

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1192 of 1990
~~REXXNS~~

199

DATE OF DECISION 1.12.1994

Anant Ram

Petitioner

Shri G. R. Matta

Advocate for the Petitioner(s)

Versus

Chief Secretary, Delhi Admin.

Respondent

Mrs. Avnish Ahlawat

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice S. C. Mathur, Chairman

The Hon'ble Mr. P. T. Thiruvengadam, Member (A)

1. To be referred to the Reporter or not? *Yes*2. Whether it needs to be circulated to other Benches of the Tribunal? *Yes**S. C. Mathur*
(S. C. Mathur)
Chairman

1.12.94

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A. NO. 1192/90

New Delhi this the 1st day of December, 1994.

CORAM :

HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN
HON'BLE SHRI P. T. THIRUVENGADAM, MEMBER (A)

Anant Ram S/O Prahlad Singh,
R/O 528, Nai Basti,
Kishan Ganj,
Delhi - 110007.

... Applicant

(By Advocate Shri G. R. Matta)

Versus

The Chief Secretary,
Delhi Administration,
5, Alipur Road,
Delhi.

... Respondent

(By Advocate Mrs. Avnish Ahlawat)

ORDER

Shri Justice S. C. Mathur —

The applicant, Anant Ram, has approached this Tribunal seeking the following reliefs :-

- (1) Declaration that he is entitled to be promoted to Grade III of the Delhi Administration Subordinate Service with effect from 15.12.1971 when his immediate junior, Shri Pritam Singh, was promoted, and to allow him consequential benefits in the matter of pay, confirmation, promotion etc.;
- (2) Declaration that the order of applicant's reversion from Grade III to Grade IV by order No. F.4/35/76-S.II dated 20.11.1976 is bad in law and quashing of the same; and

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(3) Direction to the respondent, viz., the Chief Secretary, Delhi Administration, to modify the order dated 25.4.1990 so as to make it effective from 15.12.1971 so far as it relates to the applicant.

2. The present application was filed in the Tribunal in June, 1990. On 2.7.1991, the Delhi Administration passed order No. F.4/4/8/90-S.II according pro forma promotion to the applicant to Grade III (Upper Division Clerk, for short UDC) w.e.f. 15.12.1971. In view of this order, the substantive reliefs claimed in the application stand satisfied. However, the consequential relief of arrears of pay and allowances for the period he has not actually worked on the post of Grade III (UDC) have not been allowed; rather they have been specifically denied. The only consequential benefit that has been accorded is notional fixation of pay on the post of UDC w.e.f. 15.12.1971. The applicant's surviving grievance is now confined to salary and allowances for the period 15.12.1971 to 2.7.1991.

3. The denial of aforesaid salary and allowances has been justified on behalf of the respondent on the following grounds :-

- i) promotion has been given on sympathetic considerations;
- ii) F.R. 17 disentitles the applicant to salary and allowances for the period in question; and

iii) principle of 'no work no pay' applies.

In order to appreciate the first ground, a few facts are necessary to be stated.

4. It has been stated in the respondent's reply dated 12.9.1994 that a complaint had been received that the applicant possessed assets disproportionate to his known sources of income. This complaint was investigated by the Anti Corruption Branch of the Delhi Administration. On the basis of the report submitted by the Anti Corruption Branch, a departmental enquiry was initiated and chargesheet dated 2.12.1977 was issued under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short CCA Rules), and by order dated 26.10.1981, the applicant was censured. Thus, the enquiry ended with imposition of penalty and not with exoneration of the applicant.

5. In May, 1975, Departmental Promotion Committee, for short DPC, met to consider cases for promotion to the post of UDC. At this time, the complaint made against the applicant was pending investigation, yet this fact was omitted to be brought to the notice of the DPC. The DPC cleared the name of the applicant for promotion and on the basis of this clearance, the applicant was promoted w.e.f. 1.10.1975. When the mistake was detected, review DPC was held in November, 1976, on whose recommendation the applicant was reverted to the post of Lower Division Clerk, for short LDC. The

applicant represented against the reversion and followed it up with the present application. A sympathetic view was taken and a review DPC was held to consider the applicant's claim for promotion w.e.f. 15.12.1971. The DPC next met on 26.6.1991 and recommended that the applicant be given pro forma promotion to the post of UDC w.e.f. 15.12.1971. In view of this recommendation, the applicant has been promoted by order dated 2.7.1991 referred to hereinabove, but he has been denied salary and allowances for the period in question. The punishment of censure still sticks to the applicant.

6. The aforesaid facts stated in the respondent's reply have not been disputed by the applicant as he has not filed any rejoinder. The factum of reversion from the post of UDC to the post of LDC is stated in the D.A. itself. From these undisputed facts, it does appear that a sympathetic view was taken in the matter of grant of promotion to the applicant. The question for consideration is that when promotion is made on sympathetic considerations, is the employer bound to give all the consequential benefits or has the discretion to deny some of them. In the case on hand, all the consequential benefits have not been denied to the applicant; only the salary and allowances for the period the applicant did not actually work on the post of UDC have been disallowed.

