

Central Administrative Tribunal, Principal Bench

OA No.241/97

New Delhi this the 25th day of July, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)  
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

Shri S.P. Gupta,  
S/o Shri Gopi Chand,  
R/o BQ-41, Shalimar Bagh,  
Delhi-110052.

...Applicant

(By Advocate Shri R. Dorai Swamy)

-Versus-

Union of India - through:

1. Secretary to the Govt. of India,  
Deptt. of Supply,  
Nirman Bhawan,  
New Delhi.
2. Director General of Supplies  
and Disposals,  
Jeevan Tara Building,  
5, Sansad Marg,  
New Delhi-110 001.

...Respondents

(By Advocate Shri R.P. Aggarwal)

O R D E R (ORAL)

By Justice V. Rajagopala Reddy:-

The applicant was initially working as Assistant Inspecting Officer, Group 'B' post. He was selected by the UPSC to the post of Assistant Director (Inspection) (ADI for short) in Grade III of Indian Inspection Service, as a direct recruit, in 1980. Before the appointment order was issued disciplinary proceedings were initiated against him. Hence the offer of appointment to the post was not issued. After conclusion of the disciplinary proceedings a penalty of reduction of pay to a lower stage by 3 stages for 3 years was imposed by order dated 18.4.81. The appellate authority, however, set aside the penalty and remitted the case to the disciplinary authority for further enquiry. The charges framed against the applicant were, however, dropped by order dated 26.8.86. Pending the disciplinary proceedings the

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applicant filed an application in the Principal Bench of the Tribunal, being OA No.595/87, seeking appointment to the post of ADI w.e.f. 1980 with all consequential benefits. The Tribunal by its order dated 17.11.92 while allowing the OA, directed the respondents to consider the case of the applicant for appointment to the post of ADI w.e.f. 1980. The Tribunal also allowed the claim for difference of pay and allowances admissible from the date of his appointment in the said post. Accordingly, by order dated 16.8.93 he was appointed w.e.f. 31.12.80 as ADI with all consequential benefits with retrospective effect.

2. Thereafter his case was considered for promotion to the post of Deputy Director Inspection (DDI for short) on the basis of his deemed date of appointment and his seniority. He was found fit by the review DPC for empanelment in the 1984 panel and was promoted on regular basis to the post of DDI, notionally w.e.f. 8.10.85 and effectively from the date he took over charge on 4.4.96, by order dated 4.4.96.

3. The grievance of the applicant in this case is that it is wholly unlawful to deprive him of the benefits of pay and allowances with effect from the date of deemed promotion, viz. 8.10.95.

4. The learned counsel for the respondents, however, submits that as the applicant was notionally promoted he was not allowed the pay and allowances from that date. It is also contended that as the applicant did not work during the period of notional promotion, he cannot have

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rightful claim for the pay and allowances. He relies upon FR 17 and contends that an officer is entitled to pay and allowances only from the date he assumes charge.

5. We have given careful consideration to the contentions raised on either side.

6. The facts are not in dispute in this case. Even before the applicant was appointed by direct recruitment in the post of Assistant Director, as there were disciplinary proceedings pending against him the order of appointment was not issued. Though the OA was filed seeking appointment to the post of Assistant Director, the observations made in the judgement dated 17.11.93 are relevant, which are as under:

"We find considerable merit in this contention. It is needless to state that once the disciplinary proceedings and the punishment initially imposed in pursuance of such proceedings finally come to naught, the applicant cannot be made to suffer on account of the initiation of the disciplinary proceedings against him. On the facts and in the circumstances of the case, we have no hesitation in coming to the conclusion that in this case the request of the applicant has to be considered as if no proceedings were initiated and no punishment was imposed on him. If so, there is no reason as to why he should not be held entitled to the benefit of selection to the higher post of Assistant Director/Inspecting Officer from the date from which persons selected along with him in that selection were given appointment in accordance with the relevant rules on that point, but in the matter of seniority as a direct recruit, he will be governed by his merit position in the selection list.

5. In the light of the foregoing discussion, this OA is allowed in terms of the direction that the applicant shall be appointed to the post of Assistant Director of Inspection/Inspecting Officer on the basis of his selection in 1979/80 and he shall also be entitled to the difference of pay and allowances admissible thereon between what he was entitled to as aforesaid and what he has already drawn in the grade on the basis of his ad hoc/subsequent appointment on regular basis."

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7. The applicant was accordingly appointed and was allowed all consequential benefits, including the pay and allowances for the period from 31.12.80. As seen from the order dated 31.5.96 where the applicant has been promoted to the post of DDI, the only requirement for promotion to DDI was completion of four years service as ADI. The applicant having completed four years of service by 31.12.84, he was immediately considered for promotion by the review DPC and as he was found fit, he was promoted notionally w.e.f. 8.10.85. The view taken by the Tribunal, though it was with reference to the post of ADI, holds good for considering the claim of the applicant for arrears of pay and allowances from the notional date of promotion. Once the proceedings are dropped and he was promoted w.e.f 8.10.85 he was entitled for all the benefits, including the pay and allowances as was rightly held by the Tribunal in the above OA. It is hardly convincing why arrears of pay should not be paid for promotion to DDI when they were paid to ADI. The contention that as he was not working during that period he is not entitled for the pay and allowances, cannot hold good, because he was not allowed to work in the promoted post during that period. The applicant cannot be found fault for the pendency of the disciplinary enquiry. He was allowed all the benefits w.e.f. 31.12.80 in the post of ADI though he has not worked in that post during that period. The same ratio holds good even to the post of DDI, as this promotion is consequential to his appointment in the post of ADI.

8. In Union of India v. K.V. Jankiraman, AIR 1991 SC 2010, it was clearly held that when "an employee was completely exonerated in the disciplinary proceedings and was not visited with the penalty, even of censure indicating thereby that he was not blameworthy in the least, he should

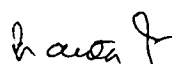
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not be deprived of any benefits including the salary of the promotional post. The normal rule of "no work no pay" is not applicable to such cases." The ratio of K.V. Jankiraman's case (supra) is squarely applicable to the present case.

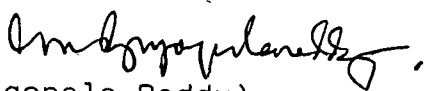
9. The judgement referred to by the learned counsel for the respondents in State of A.P. v. K.V.L. Narsimha Rao & Others, 1999 SCC (L&S) 841 has no application to the facts of the case on hand. It arises on different facts where the seniority list has been revised under the States Re-organisation Act, 1956, which required considerable exercise over a period of time. In view of the facts in the said case the court held that the respondents were not entitled to back wages. It should be noted that the court has clearly stated in that case also that the normal rule was to allow back wages in the case of retrospective promotion.

10. In the circumstances, we find force in the contention of the learned counsel for the applicant. The applicant is entitled for arrears of pay and allowances w.e.f. 8.10.85 to 3.4.96. The impugned orders are directed to be modified accordingly.

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

  
(Smt. Shanta Shastri)  
Member (Admnv)

'San.'

  
(V. Rajagopala Reddy)  
Vice-Chairman (J)