

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Dated: This the 29th day of May 2020

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No. 330/00413/2018

Rajesh Trivedi a/a 38 year son of Shri Shiv Kumar Trivedi Resident of Mohalla Bijlipura, P.S Sadar Bajar, District Shahjahanpur, presently posted as Rajesh Trivedi, 214883, Tailor/HS-II, P-5 (238) Jarsi Ribnit, Ordinance Clothing Factory, Shahjahanpur.

.....Applicant

By Advocate: Sri Anwar Hussain

Versus

1. Union of India, through Secretary, Department of Defence Production, Ministry of Defence, Government of India, New Delhi.
2. The Director General of Ordnance Factories Board/Chairman, Ordnance Factory Board, Ayudh Bhavan, 10A, Shaheed Khudiram Bose Road, Kolkata.
3. General Manager, Ordinance Clothing Factory, Shahjahanpur.
4. Assistant Works Manager/Administration, Ordinance Clothing Factory, Shahjahanpur.

.....Respondents

By Advocate: Sri Vinod Mishra

ORDER

1. The present Original Application has been filed by the applicant Ram Sagar under section 19 of Administrative Tribunals Act, 1985 seeking following reliefs:-

"(i) Issue a suitable order calling for the records and proceedings which led to the passing of the impugned office memo dated 19.01.2017 and 26.02.2018 issued by the Assistant Work Manager/Administration, Ordinance Clothing Factory, Shahjahanpur – respondent No.4 (Annexure A-1 and 2 respectively) and after considering its legality and validity quash and set aside the same.

- (ii) Issue a suitable order and direct the respondents to promote the applicant retrospectively from the date of his immediate junior promoted with all consequential benefits including arrears of pay and seniority within a stipulated period.
 - (iii) Issue such other appropriate order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and to which the applicant be entitled under: and
 - (iv) Award costs to the applicant".
2. Applicant's case is that while working in the respondents department his promotion to the post of Tailor Highly Skilled was kept in a sealed cover since there was a police challan for offence under section 279/304-A, IPC pending against him in the court of law, the allegation being that applicant due to his rash and negligent driving caused a vehicular accident in which a person sustained fatal injuries. However on his acquittal in the criminal proceedings, respondents vide impugned order dated 19.01.2017 (Annexure 1) promoted the applicant to the post of Tailor Highly Skilled, Grade -II notionally w.e.f. 01.10.2007 but would be entitled to get his actual salary from 10.01.2017. Applicant's representation for seeking arrears of pay from the date of his notional promotion was rejected by the respondents vide impugned order dated 26.02.2018 (Annexure 2). Hence the present O.A. seeking the relief of arrear of pay from the date of his notional promotion.
 3. In the counter affidavit, respondents while supporting the impugned orders have averred that the applicant's representation for arrears of salary was denied in view of OM No. 22011/4/91-Estt. (A) dated 14.09.1992, as such, the O.A. being misconceived, is liable to be dismissed.
 4. I have heard Shri Anwar Hussain, learned counsel for the applicant and Shri Vinod Mishra, learned counsel for the respondents and gone through the pleadings on record

5. The case of applicant is covered by aforementioned OM of 1992, more specifically paragraph No. 3 of the said OM. The relevant paragraph No. 3 of the OM reads as under:-

"3. On the conclusion of the disciplinary case/criminal prosecution, which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated he due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to an 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 appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Whether the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. 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 attributed to the employee etc. these are only some of the circumstances where such denial can be justified".

6. OM of 1992 specifically lays down that whether the concerned officer will be entitled to arrear of pay for a period of notional promotion preceding the date of actual promotion shall be decided by the appointing authority by taking into consideration

the facts and circumstances of the criminal prosecution and if the authority denies arrear of salary, it shall record its reason for such denial.

7. I have perused the impugned orders. The impugned order is terse and a cryptic order spelling out no detailed reasons for rejecting the request of applicant. The impugned order is singularly lacking in giving the reasons as to how and in what manner the case of applicant was considered and rejected by the respondents. It is a settled principle that giving reasons is a hallmark of a fair administration so as to enable the effected person to know as to the manner in which his lis has been dealt with.
8. It is a settled law that the necessity for recording reasons in an order be it judicial or administrative cannot be dispensed with. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others (2009) 4 SCC 240** has held as under:-

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation".

9. An identical question came to be decided by Hon'ble Apex Court in the case of **Kranti Associates Private Limited and Anr. Vs. Masood Ahmed Khan and Ors., (2010) 9 SCC 496**. The insistence on recording of reasons is meant to serve the wider principle that justice must not only be done it must also appear to be done. In para-47, it has been held that:-

“7. Summarizing the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

10. In the instant case, it was incumbent upon the respondents to pass a reasoned order observing the principles of natural justice, which are totally lacking in the present case. It is also a settled principle of

law that an unreasoned order cannot be supplemented by reasons given elsewhere.

11. In view of the facts and circumstances of the case as discussed above, the impugned orders 19.01.2017 and 26.02.2018 (Annexure 1 and 2) are set aside to the extent that they deny the arrears of pay for the period of notional promotion preceding the date of actual promotion given to the applicant without assigning any reasons for such denial. However, the respondents would reconsider the representation dated 23.12.2017 (Annexure A-13 to compilation II) and in case, respondents deny the arrears of pay for the period of notional promotion, they shall do so by recording reasons in support of their decision within a period of 03 months from the date of receipt of a certified copy of this order with information to the applicant. O.A. is accordingly disposed of. No order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

Manish/-