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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Date: 20.4.89

O.A.1196/89

D.L.Matta

.. Applicant

Vs.

Union of India and others.. Respondents

Mr.J.P.Varghese .. Counsel for applicant

None for respondents.

CORAM

Hon'ble Mr S.P.Mukerji, Vice Chairman

Hon'ble Mr.J.P.Sharma, Member (J)

ORDER

(Hon'ble Vice Chairman)
S.P.MUKERJI.

In this application dated 1.6.89 the applicant who is a retired Assistant Engineer of the CPWD has prayed that in implementation of the judgment of this Tribunal dated 23.9.88 in O.A. 1339/87 he should be given promotion retrospectively from 18.9.87 instead of 28.9.87 along with arrears of pay and allowances from 18.9.87 with market rate of interest.

2. The operative part of the aforesaid judgment reads as follows.

"We hold that the disciplinary proceeding instituted against the petitioner vide Memorandum dated 16th May, 1985 must be quashed for the reasons indicated already. We also direct that the respondents must consider the case of the petitioner for promotion to the next higher rank in accordance with law within a period of three months from the date of communication of this order. In our view, he seems to be entitled to promotion with effect from 18.9.1987 - the date from which many of his juniors seems to have got promoted provided that D.P.C. had in their 'sealed cover' recommendation found him fit for such promotion."

3. In implementation of the aforesaid judgment the applicant ^{was} given promotion w.e.f. 28.9.88 which was later revised to 28.9.87 but he ^{was} not given arrears of pay from 28.9.87 to 27.9.88. In the meantime he retired on 30.9.88.

4. The respondents have conceded that the applicant represented on 7.4.88 and as directed by the Tribunal the sealed cover in which the findings of the DPC ^{were} given on 5.9.87 had been opened and it was found that the DPC had recommended his name at Sl.No.99(a) of the panel. Accordingly the applicant was promoted w.e.f. 28.9.88 but on his representation he was promoted on 28.9.87, the date from which his junior was promoted. They have stated that in accordance with the Deptt. of Personnel and Training order dt. 12.1.88 he could not be given arrears of pay. The respondents have conceded that the Tribunal had quashed the disciplinary proceedings on the ground of unduly ^{long} and inordinate delay in finalising the same. They have also stated that his retiral benefits were settled with utmost expedition.

5. We have heard the learned counsel for both the parties and gone through the documents carefully. We feel that since the applicant was deprived of promotion for no fault of his, he cannot be denied arrears of pay and allowances. In Charan Das Chadha Vs. State of Punjab and another, 1980(3) SLR 702, the Punjab and Haryana High Court held that once promotion is made with retrospective effect one cannot be deprived of the benefit of pay and other benefits, that Govt. cannot take advantage of its wrong or illegal order. In KK Jaggi Vs. State of Haryana and another, 1972 SLR 578, the same High Court held in ^a similar case that when one is promoted with retrospective effect because

of some departmental enquiry which had been pending earlier, he is entitled to arrears of pay as he did not work in the higher post for no fault of his. A similar view was taken in Mrs. Asha Rani Lamba Vs. State of Haryana and others, 1983(1) SLR 400. In J..S. Arora Vs. Union of India and others, 1983(3) SLR 589 the Delhi High Court in a sealed cover case stated that where the disciplinary proceedings were themselves illegal or unduly delayed, the employee must get arrears on retrospective promotion.

6. In the above circumstances, we allow this application to the extent of directing the respondents that the applicant shall be paid full pay and allowances w.e.f. 28.9.87 with all consequential benefits. The learned counsel for the applicant did not press for ante-dating the date of promotion to 18.9.87. As regards interest on delayed payment, no case for the same has been made out as the respondents had taken the decision under the orders of the Deptt. of Personnel. Action on the above lines should be complied with within a period of three months from the date of communication of this order. There is no order as to costs.

J. P. Sharma
(J.P. Sharma) 20.4.96
Judicial Member

S. P. Mukerji
(S.P. Mukerji)
Vice Chairman

Procedured by me in open court.

J. P. Sharma
(J. P. SHARMA)
M.D.