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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-33/2000

New Delhi this the 5th day of December, 2001.

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

Sh. B.S. Bedharak,
D-74/2, Sector-I,
Pushp Vihar,
New Delhi-17.

Present address:
X-43, Sector-12,
Noida,

..... Applicant

(through Sh. B. Lall, Advocate)

Versus

1. Union of India through
the Secretary,
Dept. of Science & Technology,
Technology Bhavan,
New Delhi-16.

2. The Secretary,
Dept. of Personnel & Training,
North Block,
New Delhi-1.

..... Respondents

(through Sh. KCD Gangwani, Advocate)

ORDER

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

The applicant, B.S. Bedharak, a retired Under Secretary to the Government of India is aggrieved by the rejection of his representation by the respondents regarding his claim for payment of arrears of pay and allowances for the period of his notional ad hoc promotion as Section Officer from 15.09.1981 to 07.03.1990.

2. The applicant has impugned the respondents OM dated 01.12.1999 (Annexure A-V) rejecting his representation. He seeks (i) quashing of the said OM dated 01.12.1999; (ii) direction to Respondent No.1 for grant of arrears of his pay and allowances on back dating his promotion as Section Officer from 15.09.1981 to

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25.03.1983; (iii) modification of the notification issued by respondents dated 08.10.1999 (Annexure A-III) and dated 18.03.1999 (Annexure A-IV); & (iv) interest @ 18% p.a. on the said arrears from the date of filing of OA No. 290/86 i.e. 21.04.1986.

3. Facts of this case, briefly, are as under:-

i) The applicant who belongs to a Schedule Caste community was appointed as an Upper Division Clerk (UDC for short) in the Ministry of Works and Housing in the year 1963. He opted to go over to other cadres on promotion as Assistant on long term basis under the zoning scheme and conveyed his willingness on 21.12.1972. He was nominated by DP&AR for appointment as Assistant to the Department of Science & Technology in a long term reserved vacancy. He joined the post on 11.10.1973. He was later confirmed on 25.04.1982 in the said post w.e.f. 16.12.1979. However, his name was not included in the select list of Section Officers for the year 1981. He submitted a representation for inclusion of his name in the said list claiming that he fulfilled all the requirements. The said representation was rejected on 21.11.1983. His final representation on 07.11.1985 was also rejected on 17.11.1985. Aggrieved by the said rejection the applicant filed OA No. 290/86 before this Tribunal.

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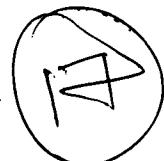
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ii) The Tribunal in their detailed order dated 30.10.1987 (Annexure A-I) held, inter alia, that on obtaining the clarification from DP&AR it was incumbent on the department of Science & Technology to take steps for revising the seniority list of Assistants for the year 1973 and also prepare the seniority lists for the subsequent years but it appeared that no seniority list of Assistants was prepared. As this was not done, the omission to include the name of the applicant in the seniority list prepared for the Section Officers grade for the years from 1981 to 1984 has vitiated the aforesaid seniority list. The aforesaid OA was allowed and the Tribunal directed Respondents No. 1 & 2 therein to take steps "for including the name of the applicant in the seniority list of Section Officers for the years 1981 to 1984 and consider the case of the applicant for promotion to the post of Section Officer in accordance with the observations made above".

4. The respondents in the said OA went in appeal to the Hon'ble Supreme Court. The Special Leave Petition was dismissed by the Apex Court finding no merit in the petition~~s~~ by order dated 27.07.1988 (Annexure A-I(A)).

