

Central Administrative Tribunal, Principal Bench

Original Application No.749 of 2000

New Delhi, this the 16th day of March, 2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)
Hon'ble Mr.Shanker Raju, Member(J)

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Shri Hans Raj Sharma, aged about yrs. S/o
Shri Darya Ditta Ram, G-189, Paschim Vihar
(Pushkar Enclave), New Delhi-110063. - Applicant

(By Advocate Shri Surinder Singh)

Versus

1. The Chief Secretary, Govt.of NCT of Delhi,
5,Shamnath Marg, Delhi-110054.
2. The Principal Secretary, Medical & Public
Health Department, Govt.of NCT of Delhi,
5,Shamnath Marg, Delhi-110054.
3. The Medical Superintendent, Guru Teg Bahadur
Hospital, Shahdara, Delhi-110095. - Respondents

(By Advocate Mrs.Avnish Ahlawat through
proxy counsel Shri Mohit Madan)

O R D E R

By V.K.Majotra, Member(Admnv) -

Applicant's OA 549/97 was disposed of on
12.5.1998 with following directions:-

"3. Admittedly, applicant's representations dated 14.8.96 (Annexure-A-3) and 18.11.96 (Annexure-A-5) still remain undisposed of by the respondents. This O.A. is disposed of with a direction to the respondents to dispose of aforesaid two representations by a detailed, speaking and reasoned order in accordance with law under intimation to the applicant within three months from the date of receipt of a copy of this order. If any grievance still survives it will be open to the applicant to agitate the same through appropriate original proceedings in accordance with law, if so advised".

It is alleged that as the respondents did not take any steps to provide him any relief, he filed contempt proceedings vide CP No.80/99. As the respondents disposed of applicant's representation vide office order dated 4.6.1999 (Annexure-A-1) notices in CP were discharged vide order dated 18.8.1999 and liberty was given to the applicant to challenge the order dated 4.6.1999 if he remained aggrieved in accordance with law. The applicant has contended that his grievance has

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not been redressed and, therefore, he has challenged the order dated 4.6.1999 in the present OA.

2. It is stated that applicant was not granted timely promotions. Ultimately he was accorded promotions vide order dated 4.7.1995 (Annexure-A-4) with retrospective effect. However, he has not been paid arrears of pay with effect from the dates when his promotions were given effect. He retired on 31.3.1993. Vide order dated 4.7.1995 (Annexure-A-4) it is stated that whereas he has been allowed benefit of notional fixation of pay in the grades from the dates of grant of assumed seniority, arrears of pay are payable from the date of taking over the charge of the promoted posts. It was further stated in that order that the arrears are effective from 27.7.1966 in the cadre of Nursing Sister and ^{from 12} 24.4.1987 in the cadre of Assistant Nursing Superintendent upto 28.2.1993. The applicant has sought payment of arrears of pay effective from the dates of grant of assumed seniority along with interest thereon. He has also sought revision in his pension as a consequence of ante-dating of his promotions.

3. In their counter the respondents have stated that whereas applicant's notional fixation of pay has been done in the respective grades from the dates of assumed seniority, actual payment is due from the date the applicant took charge of senior posts. According to respondents they asked the applicant to receive his arrears amounting to Rs.15,082/- but the letter was returned undelivered with the remark that no such person resided ^{at} at the given address. Though another letter was sent on 30.12.1998, the applicant did not collect the payment. According to respondents applicant's claim from July, 1966 ^{to} April, 1987 and July 1990 for promotional post of Nursing Sister, Assistant Nursing

Superintendent and Dy.Nursing Superintendent ⁽¹²⁾ is hopelessly time barred. However, respondents have redressed his grievance by ante-dating his promotion to the post of Deputy Nursing Superintendent with effect from 31.7.1990 instead of 1.3.1993; ^{from 1/2} 24.4.1987 to the post of Assistant Nursing Superintendent instead of 6.3.1990; and Nursing Sister with effect from 27.7.1966 instead of 29.7.1971.

4. We have heard the learned counsel of both sides and gone through the material on record.

5. Whereas the learned counsel of respondents has taken the plea of limitation, the learned counsel of applicant stated that the plea of limitation cannot be raised at this stage when OA 549/97 decided on 12.5.1998 directed the respondents to dispose of applicant's representations with detailed speaking and reasoned orders and also CP 80/99 in OA 549/97 vide order dated 18.8.1999 also gave liberty to him to challenge respondents' order disposing of his representation if he remained aggrieved. The learned counsel stated that whereas by the order dated 4.6.1999 respondents have disposed of applicant's representations, he has remained aggrieved because he has not been paid any arrears of pay and allowances and pension on the basis of ante-dated promotions. In agreement with the learned counsel of applicant and in view of the orders made in OA 549/97 and CP 80/99, we find that the present OA is not time barred.

6. The learned counsel of respondents brought to our attention the provisions contained in FR 17 which reads as follows:-

"F.R.17.(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the

date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence".

