

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A. No. 2914 of 1997 decided on 19.11.1998.

Name of Applicant : Shri Tula Ram

By Advocate : Shri Y.P. Anand

Versus

Name of respondent/s The Chief Secretary, Govt. of NCT  
& others

By Advocate : Shri Vijay Pandita

Coram:

Hon'ble Mr. N. Sahu, Member (Admnv)

Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the reporter - Yes/~~No~~
2. Whether to be circulated to the other Benches of the Tribunal. - ~~Yes~~/No

*N. Sahu*  
(N. Sahu) 19/11/98  
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2914 of 1997

New Delhi, this the 10<sup>th</sup> day of November, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)  
Hon'ble Dr.A.Vedavalli, Member(J)

Shri Tula Ram, son of late Shri Kanshi  
Ram, R/o Vill & P.O. Rawta, New  
Delhi - 110 023.

-APPLICANT

(By Advocate Shri Y.P.Anand)

Versus

1. 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, Shamath Marg, Delhi.
3. The Commissioner (Transport), Govt. of N.C.T. of Delhi, 5/9 Under Hill Road, Delhi.
4. The Director of Education, Govt. of N.C.T. of Delhi, Old Secretariat, Delhi.

-RESPONDENTS

(By Advocate Shri Vijay Pandita)

O R D E R

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

The prayer in this Original Application is that the applicant be promoted with effect from 22.10.1992 when his juniors were promoted as Upper Division Clerk (in short 'UDC') with consequential benefits; and for a direction to pay him the salary withheld with effect from 27.3.1996. Finally, the applicant prays for a direction to allot him duties and not keep him waiting in search of duties.

2. The above grievances arose in the background of following admitted facts - the applicant is a Lower Division Clerk (in short 'LDC') since 7.10.1982 in Delhi Administration and his name stands at serial

no.8336 in the seniority list of Delhi Administration Subordinate Services (in short 'DASS') for the year 1985. He was transferred to the Transport Department in June, 1991. From here he was deputed to work with the Presiding Officer, Motor Accident Claims Tribunal (in short 'MACT'), Tis Hazari Courts, Delhi. He could not be given promotion to UDC in the normal course because he neither qualified the typing test nor was he exempted from passing the test by the competent authority. Accordingly, the applicant was not promoted along with his juniors because he did not fulfil the prerequisite condition for promotion, namely, passing the type test. For confirmation of this, a letter dated 1.5.1992 (Annexure-AR-1 to the counter) was circulated for elucidating information about candidates who passed the said typing test. Accordingly, his juniors were promoted on 22.10.1992. He applied for exemption from typing test by a letter dated 12.5.1989. No exemption from the typing test was granted initially because having appeared in the test on 21.5.1990 he failed "with zero speed" (para 5 of the counter). The Government of India subsequently revised the instructions for exemption from typing test by their letter dated 28.9.1992. The "genuine attempt" clause in the earlier instructions was omitted in cases where the official is 45 years and above. A one time exemption was given under certain circumstances. The applicant was accordingly granted exemption from type test by an order dated 11.1.1993 (Annexure-I-3) with effect from 1.1.1990. Thereafter he became eligible for promotion and was promoted as UDC vide order dated

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13.4.1993 (Annexure-A-1) on adhoc basis. On promotion he was posted from Transport Department to Education Department. It is stated that the Judge, MACT directed the applicant to clear his pending work before he could be relieved and he had written to the Commissioner, Transport Department, Delhi vide letter no. MACT/93-94/376 dated 13.5.1994 (Annexure-A-3) asking for a substitute in place of the applicant so that he would be relieved of his duties. By an order dated 26.3.1996 (Annexure-A-5) the Judge, MACT, relieved him from 26.3.1996 subject to his completing certain pending work. He was not accepted by the Education Department and was not allowed to join therein. He was not paid salary from 27.3.1996.

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3. By an order No. F.4/5/98. S.II/1847 dated 22.5.1998 on the recommendation of the DPC the applicant was promoted to Grade III (DASS) on regular basis under Rule 6 of the DASS Rules, 1967 in the pay scale of Rs.1200-2040 with effect from 22.10.1992. It is stated in the promotion order that the officials would not be entitled for the payment of arrears of pay and allowances for the period they did not actually work on the post of Grade-III (DASS).

4. The reason for the applicant's not getting relieved is explained by the respondents at para 5.6 of their counter as under -

it is submitted that it is wrong to say that the official has been harassed. He was initially transferred on promotion vide Dy. Secretary Service orders BO: 4/2/13/S.II dated 13.4.93 to Education Department and relieving order was issued by the head quarter to relieve him from Transport

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department vide order No. Admn/TPT/2885 dated 3.5.94. The copy of the same was endorsed to all the Head of Departments/ Presiding Officer MACT/ official concerned. But he was not physically relieved by the concerned officer nor he made any efforts to get himself relieved. He remained there willfully. However, on noticing the fact that the applicant was not physically relieved by the presiding officer MACT, again his relieving orders were issued by the Transport Department on 9.1.96 and finally he was relieved physically w.e.f. 26.3.96 from the MACT (Branch of TPr deptt) and as such there is no harassment to the incumbents rather he himself avoided to join the Education Department on one or the other pretext."

