

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHIO.A. No. 1505/87 198  
T.A. No.

DATE OF DECISION 29.5.1989

Shri J.N.Kak Petitioner

Shri D.N.Raina, Advocate for the Petitioner(s)  
Versus

Union of India &amp; ors. Respondent(s)

Shri P.P.Khurana, Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. B.C.Mathur, Vice Chairman.

The Hon'ble Mr. G.Sreedharan Nair, Member(J)

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

MGIPRRND-12 CAT/86-3-12-86 15,000

( G.SREEDHARAN NAIR )  
MEMBER(J)( B.C.MATHUR )  
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: DELHI.

REGN.NO. OA 150/87

Date of decision: 29.5.89

Shri J.N.Kak ..... Applicant

Vs.

Union of India & others ..... Respondents

CORAM: Hon'ble Mr. B.C.Mathur, Vice Chairman  
Hon'ble Mr. G.Sreedharan Nair, Member(J)

For the Applicant ..... Shri D.N.Raina, Counsel.

For the Respondents ..... Shri P.P.Khurana, Counsel.

( Judgement of the Bench delivered by  
Hon'ble Shri G.Sreedharan Nair, Member(J) )

JUDGEMENT

The applicant who was appointed as Inspector, though due for promotion to the grade of Superintendent Grade B in the year 1971, ~~he~~ was not promoted in view of the pendency of disciplinary proceedings against him. Admittedly, his junior L.G.Bhatia along with certain others were so promoted by the order dated 12.8.1971 pursuant to which the said Bhatia took charge as Superintendent with effect from 9.9.71. The applicant retired on superannuation on 31.8.1974. The disciplinary proceedings against him came to an end by the Presidential order dated 6.12.1975 by which the applicant was completely exonerated. Even thereafter, no steps were taken for the promotion of the applicant. It was only by the order dated 2.8.1985 that the applicant was promoted to the grade of Superintendent Grade B with effect from 9.9.1971, the date on which his immediate junior Shri Bhatia was "promoted as Superintendent Grade B". By the order dated 1.7.1986

the notional fixation of the pay of the applicant in the pre revised scale of Superintendent with effect from 9.9.1971 was allowed and his pay till retirement was directed to be regulated notionally on that basis. Sanction was also given for re-fixation of his pension on the basis of the said notional pay in the grade of Superintendent. However, no arrears of pay or of pension ~~were~~ <sup>was</sup> allowed.

2. The applicant has filed the present application for arrears of pay as well as arrears of pension and for recalculation of the gratuity. He also prays for re-fixation of the effective date of promotion as 12.8.1971, the date on which Shri Bhatia was promoted.

3. In the reply filed by the respondents, it is stated that the applicant was not promoted in view of the pendency of "some disciplinary case" which was finalised only in December 1975. It is stated that arrears of pay ~~were~~ <sup>was</sup> not granted since the applicant has already retired from service and has not worked in the promoted post. As far as pension is concerned, it is contended that only those emoluments which were actually drawn during the last 10 months preceding ~~to~~ the date of retirement have been taken into account, <sup>15</sup> but in view of the peculiar circumstances it was decided that the notional pay be taken into consideration for the purpose of commutation of pension. The claim for arrears of pension is resisted.

4. The first question that arises is with respect to the date from which the notional promotion of the applicant is

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to commence. As has been stated earlier, the respondents have reckoned 9.9.1971 as the date since Shri Bhatia took charge of the post only on that date. However, the applicant could claim notional promotion with effect from 12.8.1971, the date on which Shri Bhatia and others were actually appointed as Superintendent. We are in agreement with the ~~submission of~~ <sup>r</sup> the ~~counsel of~~ the applicant. A reading of the order dated 12.8.1971 under which Shri Bhatia and others were appointed as Superintendent shows that they "are being/appointed" and that it is "with effect from the date they actually ~~take~~ <sup>so</sup> ~~take~~ charge of the post". The mere fact that Shri Bhatia took a few days for the actual assumption of the charge of the post cannot be relied upon by the respondents not to afford notional promotion to the applicant with effect from 12.8.1971, the date on which his junior was admittedly appointed to the post of Superintendent.