5. The applicant was included in the select list of Assistants in 1973 as seen from the OM dated 09.09.1988 (Annexure A-X) indicating his date of appointment as 11.10.1973. The respondents thereafter issued a notification dated 09.09.1988 (Annexure A-VI) purporting to be in implementation of the order of this

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Tribunal dated 30.10.1987 in OA-290/86 appointed the applicant as Section Officer on regular basis w.e.f. 01.06.1987. It was stated therein inter alia, that he is included in the select list of Section Officers grade for the year 1983 and is deemed to have been promoted w.e.f. 30.06.1984 without any benefit of arrears of pay but counting for purposes of fixation of pay in the grade of Section Officer and other benefits. Not satisfied by the said order the applicant filed CCP No.5/89 in OA-290/86 which was disposed of by this Tribunal by its order dated 04.05.1999 (Annexure A-II). Though the said CCP was dismissed the respondents were directed to include the applicant in the select list of Section Officers for the year 1981 also and to consider him for promotion to the post of Section Officer in accordance with the observations made in the Tribunal's order dated 30.10.1987 in the aforesaid OA. SLP filed against the said order passed in CCP was dismissed by the Hon'ble Supreme Court by order dated 14.08.1989 (Annexure A-II(A)). Thereafter the respondents - by Notification dated 27.09.1989 (Annexure A-VII) in pursuance of the order of this Tribunal dated 04.05.1989 in the aforesaid CCP appointed the applicant as Section Officer on regular basis w.e.f. 26.03.1983 and till further orders treating him as being included in the select list of Section Officers (seniority quota for the year 1981). This Notification was in supersession of the earlier Notification dated 09.09.1988 (Annexure A-VI). The applicant was granted arrears of pay in the concerned scale w.e.f. 26.03.1983 by the respondents' order dated 28.09.1989 (Annexure A-VIII).

6. Thereafter, one Gurmit Singh working as Section



Officer in the Ministry of Science & Technology who also belongs to a Scheduled Caste filed OA-1739/90 against the official respondents and the present applicant was Respondent No.3 in the said OA. Gurmit Singh was appointed as a direct recruit Assistant on 28.04.1975. He was confirmed w.e.f. 28.04.1977. The date of continuous officiation of the 3rd respondent was shown as 11.10.1973. Gurmit Singh was aggrieved by the advancement of the date of confirmation of the 3rd respondent therein (B.S. Bedharak, the present applicant) on the post of Assistant and by the non-inclusion of his own name in the select list of Section Officers (seniority quota) for the year 1981. He prayed for the quashing of the order dated 24.03.1989 appointing the 3rd respondent to the post of Assistant w.e.f. 28.04.1977. 3rd respondent was confirmed on the post of Assistant w.e.f. 16.12.1979. The impugned order therein, therefore, had the effect of advancing the date of confirmation of 3rd respondent on the post of Assistant by more than 2 1/2 years. The applicant sought a direction to the respondents to include his name in the select list of Section Officers for the year 1981.

7. The Tribunal in its detailed order dated 20.01.1995 (Annexure-VI to counter) held that the applicant's argument that the 3rd respondent was junior to him and since his name has been included in the select list of Section Officers for the year 1981 his name also deserves to be included in the said list is misconceived and that the 3rd respondent can no longer be treated as junior. The said OA was dismissed. There is nothing on record to show that the said order of the Tribunal dated 20.01.1995 has not become final.

8. Heard the learned counsel for both the parties.

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Pleadings and all the relevant papers and documents placed on record have been perused.

9. The applicant claims that the ad hoc promotion as Section Officer given to him notionally for the period from 15.09.1981 to 25.03.1983 by the 1st impugned order dated 8.10.1988 (Annexure A-III) should be treated as regular by back dating his promotion as Section Officer from 15.09.81 to 25.03.83 and that he must be paid the arrears of pay and allowances with interest from the date of filing of the earlier OA-290/86 i.e. 21.04.1986. The applicant was promoted as Under Secretary w.e.f. 08.03.1990 on ad hoc basis. He retired from service on 31.08.1990.

10. The crucial question for consideration is whether the above mentioned claim of the applicant is sustainable in the facts and circumstances of this case under the law.