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5. As far as the reasons for not paying the withheld salary and arrears, the respondents make the following submissions -

"It is further submitted that so far as relieving of his withheld salary, it is stated that the same has been paid to him w.e.f. 27.3.96 as per his LPC and now his pay and allowances are not pending with Education Department. As regards to the payment of arrears the same cannot be paid as the applicant was relieved in time but he failed to join the Education Department on promotion. Thus, there is no fault of this department due to which the arrears of pay and allowances be paid to the applicant. Moreover the applicant cannot claim the benefit of his own wrong by not passing the type test in time. If he had passed the type test in time he would have been promoted on adhoc basis in time. It was only by virtue of revised instructions dated 28.9.92 of Govt. of India that he got exemption from passing the type test on 11.1.93 w.e.f. 1.1.90 and became entitled for promotion."

6. The learned counsel for the respondents vigorously urged that this Original Application is barred by limitation and for this purpose he cited a decision of Hon'ble Supreme Court in the case of S.S. Rathore Vs. State of M.P., AIR 1990 SC 10 and

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also Ratan Chandra Sammanta and others Vs. Union of India and others, (1994) 26 ATC 228 = 1993 Supp (4) SCC 67 = 1994 SCC (L&S) 182.

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7. We have carefully considered the submissions of rival counsel. The arguments relating to limitation is not applicable to the facts of this case. The applicant has been promoted on adhoc basis on 13.4.1993 and regularised under Rule 6 of the DASS Rules, 1967 with effect from 22.10.1992. The regular promotion was qualified by saying that payment of arrears of pay and allowances would not be paid to the promoted official unless he worked in the post. We are very clear in our mind that the applicant did not pass the typing test and till relaxation order he was not entitled to any promotion benefits. The relaxation order was dated 11.1.1993 although it was effective from 1.1.1990. He cannot claim parity of pay with those who were promoted on 22.10.1992 although the promoted official were his juniors. There can be no question of payment of arrears upto 11.1.1993 because he had no eligibility; he was not promoted and he did not function in the promoted post. He was promoted with effect from 13.4.1993. The orders were issued. It was for the respondents to ensure that a subordinate gets relieved and works in the new post. The facts have come on record that he was not immediately relieved by the Judge, MACT under whom he worked because of pending work. He could have been given in situ promotion by the Judge who had taken his services if that was permissible under the rules. A clear right has accrued in favour

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of the applicant when the promotion orders were issued to him. It was not his fault at all that he was relieved only in 1996 and that too conditionally. The exercise of giving a promotion order becomes pointless when the promoted official is not allowed to function in the new post. That cannot be a ground to deprive him of his promotion or monetary benefits. In Union of India Vs. K.V. Jankiraman, (1991) 4 SCC 109 it has been held that when for no fault of the employee a promotion or an appointment or a higher pay is denied to him and the same is rectified later by the department as in the case of retrospective promotion after a full exoneration in a disciplinary case/ criminal trial, actual monetary benefits have also to be given.

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8. We have extracted the pleadings of the respondents' counter above. It is elementary that the respondents should know that it is their duty to get an official relieved and make him work in the promoted post. In this case there is nothing on record to show that the applicant refused to work in the promoted post. He was deprived of his promotion benefits because he was retained by the Judge, MACT for a period of roughly over two years to perform arrears of pending work. This is, therefore, a fit case where from 13.4.1993 or from the date from which the applicant's junior had been promoted whichever is later he should be given the pay of the promoted post along with other consequential benefits.

*Remuneration.*

9. In case where promotion was withheld for genuine reasons the Hon'ble Supreme Court had held in favour of the affected officials. In U.P.State Electricity Board and another Vs. Kharak Singh and another, (1991) 15 ATC 833 the Apex Court upheld the order of the Tribunal giving retrospective promotion to the applicant with effect from the date his juniors were promoted since the adverse entry in the CRs on the basis of which he had earlier been not considered for promotion, had been expunged later. The Tribunal had ordered consequential benefits like arrears of salary and seniority, which has also been upheld by their Lordships. To the similar effect is the decision of the Hon'ble Supreme Court in R.K.Singh Vs. State of Uttar Pradesh and others, 1991 SCC (L&S) 1178.

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10. In the two cases cited above, there were reasons for withholding the higher pay and promotional benefits and the moment the reasons disappeared, they were given the full benefits of promoted post with retrospective effect. In the applicant's case, there is no handicap, no infirmity, and no fault on his part. There was a promotion order, his juniors were promoted, he could not be allowed to take charge, and what is more the DPC regularised his promotion from an earlier date. It is settled law in S.R.Bhanrale Vs. Union of India and others, 1996 SCC (L&S) 1384 that where the Government is clearly at fault, the limitation would not apply. Secondly, where financial benefits are at stake, limitation would not apply. Thirdly, the

*R. K. Singh*

applicant had been promoted in 1993. He is entitled to the higher pay month after month. The cause of action arises intermittently for all the periods of his deprivation. For the above reasons, the ground of limitation would not apply and is rejected.

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11. If the applicant had not joined so far, the respondents are directed to issue an order directing him to join a particular place within four weeks from the date of receipt of a copy of this order. Arrears of pay shall be paid as per directions above at para 8 of this order within a period of six weeks from the date of receipt of a copy of this order.

12. In the result, the OA is disposed of with the directions as above. In the particular facts and circumstances of the case, no interest on arrears is admissible. This is also a case where the parties are left to bear their own costs.

A. Vedavalli  
(Dr. A. Vedavalli)  
Member (J)

N. Sahu  
(N. Sahu) 19.11.98  
Member (Admnv)

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