

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

CAT/7/12

SA 6

O.A. No. 940/88  
T.A. No.

199

DATE OF DECISION 9.10.1990.

Shri O.P. Jayana

Pétitioner

Shri Mukul Talwar (Counsel  
Amicus Curie)

Advocate for the Petitioner(s)

Versus

U.O.I. through the Secretary,

Respondent

Min. of Urban Development & Another

Shri M.L. Verma

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGMENT

(of the Bench delivered by Hon'ble Mr. D.K. Chakravorty,  
Administrative Member)

The applicant, who retired from Government service on 31.1.1977 on attaining the age of superannuation, filed this application under Section 19 of the Administrative Tribunals Act, 1985 on 17.1.1988. At the time of the filing of the application, he was about 69 years of age. He had a chequered career. In the main application, he has prayed for ordering his promotion from the post of Assistant to that of Section Officer from the date his juniors were promoted and for consequential benefits. In the rejoinder-affidavit filed by him, he has sought two other reliefs, namely, payment of interest to him on the arrears of emoluments etc., which were due to him from 18.6.1964

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to 17.7.1975 and reimbursement of legal expenses incurred by him.

2. The application was admitted on 24.5.1988 when the applicant appeared in person. Thereafter, he had appeared once but had remained absent on subsequent hearings. At the request of the Tribunal Shri Mukul Talwar, the learned counsel agreed to appear on behalf of the applicant as

*Q amicus curie. We are thankful to him for the assistance rendered by him.*

3. We have gone through the records of the case carefully and have considered the rival contentions. Shri Talwar submitted that the case could be decided on perusal of the confidential reports of the applicant and the minutes of the Departmental Promotion Committee. The respondents have produced the same and we have also considered them.

4. The facts of the case are not disputed. The applicant, while working as Assistant in the office of Chief Controller of Printing and Stationary, presently Directorate of Printing, New Delhi was placed under suspension with effect from 18.6.1964 in view of the pendency of a criminal case against him and 7 others. The criminal case was filed in the Court of District and Sessions Judge, Delhi on 31.12.1964. The learned District & Sessions Judge found all the accused "not guilty" and acquitted them on 17.5.1975. The respondents preferred an appeal to the Delhi High Court

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which was dismissed on 1.3.1985. In the meanwhile, the applicant retired from service on attaining the age of superannuation on 31.1.1977.

5. The applicant made several representations to the respondents to consider him for promotion to the next higher grade of Section Officer. As the applicant had been placed under suspension from 18.6.1964 till the date of his retirement, the Departmental Promotion Committee to consider his case for promotion could have considered only confidential reports of the applicant for the years 1960 to 1964. Thereafter, no reports were written about him as he was under suspension.

6. The DPC which considered persons suitable for inclusion in the select list of Section Officer for the year 1971 graded him as "not yet fit". We have gone through the confidential reports of the applicant for the years 1960 to 1964. The grading give<sup>to</sup> him for these years is as follows:-

<u>"Year</u>	<u>Grading</u>
1960	Very good
1961	Very good (the Chief Controller of Printing and Stationary who is the next superior officer to the reviewing officer has, however, remarked that his integrity has been questioned in regard to certain cases dealt with by him which was under investigation by the SPE and also departmentally).
1962	Good/Very good (the report is in two parts for the first part from 22.9.61 to 30.4.62 the overall grading is good. For the period from 1.5.62 to 31.12.62 the overall grading is very good).



1963

Good  
(the Chief Controller of  
Administration is the next  
superior officer to the  
reviewing officer has, however,  
remarked that his integrity  
is "doubtful").

1964

Good ".

7. In our opinion, the remark that the integrity of the officer is "doubtful" has been entered in the confidential reports contrary to the relevant instructions issued by the Department of Personnel and are to be ignored. Even then, the case of the applicant for promotion will be a border-line case as we have noticed that the 94 persons who have been empanelled by the DPC have been graded as outstanding/very good. We do not consider it appropriate at this distant point of time to direct the respondents to hold a review DPC to consider the case of the applicant for promotion to the grade of Section Officer. The DPC appears to have assessed the suitability of the candidate bona fide and in an objective manner. In view of this, we hold that the applicant is not entitled to the relief in so far as it pertains to his promotion to the post of Section Officer is concerned.