11. The main contention of the applicant is that since the respondents have treated Gurmit Singh who is junior to him as a senior initially and promoted him as Section Officer from 15.09.1981 and have also back dated his own (applicant's) promotion from 15.09.1981 on his representation correctly, denial of arrears of pay and allowances for the concerned period from 15.09.1981 to 25.03.1983, on the ground that his promotion for the said period is ad hoc on notional basis and not a regular one is not correct and that he is entitled for payment of actual arrears of pay and allowances etc. as claimed by him for the aforesaid period. Learned counsel for the applicant Sh. B. Lall relied upon an order of this Tribunal dated 09.03.2000 in OA-2090/96

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(Dr. V.B. Kamble & Others Vs. Union of India) in support of the above contention.

12. The respondents in their reply have stated that the concerned decision of the Hon'ble Supreme Court and this Tribunal supra have been implemented in toto. The applicant's name was included in the select list of Section Officers for the year 1981. He was subsequently promoted as Section Officer w.e.f. 26.03.1983 on regular basis after consultation with the Department of Personnel & Training against the select list of Section Officers for the period 1981 based upon the decision of this Tribunal. Gurmit Singh was considered senior to the applicant initially. However, as per the Tribunal's order dated 21.09.1995 in OA-1739/90 filed by Gurmit Singh dismissing the said OA the applicant could no longer be treated as junior to him. The applicant was subsequently promoted as Section Officer purely on ad hoc and notional basis w.e.f. 15.09.1981 to 25.03.1983 as Gurmit Singh was promoted on ad hoc basis from that date. The applicant had already been promoted as Section Officer on regular basis from 26.03.1983. Though arrears of pay and allowance were not paid to the applicant for the period in question his pay was fixed notionally and benefits of revised pension was also given to him. The respondents submitted further that the applicant did not actually function as Section Officer during the period from 15.09.1981 to 25.03.1983. It was made clear to him that no pay and allowances were payable to him for the said period during which he only worked as Assistant and did not actually perform the duties of the post of Section Officer. Learned counsel for the respondents, Shri K.C.D. Gangwani contended that in view of the

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principle of "No work no pay", the relief claimed by the applicant is untenable in the eye of law and deserves to be rejected.

13. The applicant in his rejoinder dated 10.04.2000 denied the submissions and contentions made by the respondents in their reply. He reiterated his contention that he is entitled for his regular promotion from 15.09.1981 and as such he should be granted the pay and allowances for the period in question.

14. Learned counsel for the applicant submitted that the principle of "no work no pay" is not tenable for the reason that an individual should not suffer for the lapses on the part of the administration. Moreover, in a similar situation earlier i.e. back dating the promotion as Section Officer from 07.05.1986 to 26.03.1983 the applicant was paid pay and allowances for that period and hence the arrears cannot be denied for the period in question, namely, 15.09.1981 to 25.03.1983.

15. Further, the applicant in para-4 of his supplementary affidavit dated 02.08.2000 filed in compliance of this Tribunal's directions dated 20.07.2000 in the present OA referred to para-6 of the Tribunal's order dated 20.01.1995 in OA-1739/90 (Gurmit Singh) supra and submitted that once the date of empanelment of the 3rd respondent (applicant in the present case) is advanced, he will have to be given consequential benefits. Learned counsel for the applicant submitted that but for the promotion of Gurmit Singh as Section Officer, the applicant would have been promoted as Section Officer w.e.f. 15.09.1981 and would have drawn pay and allowances of the post on a regular basis. He relied upon the judgement of Punjab & Haryana High Court

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in Avtar Singh vs. State of Haryana & Others (ATJ 1996(2)214) and contended that the applicant for no fault of his was deprived of his actual pay and arrears and allowances for the period in question and hence the action of the respondents impugned deserves to be set aside.

