

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

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Regn. No. OA-528 of 1986

Date of decision: 29.8.1990

J.S. Kapoor

Applicant

Vs.

Union of India & Others

Respondents

PRESENT

Shri M.L. Bhargava, counsel for the applicant.

Mrs. Raj Kumari Chopra, counsel for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

Hon'ble Shri S.R. Sagar, Member (Judicial).

(Judgement of the Bench pronounced by Hon'ble
Shri B.C. Mathur, Vice-Chairman.)

Shri J.S. Kapoor, U.D.C. in the office of the Chief Engineer, Delhi Zone, Delhi Cantt, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, against impugned letter No. 90237/393/EIC(I) dated 20.6.1986 issued by the E-in-C's Branch, Kashmir House, New Delhi, (Annexure P-12 to the application) and has prayed for promotion to the post of Office Superintendent Grade II with effect from 23.7.1980, Office Superintendent Grade I with effect from 3.3.1984 and Administrative Officer-II with effect from 21.12.1984 with all arrears of pay and allowances in respect of the said posts after adjusting the amount already received by him on 3.9.1985.

2. The facts of the case, as stated in the application, briefly are as follows. The applicant was working as U.D.C. in the Western Command and was posted in the Office of the Chief Engineer, Delhi Zone, Delhi Cantt. He was struck off the strength by the Chief Engineer Delhi Zone on 8.11.67 on the alleged ground of his transfer to Nasirabad under Chief Engineer Southern Command. However, no transfer order was served on the applicant and as such he could not be struck off strength from the office of Chief

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Engineer Delhi Zone, Delhi Cantt. The applicant filed a civil suit in the court of the Sub Judge, Delhi, seeking declaration that he continued to work at Delhi and that he ^{be} allowed to join his duties at Delhi. The suit was dismissed on 3.10.1977, but thereafter the petitioner filed an appeal and while the appeal was pending, the applicant filed an application for additional evidence as in letter dated 31.7.1982 the Chief Engineer, Delhi Zone, had admitted that there was no transfer order in respect of his transfer from Delhi to Nasirabad. Without going into the details of the case, it may be stated that non-compliance of the transfer orders resulted in disciplinary proceedings in which show cause notice for removal from service was served upon the applicant. On the representation, the disciplinary case against the applicant was cancelled. The Disciplinary Authority, however, initiated a de novo enquiry against the applicant on the same charge. The applicant filed a Writ Petition in the High Court. During the pendency of the Writ Petition, the applicant was taken on duty at Delhi on 21.4.1980 by way of compromise without prejudice to the rights of the parties in the Writ Petition. The Writ Petition was allowed by the High Court on 25.1.1985 and the orders of the respondents to start de novo enquiry were set aside with the observations that the applicant would be entitled to all his pay and allowances and consequential benefits. As a result of the orders of the High Court and also on filing a contempt petition for non-compliance of the High Court judgment, the respondents paid a sum of Rs. 1,07,048.95 to the applicant on 2.9.1985. The payment, however, has not been made to the applicant on the basis of his entitlement nor was he given any promotion according to law. According to the applicant, he was entitled to be promoted to the post of Administrative Officer-II alongwith intervening promotion and to get arrears of pay and allowances resulting from such promotion. The applicant had filed a contempt petition, but the High Court in their order dated 29.11.1985 observed that no contempt case was made out as the petitioner had been promoted to the higher post and would be given retrospective promotion according to the Select List of January 1984 from the date his

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junior was promoted. It was further held that if the applicant had any grievance regarding seniority, he would be free to take appropriate steps to remedy this grievance by filing a separate writ petition.

3. The claim of the petitioner that he is entitled to be promoted as Administrative Officer Grade-II and is entitled to get all intervening promotions and to get arrears of pay and allowances resulting from the amount actually paid to him and the amount to which the petitioner would be entitled on account of his further promotions to the next high posts.

4. When the applicant was struck off strength on 8.11.67 he was senior to Shri Hans Raj Malhotra and Shri Raj Kumar Markanday and they have already been promoted. He has pointed out that Shri Hansraj was promoted as Office Superintendent Grade II on 4.7.1980, Shri Raj Kumar Markanday was promoted as Office Superintendent Grade II in March 1982, as Office Supdt. Grade I on 3rd March, 1984 and as Administrative Office-II on 21.12.1984. Shri Dharam Paul Choudhary was promoted as Office Supdt. Grade II in march, 1982, as Office Supdt. Grade I on 3rd March 1984 and as Administrative Officer Grade II on 21.12.1984. The applicant has refuted the claim of the respondents that in the light of the Review D.P.C. of 1975 the proceedings of 1980 and 1982 D.P.C. were reviewed and the case of the applicant was considered for promotion as Office Supdt. Grade II by a Review DPC held on 31st May, 1983.

