

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A. No. 427 of 1989.

New Delhi this 8th of April, 1994.

CORAM:

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

Hon'ble Mr. S. R. Adige, Member (A)

Roshan Lal s/o Shri Sumer Singh,
r/o 18/2, Balbir Road,
Dehradun (UP)

By Advocate Shri G. D. Gupta,.....Applicant.

Versus

Union of India through
The Secretary to the Govt. of India,
Ministry of Finance,
New Delhi.

2. The Chairman,
Central Board of Direct Taxes,
North Block, New Delhi.

3. The Drawing & Disbursing Officer,
Income Tax Department,
Dehradun (UP).

By Advocate Shri R. S. Agarwal Respondents.

JUDGMENT

By Hon'ble Mr. S. R. Adige, Member (A)

The applicant Shri Roshan Lal was initially appointed as an Income Tax Inspector on 6.1.56 and was promoted as Income Tax Officer Group 'B' on regular basis in July, 1968. On 27.9.75, he was charge sheeted, and in pursuance of that charge sheet, a departmental enquiry was started against him. On 11.2.81, the applicant was exonerated of the charges levelled against him. Meanwhile certain promotions were made to the (Junior Scale) post of Income Tax Officer Group 'A' purely on adhoc basis w.e.f. 13.12.78, for a period of one year i.e. upto 12.12.79 vide notification dated 13.12.78 (Annexure-B). These adhoc promotions were made after obtaining the recommendations of a DPC held on

4.11.78 and the applicant was also considered for promotion along with others, but as the departmental proceedings for major penalty were pending against him, the findings of the DPC were kept in a sealed cover. As these adhoc promotions were made only for a period of one year ending on 12.12.79, which were followed by consideration for regular promotion in January, 1980, the DPC's recommendations which were kept in a sealed cover were not extended to the applicant, owing to the pending departmental proceedings in which he was exonerated only on 11.2.81. Meanwhile, in January, 1980 the DPC met again to consider regular promotions, and the applicant was once again recommended for promotion, but as the departmental proceedings were then pending against him, the applicant's case was treated as a sealed cover case. It appears that thereafter another charge sheet dated 10.12.80 was served on the applicant and a second departmental enquiry was instituted against him for certain other allegations of misconduct, but the applicant was also exonerated of these charges vide order dated 21.4.83 (Annexure-E). This order was reviewed by the President and a warning was issued to the applicant in July, 1984 but later on the warning so-issued was withdrawn in 1987.

2. Consequent to the applicant being exonerated of the charges against him, he was promoted as Income Tax Officer Group 'A' (Junior Scale) on regular basis w.e.f. 20.7.84 vide notification dated 21.7.84 (Annexure-F), and his seniority was restored w.e.f. 21.1.80 along with those who were promoted as Income Tax Officer Group 'A' (Junior Scale) w.e.f. 21.1.80

-3-

3. Thereafter he was promoted as Income Tax Officer Group 'A' (Senior Scale) w.e.f. 7.1.85 vide notification of said date (Annexure-G) and his seniority was likewise restored w.e.f. 1.11.83 along with his batchmates who had been given senior scale w.e.f. 1.11.83 vide notification dated 6.3.84. The applicant superannuated on 31.1.88.

4. The applicant's pay as Income Tax Officer Group 'A' (Junior Scale) was fixed on 20.7.84 by counting the period from 21.1.80 to 19.7.84 for the purpose of increments but not for arrears and similarly his pay on promotion as Income Tax Officer Group 'A' (Senior Scale) has been fixed on 7.1.85 by counting the period from 1.11.83 to 6.1.85 without arrears vide letter dated 15.12.87 (Annexure-M).

5. Learned counsel Shri G.D.Gupta now presses for the following reliefs on behalf of the applicant:-

i) Promotion, pay-fixation and arrears of salary against the post of Income Tax Officer Group 'A' (Junior Scale) w.e.f. 13.12.78 with consequential benefits.

ii) Promotion to the grade of Asstt. Commissioner Income Tax, from the date his juniors were promoted together with consequential benefits.

iii) Arrears of pay w.e.f. 21.1.80 and 1.11.83 till the date of superannuation.