8. There is, however, force in the <sup>Contention</sup> ~~statement~~ of the applicant in regard to the other two reliefs sought by him.

(10)

9. With regard to his claim for interest, it may be stated that the respondents passed an order regarding the payment of full pay and allowances from 18.6.1964 to 31.1.1977 <sup>2</sup> ~~by their order dated~~ <sup>on 2</sup> 2.7.1985 (vide Annexure R.1 to the rejoinder, page 32 of the paper book). This was after the criminal case launched against the applicant and others ended in acquittal. The applicant has stated that the arrears of pay and allowances was paid to him after about 6 months. In the interest of justice and equity, we are of the opinion that the respondents should have paid interest on the delayed payment of arrears of pay and allowances <sup>2</sup> i.e. the date of the judgment of the Delhi High Court for the period from 1.3.1985 till the date of actual payment at the rate of 10% per annum.

10. With regard to the claim for reimbursement of legal expenses incurred by him, the applicant has not indicated actual expenses incurred by him in connection with his defence in the criminal case. He has, however, referred to the OM dated 8.1.1957 issued by the Ministry of Home Affairs which provides inter alia as follows:-

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"2. (a) Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government servant - Government will not give any assistance to a Government servant for his defence in any proceedings, civil or criminal, instituted against him, by the State in respect of matters arising out of or connected with his official duties or his official position. Should, however, the proceedings conclude in favour of the Government servant, Government may, if they are satisfied from the facts and circumstances of the case that the Govt. servant was subjected to the strain of the proceedings

without proper justification, reimburse the whole or any reasonable proportion of the expenses incurred by the Government servant for his defence".

(vide Annexure R-2 to the rejoinder, page 33 of the paper book).

11. Having regard to the present age of the applicant, we do not consider it appropriate to direct the applicant to give any statement of the actual expenses incurred by him and direct the respondents to give him a reasonable amount in terms of the aforesaid OM issued by the Ministry of Home Affairs. In this context, we may refer to the following somewhat pathetic statement made by him in frustration in MP 787/90 filed in the Tribunal on 28.3.1990:-

" Even one of my other colleague who was also in the same case was given interest on all his arrears but I was refused as everybody in the Ministry was prejudiced against me as the case was filed only against me but when they could not involve me alone, they had to involve others to make a case of conspiracy. That is why I approached the Central Administrative Tribunal to get justice. I have no money to engage an advocate and so I waited for so long to get justice from this Hon'ble Court but now my age is such and that I am having so many ailments and cannot stir out of the bed, I request the Hon'ble Court to drop my case, so that I can die in peace. Let the Govt. enjoy with my money which is genuinely due to me. I will take it that my case is closed for ever".

12. Considering all the aspects of the matter, we are of the opinion that this is a fit case in which a lumpsum amount of Rs.3,000/- be paid by the respondents to the applicant towards the legal expenses incurred by him in his defence in the criminal case.

13. In conclusion we order and direct as follows:-

(1) The decision of the Departmental Promotion

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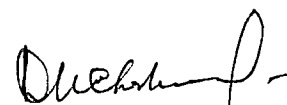
Committee in not empanelling him in the list of persons found suitable for the grade of Section Officers cannot be faulted.

(2) The respondents shall pay to the applicant interest on the arrears of pay and allowances for the period from 01.3.1985 till the date of actual payment at the rate of 10% per annum.

(3) The respondents shall pay to the applicant a lumpsum amount of Rs.3,000/- towards reimbursement of legal expenses incurred by him for defending the criminal case launched against him during the period 1964 to 1985 in the Court of District and Sessions Judge, Delhi and in the Delhi High Court.

(4) The respondents shall comply with the above directions within a period of one month from the date of receipt of this order. The amounts due to the applicant should be sent by crossed cheque to him at his address at C-1465, IDPL Colony, Virbhadra (District Dehradun)-249202, the address given in his MP 787/90 without insisting on any formalities.

There will be no order as to costs.

  
(D.K. CHAKRAVORTY)  
MEMBER (A)

9/8/99

  
(P.K. KARTHA)  
VICE CHAIRMAN (J)

9/10/90