further confirmation of the orders. By admitting these claims for reliefs we would be violating the principle of res judicata. The review DPC has been held for promotion to the grade of ACIO-I(G) with reference to 1989 DPC. The review DPC did not find him fit for promotion as ACIO-I(G) with effect from 1989. Consequently, his case for promotion as ACIO-I(G) was considered by the next review DPC with reference to the 1990 DPC. This DPC found him fit with effect from 20.11.1990. There is, therefore, no question of considering the applicant for promotion with effect from November, 1988. Similarly, there is no question of considering his seniority as ACIO-I(G) from 1981 to 1985. The request for counting of period of suspension was not rightly acceded to as the entire period from 29.4.1983 to 16.11.1988 was treated as dies non by an order of the IB Headquarters dated 25.9.1990.

4. In pursuance of the judgment of the Tribunal the applicant's pay was correctly fixed. There is no question of

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paying any interest. There was no direction for payment of interest on arrears. The applicant had claimed penal interest in OA 2238/1989 which was not granted. Therefore, his claim for interest on the payment of arrears cannot be entertained as it is hit by the principle of res judicata.

5. With regard to the claim of damages the Hon'ble Supreme Court has held in the case of Dr. H. Mukherjee Vs. S. K. Bhargava, (1996) 4 SCC 542 that a suit for damages is not within the province of Section 14 of the Administrative Tribunals Act, 1985. In the case of Sanjeev Kumar Sharma Vs. Union of India & others, (1990) 13 ATC 894 a Division Bench of this Tribunal has held that the prayer for damages for wrongful removal is in the nature of a claim for tort and cannot be considered in an application under Section 19 of the Administrative Tribunals Act, 1985. Thus, the relief at item no. (vi) as also relief at item no. (viii) cannot be considered by this Tribunal.

6. With regard to the payment of HRA & SDA and ACA with interest for the dies non period, the applicant should have contested the order of dies non passed as early as on 29.5.1990. That order having become final he cannot now after a lapse of such a long time approach this Tribunal. This claim also fails on account of limitation. All the other grounds claimed do not strictly relate to the service conditions of the applicant and are matters extraneous and inadmissible under Sections 14 and 19 of the Administrative Tribunals Act, 1985.

7. The Original Application is dismissed summarily at the admission stage.

Narasimha Sahu
(N. Sahu)
Member (A)

KM
(K. M. Agarwal)
Chairman