6. In so far as the first relief prayed for is concerned, admittedly, the promotions notified on

13.12.78 were provisional, adhoc and for a limited period of one year. In fact, notification itself makes it clear that the promotions had been ordered on purely an adhoc basis and did not confer any claim for continuous officiation or for seniority. The promotions were made subject to the final orders of letters patent appeal which was then pending in the Delhi High Court. Clearly, therefore, these adhoc promotions were a purely stop-gap-arrangement for a temporary period, to meet certain specific exigencies. Notwithstanding the fact that these adhoc promotions were made upon the DPC's recommendation the character of these promotions continued to remain adhoc and for a strictly limited period. At the end of that period, these promotions were replaced by regular promotions, in which the applicant's seniority was retrospectively restored along with his batchmates w.e.f. 21.1.80 after he had been finally exonerated in the departmental proceedings. Under the circumstances, the applicant cannot legitimately complain if he was not given an adhoc promotion on 13.12.78 (inspite of the DPC finding him suitable) because of that departmental proceedings pending against him on that date. Hence the prayer for promotion, pay fixation and arrears of pay as Income Tax Officer Group 'A' (Junior Scale) w.e.f. 13.12.78 fails.

7. In so far as the prayer for promotion as Asstt. Commissioner, Income Tax is concerned, Shri Gupta states that the applicant's name should have been included in the order of promotions dated 7.4.87 (Annexure-P). He admits that the recruitment rules for the promotion of Income Tax Officer Group 'A'

to Asstt. Commissioner prescribe a minimum qualification of eight years' service as Income Tax Officer Group 'A'. As the applicant was promoted as Income Tax Officer Group 'A' only w.e.f. 21.1.80, his prayer for adhoc promotion w.e.f. 13.12.78 having been rejected above, he had not completed eight years' service as Income Tax Officer Group 'A' on 7.4.87 and hence this prayer also fails.

8. In so far as the payment of arrears as Income Tax Officer Group 'A' (Junior Scale) w.e.f. 21.1.80 and Income Tax Officer Group 'A' (Senior Scale) w.e.f. 1.11.83 is concerned, the respondents relied on fundamental Rule 17(1) according to which an officer begins to draw the pay and allowances of a post only on assuming the duties of that post. It is urged that as the applicant did not assume the duties of the post of Income Tax Officer Group 'A' (Junior Scale) w.e.f. 21.1.80 and that of Income Tax Officer Group 'A' (Senior Scale) w.e.f. 1.11.83, he is not entitled to arrears of pay from those dates. However, in this connection, the ruling of the Hon'ble Supreme Court in 'Union of India & others Vs. K.V.Jankiraman & others' (JT 1991(3) SC 527) is extremely apposite, and relevant extracts are quoted below:-

24 "It was further contended on their behalf that the normal rule is 'no work no pay'. Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to

all the benefits from which he was kept away unjustly.

25.

We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of 'no work no pay' is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26.

We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employees etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such considerations may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz. 'but no arrears of pay shall be payable to him for the period

of notional promotion preceding the date of actual promotion, we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

9. Admittedly, the pendency of the two departmental proceedings, in both of which the applicant was ultimately exonerated fully, delayed the applicant's promotion as Income Tax Officer Group 'A' (Junior Scale) and Income Tax Officer Group 'A' (Senior Scale), but the respondents have failed to furnish any material which prima facie would lead us to conclude that the delay was on account of causes attributable to the applicant. Under the circumstances, we hold that the applicant is entitled to the arrears of salary and related allowances as Income Tax Officer Group 'A' (Junior Scale) w.e.f. 21.1.80 and Income Tax Officer Group 'A' (Senior Scale) w.e.f. 1.11.83. These arrears should be calculated by the respondents and paid to the applicant along with a comprehensive statement of calculation within three months of the date of receipt of a copy of this judgment.

10. In result, this application is partly allowed to the extent outlined in paragraph 9 above. No costs.

Anil Agarwal
(S.R.ADIGE)
MEMBER(A)

J.P.Sharma
(J.P.SHARMA)
MEMBER(J)