5. The next question relates to the arrears of pay and of pension claimed by the applicant. The two, in our view, have to be considered separately. As regards the pay, the respondents have not allowed the same on the ground that before the final order in the disciplinary proceedings was passed by the President, the applicant had retired from service even and that he did not/work in the post of Superintendent for a single day. It was submitted by the counsel of the applicant that it is not due to the fault of the applicant that the final order was delayed. He invited our attention to the report of the Inquiry Officer which was submitted in the middle of 1973, wherein the applicant was exonerated. But we have to observe that the proceedings were initiated

not only against the applicant but also against certain other officers as well and it was a joint inquiry. The report of the Inquiry Officer had to be processed and final orders had to be passed by the disciplinary authority, before which it cannot be said that the applicant has been exonerated. By the time the final order was passed the applicant had admittedly retired on superannuation. On a perusal of the ~~report~~ <sup>records</sup> we cannot agree with the contention of the learned counsel for the applicant that there was inordinate delay on ~~behalf~~ <sup>the part</sup> of the respondents in completing the disciplinary proceedings, so as to entitle the applicant to the arrears of pay ~~for~~ <sup>though</sup> the applicant did not work in the promoted post. In the circumstances, we hold that the arrears of salary claimed by the applicant was rightly disallowed.

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6. As regards/arrears of pension , the matter stands on a different footing. The pension that had been fixed originally had to be modified in view of the retrospective promotion that has been granted on the notional refixation of the pay. When that is so done, it is only just and fair that the arrears of pension on account of the enhancement of pension ~~in view of the above~~ has to be taken into account and disbursed to the applicant.

7. Counsel of the applicant invited our attention to the decision of the Punjab and Haryana High Court in Shri Charan Dass Chadha Vs. The State of Punjab and another ( 1980(3) SLR 702) which was followed by a

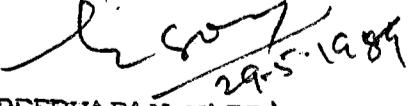
Bench of this Tribunal in Bharat Singh Vs. Union of India ( ATR 1987(1) CAT 621). Reference was also made to the decision of the Calcutta Bench of this Tribunal in Sambhu Nath Das Versus General Manager and others ( A.T.R.1986(2) C.A.T.110). We have carefully gone through these judgements, but we are of the view that they are of no assistance to the applicant in this case.

8. In the ~~decision~~ <sup>case before</sup> of the Punjab and Haryana High Court, due to no fault of the petitioner he was ~~entitled~~ <sup>not allowed</sup> to perform his duties in the higher post ~~(emphasis supplied)~~ as he was not regularly promoted to the post at the time his promotion was due. <sup>(emphasis added)</sup> In the decision in Bharat Singh 's case, the applicant who had been empanelled for promotion was denied promotion in view of the pendency of disciplinary proceedings on a charge which was not at all in connection with <sup>his</sup> official duties. Moreover, though the actual orders of promotion were <sup>not</sup> issued, the petitioner was designated defacto as Assistant Superintendent, to which post the promotion was due. It was taking into account these facts and following the ratio that where the disciplinary proceedings were themselves illegal or unduly held up for no fault of the officer that the applicant was allowed arrears of pay as a consequence of the promotion. In Sambhu Nath Das 's case the question whether a Government servant who has not been promoted on account of the pendency of the disciplinary proceedings is entitled to arrears of pay on grant of such promotion notionally on his being <sup>is not</sup> exonerated in the disciplinary proceedings, <sup>seen to have been</sup> discussed or adverted to, <sup>but</sup> though by the order a direction

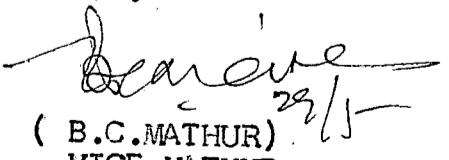
for payment of arrears of pay which have been due in the promoted post is ~~also seen to have been made~~ given.

9. This is not a case where it can be said that there was any illegality on the part of the respondents in not promoting the applicant when his junior Shri Bhatia was promoted, for admittedly at that time the disciplinary proceedings were pending against the applicant. By the time those proceedings came to an end the applicant had retired on superannuation. There has not been any inordinate delay in the disciplinary proceedings as a result of ~~any action~~ <sup>inaction</sup> on the part of the respondents. In such circumstances, we are of the view that the applicant cannot claim the arrears of pay on account of the benefit of notional promotion.

10. In the circumstances of the case, we direct the respondents to promote the applicant to the grade of Superintendent Grade 'B' with effect from 12.8.1971 and to fix his pay in the promoted post on a notional basis with effect from that date. The increments due to him till his retirement on 31.8.1974 shall be taken into account and his pension and pensionary benefits shall be calculated on the basis of the pay so arrived at. The arrears on account of pension and pensionary benefits on such re-calculation shall be disbursed to the applicant within a period of three months from the date of copy of this order. We make no order as to costs.

  
( G. SREEDHARAN NAIR)  
MEMBER(J)

29.5.1989

  
( B.C. MATHUR)  
VICE MATHUR