

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No.1941/1987

DATE OF DECISION:10.08.1993

Shri S.P. Bansal Applicant(s)

Versus

Union of India & Another Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

S.K.
(S.K. DHAON)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1941/1987

Date of decision: 10.08.1993

Shri S.P. Bansal

...Petitioner

Versus

Union of India & Another

...Respondents

For the Petitioner

..Shri G.D. Gupta, Counsel

For the Respondents

..Shri N.S. Mehta, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman)

The petitioner, a retired officer of the Delhi Andaman and Nicobar Islands Civil Service (hereinafter referred to as the DANIC Service) challenges the legality of a notification dated 9.9.1987 issued by the Ministry of Home Affairs, Grah Mantralaya, according to which, even though he stood appointed in the selection grade from 1.4.1976 to 10.01.1983, he would not be entitled to arrears of pay from 1.4.1976 to 10.01.1983 in that grade.

2. A counter-affidavit has been filed on behalf of the respondents. Learned counsel for the parties have been heard.

3. The undisputed facts are these. On

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31.03.1972 the petitioner was suspended from service. On 13.09.1972 the order of suspension was revoked. On 19.06.1976, a charge-sheet was given to him. In October, 1977, the enquiry officer submitted his report to the punishing authority indicating that the charges had not been established. On 3.12.1977 the punishing authority remitted the matter to the enquiry officer for further enquiry. Feeling dissatisfied in February, 1978, the petitioner preferred a Writ Petition No.309 of 1978 in the High Court of Delhi which was transferred to this Tribunal on 13.05.1986 and treated as Transferred Application No.386/1985. On 30.05.1986 this Tribunal in the Transferred Application quashed the order of the punishing authority remitting the matter to the Enquiry Officer and the punishing authority was directed to pass final orders on the material before him. On 20.11.1986 the disciplinary proceedings were dropped. On 18.02.1987 the respondents paid the entire arrears of pay etc. to the petitioner. On 10.01.1983 an order was passed giving the selection grade to the petitioner on ad hoc basis.

4. On 10.08.1987 by a Notification of the Ministry of Home Affairs, Grah Mantralaya, it was made clear that the President had been pleased to appoint the petitioner in the selection grade with effect from 1.4.1976 to 10.01.1983. However, it was made clear that the appointment was to be on notional basis and the petitioner was to get the advantage of the said appointment only for the purpose of fixation of pay. He was not to be entitled to arrears of pay from

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1.4.1976 to 10.01.1983. On 9.9.1987 a fresh Notification was issued superseding the aforesaid Notification of 10.08.1987 as well as the Notification of 21.08.1987. The contents of the said Notification were substantially the same as the contents of the Notification dated 10.08.1987 except that a slight correction was made in the name of the petitioner.

5. The controversy before this Tribunal is a narrow one. The question to be answered by us is whether the petitioner is entitled to be paid salary in the selection grade from 1.4.1976 to 10.01.1983. It cannot be the case of the respondents that the case of the petitioner was of promotion. Admittedly, he was working on a certain post even on 1.4.1976. On or before that day, it appears, for the purpose of giving selection grades some sort of committee considered the matter and that committee had, in fact, given the selection grade to one Mr. Awasthi, who was admittedly junior to the petitioner. It appears that the authority or the committee felt that since, the petitioner was about to face a departmental enquiry, he should not be recommended for the selection grade. Probably till then the legal position was not clear that a departmental enquiry against a Government servant commences only upon the issue of a charge-memo to him. Obviously that event took place on 19.06.1976, i.e., after 1.4.1976. In the normal course, the petitioner

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should have been put at par with his junior Mr. Awasthi. No reason has been disclosed as to why the petitioner was not given the selection grade with effect from 1.4.1976 by the committee concerned.

6. Learned counsel appearing for the respondents has relied upon an Office Memo dated 30.01.1982. The relevant portion of the same runs:-

"....But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion".

7. A Full Bench of this Tribunal in the case of **K. Ch. Venkata Reddy and Others Vs. Union of India & Others, Full Bench Judgments (CAT) 1986-1989** page 158 has held that the aforequoted opinion expressed in the Office Memo is not sound and in fact the aforequoted portion of the Office Memo had been struck down by the Full Bench.

8. Learned counsel for the respondents also placed reliance upon a decision of the Supreme Court in the case of **P. Murugasan and Others Vs. State of Tamil Nadu and Others, JT 1993(2) SC page 115**. This was a case where there was a dispute between Graduate and Diploma Holders. The Supreme Court made certain observations. The observations, as material,

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may be extracted:-

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"...such diploma-holder-promotees shall be entitled to the benefit of seniority and pay-fixation flowing from such retrospective promotions, but they shall not be entitled to the arrears of difference in salary for the period they have not actually worked as Assistant Executive Engineers.....".

This was a case where apparently the Supreme Court felt that certain diploma-holders should have been promoted but actually they had not been promoted. In that context, their Lordships observed that since they had not worked on a higher post as Assistant Executive Engineers, they could not be paid emoluments of that post. We have already indicated, that we are not dealing with a case of promotion.

9. Shri Gupta, the learned counsel for the petitioner has relied upon an observation made by the Supreme Court in the case of **State of Madhya Pradesh and Another Vs. Syed Naseem Zahir and Others, 1992(5) SLR page 618.** This was a case where on account of pendency of departmental proceedings, the matter of a Government servant had been placed in a sealed cover. In that context, it was observed:-

"Keeping in view the facts of this case we are of the view that the 'sealed cover' containing recommendations of the DPC in respect of respondent Syed be not opened till the departmental proceedings against him are concluded. As mentioned above the enquiry report has already been received by Syed and it is a matter of days before the disciplinary proceedings would come to an end. In case he is completely exonerated, the 'sealed cover' shall be opened and if the recommendation is in his favour, he shall be notionally promoted with effect from the date when a person junior to him was promoted to the post of Chief Engineer. In that event, he shall be entitled to all consequential benefits including back wages. In case, respondent Syed Naseem Zahir is punished in the proceedings, then action would be taken in accordance with the guidelines as laid down by this Court in Jankiraman's case".

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This case is somewhat apposite.

10. There is no allegation that there was any qualitative difference whatsoever between the work performed by the petitioner and Shri Awasthi. Both were working on similar but different posts. The nature, content and quality of their work was similar. The petitioner was not working on gratis. The respondents took work from him on the clear understanding that he would be justly and reasonably compensated for the work done by him. The petitioner was unjustifiably denied selection grade with effect from 1.4.1976. Equity and justice demanded that he should have been remunerated on the footing that he was in the selection grade with effect from 1.4.1976. The respondents, therefore, could not unjustly enrich themselves by withholding the selection grade which was admissible to the petitioner with effect from 1.4.1976. We, therefore, have no hesitation in recording the finding that that part of the Notification dated 9.9.1987, which directs that the petitioner will not be entitled to arrears of pay from 1.4.1976 to 10.01.1983 in the selection grade suffers from the vice of arbitrariness.

11. This petition succeeds and is allowed. The Notification dated 9.9.1987 in so far as it purports to direct that the petitioner will not be entitled to arrears of pay from 1.4.1976

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to 10.01.1983 is quashed. The respondents are directed to pay to the petitioner the salary which would have been payable to him from 1.4.1976 to 10.01.1983 on the footing that he had been given the selection grade with effect from 1.4.1976.

12. There shall be no order as to costs.

B. N. DHOUDIYAL
(B.N. DHOUDIYAL)
MEMBER (A)

10.08.1993

S.K.D
(S.K. DHAON)
VICE CHAIRMAN
10.08.1993

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