5. After the decision of the High court in Writ Petition on 25.1.1985, the respondents have paid the arrears of salary to the applicant in the scale of U.D.C. on 3.9.85, but they have neither promoted him retrospectively to various posts nor paid him arrears of pay and allowances to which he is entitled.

6. In their reply, the respondents have denied that the applicant is entitled to any other relief than what has already been granted to him as ordered by the High Court. The impugned letter against which the application has been made is a clarificatory communica-

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on a number of points. It has been stated that the post of Office Supdt. Grade II is a selection post and promotion to that post is based on seniority-cum-merit. The DPCs had considered the applicant regularly but he was superseded by S/Shri Hans Raj Malhotra, Raj Kumar Markanday and Dharam Pal Choudhary by virtue of higher gradings although they were junior to the applicant. The DPCs of 1980 and 1982 were again reviewed in December, 1983, and the applicant was also selected on 20.1.1984. However, based on the High court judgment, the applicant was promoted as Officer Supdt. Grade II and was assigned the notional seniority with effect from 6th October, 1982, the date from which his immediate junior in the panel was promoted. The applicant refused this promotion and gave an undertaking that he was not willing to accept the promotion of Office Supdt. Grade II. As such, the applicant cannot be equated with Shri H.S. Malhotra and can only be promoted as Office Supdt. Grade II only after 14 July 1987 on completion of one year from the date of refusal of earlier promotion. When the applicant was promoted as Office Superintendent Grade II, he not only refused to take promotion, but wrote that he fully understood that loss of seniority was inherent and would not claim whatsoever on that account. A copy of the unconditional forego certificate is at Annexure R-1 to the counter.

7. The case of the respondents is that he was promoted to Grade II with effect from 6th October, 1982, the date from which his immediate junior in the panel was promoted as Office Supdt. Grade II and since the applicant had refused promotion to the next higher grade, he could only be continued as U.D.C. and has been paid full arrears of salary on that basis.

8. The learned counsel for the applicant, Shri M.L. Bhargava, said that the applicant had foregone the promotion only because he could not accept the post of Superintendent Grade II when his juniors were already working as Administrative Officers Grade



II. His claim was that he should be promoted simultaneously as Office Supdt. Grade II, Office Supdt. Grade I and Administrative Office-II from the various dates and given notional promotion, but on the face of the fact that his juniors were working as Administrative Officer II, he could not work as Office Supdt. Grade II. Shri Bhargava said that the applicant was not allowed to work between 11.8.67 and 24.2.1980 and, therefore, there was no ACR during this period. Because of the disciplinary case, his promotion was not considered. Once the High Court quashed the disciplinary proceedings, promotion has to be given from the date his immediate junior is promoted. The respondents promoted the applicant in 1985 as Office Supdt. Grade II and this was not accepted by the applicant and he made representations against this which can be seen in his representations at Annexure P-11 and P-13. According to him, the forego certificate dated 24.2.86 has to be read with his application dated 19.2.86 wherein he had specifically mentioned that he had foregone promotion on the basis of the 20th January 1984 panel issued by the Engineer-in-Chief's Branch as the same was not legally tenable. The case of the applicant is that he belonged to the Western Command and not to the Southern Command as he had never physically reported to GE Nasirabad although he was taken on duty by GE Nasirabad in utter violation of Statutory Rule under Article 53 of the CSR which clarifies that a civilian employee on transfer from one Unit to another Unit should be struck off strength of his previous unit with effect from the date he is relieved of his duties in that unit and taken on the strength of the receiving unit from the date he actually joins the receiving unit. The applicant was neither relieved at Delhi nor did he join at Nasirabad and as such he continued to be on the strength of Delhi. He has approached the Tribunal to get his dues, namely, his promotion to various ranks on the basis of the promotion of his juniors.

9. The learned counsel for the applicant cited the case of Daulat Ram Vs. Delhi Administration decided by the Principal

Bench on 16.12.1986 in T.A. No. 71/85 where the applicant in that case was allowed all notional promotions with full arrears of pay etc.