16. I have given my careful consideration ~~to~~ this case.

17. The applicant was appointed as Section Officer on regular basis w.e.f. 26.03.1983 and until further orders by the respondents by their Notification dated 27.09.1989 (Annexure A-VII) in pursuance of the order of this Tribunal dated 04.05.1989 in CCP No. 5/89 in OA-290/86 (Annexure A-II) and he was also granted arrears of pay from 26.03.1983 by an order dated 28.09.1989 (Annexure A-VIII) as noted supra. The applicant apparently was satisfied with the above two orders passed by the respondents since there is nothing on record to show that he had any surviving grievance regarding his promotion and the payment of arrears under the above two orders. It is only in the year 1991 that he had submitted a representation dated 21.06.1991 (Annexure A-xi) inter alia claiming promotion as Section Officer on regular basis according to reserve point from 23.09.1980 and stepping up of his pay as Section Officer equal to that of Gurmit Singh. He has not challenged the order of this Tribunal in CCP-5/89 in OA-290/86 dismissing the said CCP and directing the respondents to include the applicant in the select list of Section Officers in the year 1981 also and to be considered for promotion to the said post of Section Officer in accordance with the observations made in the order dated 30.10.1987 in the

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aforesaid OA. There is nothing on record to show that applicant felt aggrieved by the relevant observations in findings of this Tribunal's order dated 20.01.1995 in OA-1739/90 i.e. Gurmit Singh's case supra wherein he was a 3rd respondent regarding the advancement of the date of his confirmation as Assistant by more than 2 1/2 years, order of empanelment and payment of consequential benefits etc. and had challenged the same in any manner. It is only after the respondents have issued the impugned Notification dated 08.10.1998 (Annexure A-III) back dating his promotion as Section Officer on ad hoc basis, inter alia, for the period in question from 15.09.1981 to 25.03.1983 after the judgement of the Tribunal dated 20.01.1995 in Gurmit Singh's case supra that he started claiming regular promotion for that period also alongwith the payment of actual arrears of pay and allowances for the said period. There is also no material to show that he had ever challenged the ad hoc promotion of Gurmit Singh from 15.09.1981 before the appropriate forum if he was aggrieved by that promotion. It is, therefore, evident from the above factual position that the applicant was quite satisfied by the promotion as Section Officer on regular basis from 26.03.1983 and had not bothered to assert his claim, if any, for back dating of his regular promotion to 15.09.1981.

18. Coming to the legal position it is seen that regarding the question of payment of back wages in back dated promotions and the rule of "no work no pay" the Apex Court in Paluru Rama Krishnaiah Vs. UOI (AIR 1990 SC 166) approved the judgement of the Madhya Pradesh High Court in CA No. 441 of 1981 wherein it was held thus:-

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"It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to refixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them"

19. The Apex Court in a later case i.e. of State of Haryana & ORs. Vs. O.P. Gupta etc. (1996 (2) SLR 466) followed the ratio of the decision of the Court in Paluru's case supra and held that a person who gets notional promotion from back date without having actually worked on the higher post is not entitled to claim arrears of pay from the date of notional promotion.

20. The Apex Court in the aforesaid case of O.P. Gupta supra has also referred to the ratio of the decision in Union of India Vs. K.V. Jankiraman (AIR 1991 SC 2010) wherein it was held that where the incumbent was willing to ~~do~~ work but was denied the opportunity to work for no fault of his he is entitled to payment of arrears of salary. In Janakiraman's case, the respondent was kept under suspension during the departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case which ended in his favour. It was held by the Apex Court that the above ratio laid down in Janki Raman's case is not applicable to the cases where the claims for promotion are to be considered and made in accordance with the rules.

21. The ratio in Paluru's case supra was reiterated

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in Virender Kumar Vs. Avanish Chandra Chadha (1990 (3) SCC 482 at para 16).

22. The two main cases on which the applicant has relied on in support of his case referred to earlier, in my view, do not help him in any way as the said decisions were given in a different set of facts, and in view of the law laid down by the Apex Court as discussed above.

23. On an examination of the fact situation in the present case in the light of the well settled legal position discussed above, I am of the considered opinion that the applicant has failed to establish any vested legal right justifying the grant of reliefs as claimed by him on any valid and tenable grounds. The impugned orders in my view do not, therefore, warrant any judicial interference. In the result, the OA is dismissed. No costs.

A. Vedavalli
5/12/2001

(Dr. A. Vedavalli)
M(J)

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