He contended that although the promotion of the applicant has been ante-dated since he has not assumed duties of those posts with effect from previous dates he cannot be allowed any pay and allowances for the period when he has not worked in those posts. The principle of 'no work no pay' could not permit pay and allowances of higher posts when applicant had not worked in those posts during the earlier period. On the other hand learned counsel of applicant stated that denial of promotions to the applicant from earlier due dates due to no fault of his should not come in the way of payment of arrears from back dates. He relied on the case of Union of India Vs.K.V.Jankiraman, (1991) 4 SCC 109 wherein when in a disciplinary case the employee was completely exonerated it was held that he is not found blameworthy and is not visited with the penalty, he has to be given benefit of salary of higher post along with other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. This cannot be denied on principle of 'no work no pay'. Their Lordships have further held that the normal rule of 'no work no pay' is not applicable to cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. It was held that FR 17(1) will not apply to such cases. On the other hand the learned counsel of respondents referred to the case of R.R.Bhanot Vs.Union of India and others, (1994) 2 SCC 406 wherein appellant's premature retirement was quashed by the Hon'ble High Court, arrears of salary were allowed by the Hon'ble Supreme Court till the date of

judgment of the High Court. However, the appellant failed to submit joining report after the High Court's decision and, therefore, did not render any service to the Government till his age of superannuation. It was held that he was not entitled to salary for the period. However, the period was directed to be regularised by grant of leave of the kind due. From the order dated 4.6.1999 (Annexure-A-1) it is clear that the departmental promotion committee accorded due promotion to the applicant as Deputy Nursing Superintendent with effect from 1.3.1993 considering his seniority with effect from 24.4.1987 on the basis of actual seniority given to him on the post of Assistant Nursing Superintendent. Annexure-A-4 dated 4.7.1995 is indeed contradictory in terms whereas on the one hand applicant was allowed benefit of notional fixation of pay in the grades from the dates of grant of assumed seniority, on the other hand the arrears were held to be payable from the date of taking over of the charge of the promoted posts. It was also stated that the arrears were effective from 27.7.1966 in the cadre of Nursing Sister and 24.4.1987 in the cadre of Assistant Nursing Superintendent upto 28.2.1993. If the arrears were payable from the date of taking over of the charge of the promoted post, they could not have been made effective from 27.7.1966 in the cadre of Nursing Sister and 24.4.1987 in the cadre of Assistant Nursing Superintendent.

7. Although order dated 4.6.1999 (Annexure-A-1) is a long order stating that applicant had been accorded promotions and seniority by ante-dating them, it is not reasonably explained why arrears were not sanctioned and paid to him on the basis of the ante-dated promotions. Ante-dating of promotions of the applicant was done basically on the ground that his juniors had been

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promoted prior to the applicant. The redressal of applicant's grievance by ante-dating his promotion has to result in payment of arrears of pay and allowances and also revision of his pension on the basis of revised pay at different points of time. The respondents have stated to have fixed applicant's pay and allowances correctly, but it has not been explained as to how the fixation accorded is correct, as no details have been furnished in the order. In this view of the matter this order is not detailed and speaking. In our view, whereas the ratio in the case of R.R.Bhanot(supra) is not applicable to the facts of the present case as the applicant could not have joined in the higher post as his promotions were ante-dated and the dates from which his promotions were effected had already passed several years ago. In the case of R.R.Bhanot the appellant had not submitted his joining report deliberately and was thus denied the arrears. In the present case, the applicant is not to be blamed for delay in his promotion. On consideration of his representations he has been accorded promotions with retrospective dates. But for the delay caused by the respondents in according promotion to the applicant, he would normally have been promoted before his juniors were promoted. On realisation of this genuine grievance of the applicant, his promotions were ante-dated. Certainly, the ratio that the normal rule of 'no work no pay' is not applicable to cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his, laid down in the case of K.V.Jankiraman (supra) is applicable in the present matter and the normal rule of 'no work no pay' should not be made applicable to this case as applicant could not avail of his promotions from earlier dates for no fault of his. The provision of FR 17(1) should not

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restrain sanction of arrears etc. to the applicant on the basis of his promotions from retrospective dates. As a matter of fact the respondents have themselves vide Annexure-A-4 dated 4.7.1995 stated that arrears are effective as Nursing Assistant with effect from 27.7.1966, as Assistant Nursing Superintendent from 24.4.1987 and as Deputy Nursing Superintendent from 1.3.1993.

8. It is appropriate to state here that in Annexure-A-1 dated 4.6.1999 the respondents have stated that "[F]urther, it was also made clear to Sh. Hans Raj Sharma that he worked in various hospitals in different spells of time during the period from 27.7.66 to 28.2.93 and this office had requested him to get the drawn statement from previous departments to enable this office to draw his arrears but he did not pay any heed in this regard and in this way did not cooperate with the office". Thus, in clear terms they have indicated their readiness to pay all arrears to the applicant from 27.7.1966 to 28.2.1993. However, the respondents have pointed out that the applicant had not furnished information regarding drawn statement from previous department. In this regard, we are constrained to observe that an official who retired from active service long ago cannot be expected to go from department to department to collect the requisite information. Certainly, it is easier for the respondents themselves to collect the relevant information. Respondent 3 could have deputed a special official to collect relevant information themselves and paid up the arrears to the applicant.

9. In view of the fact that injustice has been done to the applicant for a long time by delaying his promotions at each stage for years together, in our view justice warrants that the respondents must pay

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difference of pay and allowances to the applicant by fixing his pay and allowances from ante-dated promotions as Nursing Sister, Assistant Nursing Superintendent and Deputy Nursing Superintendent.

10. In the result, the OA is allowed. The respondents are directed to grant difference of pay and allowances to the applicant on the post of Nursing Sister, Assistant Nursing Superintendent and Deputy Nursing Superintendent respectively from 27.7.1966, 24.4.1987 and 31.7.1990. The respondents are further directed to revise applicant's pension as a consequence of ante-dating of his promotion and grant him arrears of pension. However, the applicant would not be entitled to any interest. Aforesaid directions be complied with within a period of three months from the date of communication of this order. Respondent 3 is directed to depute an official of his office to collect drawn information pertaining to applicant for the period 1966 to 1993 with a view to work out the arrears within the stipulated period mentioned above. In the facts and circumstances of the case, the parties are directed to bear their own costs.

S. Raju

(Shanker Raju)
Member (J)

rkv

V.K. Majotra

(V.K. Majotra)
Member (Admnv)