10. Mrs. Raj Kumari Chopra, learned counsel for the respondents, said that the applicant was absent from duty for 13 years between 1967 and 1980 and at that time he was working as U.D.C. The High Court had quashed the proceedings on technical grounds and not on any merit, but on the basis of the judgment of the High court, he was paid more than Rs. 1 lakh and was also promoted as Office Supdt. Grade II retrospectively. She said that the post of Office Supdt. Grade II and other higher posts are selection posts and a U.D.C. has only a right for being considered for such promotion. The courts cannot order promotion retrospectively. She cited the case of State Bank of India Vs. Mohd. Myinuddin - 1987 (3) SLJ 161 - where the Supreme Court has held that court can only direct consideration of a person for promotion, but cannot direct selection.

11. We have gone through the pleadings and given careful consideration to the arguments of the learned counsel on both sides. We have also gone through the DPC files relating to the consideration of the case of the applicant. The case of the applicant was earlier kept in a sealed cover, but after the judgment of the High Court, he was graded 'Good' and promoted retrospectively. The point made by the learned counsel for the applicant is that in the absence of any ACR for 13 years, it is not possible to consider the applicant on merit and the only way would be to promote him on the basis of his length of service or seniority in the list. We note that the applicant was actually promoted as Office Supdt. Grade II giving him the notional seniority of 1982. Without going into the question whether it should have been 1982 or 1980, the fact remains that the applicant refused this promotion because, according to him, he should have been promoted as Administrative Officer-II as his juniors had been promoted to that Grade by

that time. On the other hand, the case of the respondents is that promotions have to be given step by step. He has first to be promoted as Office Superintendent Grade II and then as O.S. Grade I if found suitable by the D.P.C. and that there cannot be any automatic promotion from O.S. Grade II to O.S. Grade I and Administrative Office Grade II. Although this point has not been discussed fully, it was mentioned that the applicant did not want to go out of Delhi. In the impugned letter, it is mentioned that the applicant's posting to Chief Engineer, Nasirabad, still stood and that if he wished to forego promotion as Office Supdt. Grade II, he would be moved to Nasirabad as U.D.C. The applicant was advised to reconsider his undertaking to forego promotion and to resubmit his fresh willingness to Chief Engineer, Delhi Zone. We are of the opinion that the applicant should have accepted the promotion as Office Supdt. Grade II and the respondents would have even considered his further promotion with retrospective effect, but there cannot be an order to promote the applicant straightaway as Office Supdt. Grade I or Administrative Office Grade II without first joining as Office Supdt. Grade II. However, in view of the special circumstances of this case, we would suggest that the applicant may be allowed to join as Office Supdt. Grade II with notional seniority as allowed to him earlier. He would not, however, be eligible to get any arrears of pay as Office Supdt. Grade II, but his pay would be fixed keeping in view his notional promotion with effect from 6th October, 1982. The respondents may also consider him for ^{motion} pro/ to Office Supdt. Grade I and to Administrative Office Grade II according to rules. The respondents may not insist that the promotion as Office Supdt. Grade I would be available only after one year from the date of his refusal to accept the post of Office Supdt. Grade II. As the applicant is likely to retire shortly, perhaps the respondents may not insist on his transfer to Nasirabad at this stage and he may be kept at Delhi even though it is seen that he has spent most of his

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service at Delhi itself. With these observations, the application is disposed of. There will be no orders as to cost.

B.C. Mathur
(B.C. MATHUR)
VICE-CHAIRMAN
29.8.90

Shri S. R. Sagar, Member(Judicial) : With respect to the matter in dispute and in addition to what has been said and discussed by my learned brother Hon'ble Shri B. C. Mathur, it may be stated that notional promotion of the applicant to the post of Office Superintendent Grade II with retrospective effect makes it crystal clear that the applicant has not performed actual duties of that higher post. That being so the applicant, on the principle of "no work, no pay" should not be entitled to pay and allowances of the post in which he did not work. He should get pay and allowance of that higher post only from the date he actually works in that post.

In this connection their lordships of the Hon'ble Supreme Court in Paluru Ramkrishniah and others vs. Union of India and another (1989) 10 ATC-378) approved the following principle which has been decided by the Madhya Pradesh High Court in its judgment dated April 4, 1983.

"It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted....".

Their lordships of the Hon'ble Supreme Court though in different context, observed in Bank of India vs. T. S. Kelawala and others (1990, (4) SLR 248) that wages are payable pro rata for work done and hence deductible for the work not done.

There could, however, be certain exceptional cases where a government servant would be entitled to be paid for work which he has not done. Such exceptional circumstances are not present in the instant case so as to entitle the applicant to be paid for work which he has not done.

I am therefore, in entire agreement with the judgment prepared by my learned brother Hon'ble Shri B. C. Mathur.

S. R. Sagar
(S. R. SAGAR)
Member(Judicial)

Pronounced by me in open Court

B. C. Mathur
29.8.1990