7. Our attention has not been invited by the learned counsel for the applicant to any law whereunder administrative authority while granting pro forma promotion to its employee retrospectively is disabled from denying payment of salary to him for the period prior to the date of the promotion order. On the contrary, our attention has been invited by the learned counsel for the respondent to F.R. 17 which reads as follows :-

"(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties :

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.

(2)"

Under the above Rule, an officer is entitled to draw pay and allowances attached to a post from the date he assumes the duties of that post. We may for the purposes of the present case, assume that the rigour of this Rule will not apply where the Administration arbitrarily supersedes an employee. That, however, is not the position in the present case. Accordingly we are of the opinion that the respondent has not acted arbitrarily and illegally in denying to the applicant the salary and allowances for the period he did not actually work on the post of UDC. In

taking this view, we are fortified by the decision of their lordships of the Supreme Court in Union of India & Ors. vs. K. V. Jankiraman & Ors. : (1993) 23 ATC 322. In this case, their lordships were dealing with a matter where the recommendation of the DPC had been kept in sealed cover. Where such a procedure had been followed, the Government had issued a memorandum which provided that if on the basis of exoneration promotion is accorded, the Government servant will get only notional promotion but will not get the salary for the period he has not actually worked on the promoted post. The claim of the Government servant was that this direction was invalid. Dealing with the argument and taking note of F.R. 17, their lordships observed in paragraph 26 of the report as follows :-

"26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings....." (emphasised).

As already noticed, in the case on hand, the applicant's conduct was not absolutely free from blame. He had been censured. Accordingly, the authority could exercise the discretion of denying payment of salary for the period he did not actually discharge the duties of the higher post.

(17)

8. The learned counsel for the applicant has cited the case of V. B. Gupta vs. Deputy Director, C.G.H.S., Delhi : (1990) 13 ATC 681, decided by a Division Bench of the Tribunal at Delhi. The facts of this case were that the applicant who was a Pharmacist had been empaneled in the year 1975 for promotion to the post of Assistant Stores Superintendent. No post of Assistant Stores Suptd. was available at Delhi and accordingly, the applicant was sent on deputation to Nagpur in 1976. In 1979 he was sent on deputation to Jaipur. In December, 1980 he was reverted from deputation and posted as Pharmacist at Delhi. The claim of the applicant was that after 1975 another panel had been prepared in 1979 and appointments to the post of Assistant Stores Suptd. had been made from both the panels and it was, therefore, arbitrary to post him as Pharmacist on his reversion from deputation. The case of the Department was that the panel had already been operated when the applicant was sent on deputation and thereafter in the year 1987, the recruitment rules had been amended and the applicant could not now claim appointment to the post of Assistant Stores Suptd. The Bench did not find any validity in the defence of the respondent and, therefore, issued direction to the respondent to consider the appointment of persons empaneled in 1975 and 1979 on the basis of merit at various Offices as and when posts were created there, and till the names of persons borne on the panels were

exhausted, the respondents shall not resort to any other method of appointment to the posts of Assistant Stores Suptd. This indeed was a case in which the action of the respondent was arbitrary. On the one hand, the Department was pleading that the panel of 1975 had been operated and on the other, they were pleading that the applicant cannot be continued on the post of Assistant Stores Suptd. Be that as it may, the Tribunal has merely directed the administration to consider the appointment of persons empaneled in 1975 and 1979. This case is accordingly distinguishable. Further, this authority does not take note of F.R. 17.

9. That payment of back wages depends on facts and circumstances of each case has been dealt with by a Division Bench of the Tribunal at Madras in C. Karibeeran vs. Union of India : (1994) 26 ATC 29. In paragraph 14 of the report, it has been observed :-

"It is thus seen from the above pronouncements that the applicability of the principle, 'no work, no pay' to claim for differential salary and allowances arising out of retrospective promotions or wrongful reversions would depend upon the facts of each particular case and there could be no hard and fast rule either way."

This observation has been made after taking note of the decisions rendered by their lordships in Paluru Ramakrishnaiah vs. Union of India : (1989) 2 SCC 541, and Virender Kumar, General Manager, Northern Railway, New Delhi vs. Avinash Chandra Chadha : (1990) 3 SCC 472. In both these cases, their lordships had negatived the claim of retrospective financial benefit.

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10. The claim of back wages was negatived by their lordships of the Supreme Court in Telecommunication Engineering Service Association (India) and Another vs. Union of India & Anr. : (1994) 27 ATC 742 also.

11. It also needs to be pointed out that the cause of action for the first relief accrued to the applicant on 15.12.1971 but he approached the Tribunal only in the year 1990, i.e., after about 20 years. Limitation for filing application in the Tribunal is one year from the date of accrual of the cause of action. The applicant's application was, therefore, hopelessly barred by time. Fortunately he has got relief on account of the order passed in his favour during the pendency of the application. The position in respect of the second relief is also the same. The order of reversion which the applicant claims to be bad in law was passed as far back as 20.11.1976. This claim is also hopelessly barred by time. If the order which has given relief to the applicant had not been passed by his administrative authority, perhaps this application would have been dismissed as barred by limitation.

12. In view of the above, we are of the opinion that the applicant is not entitled to salary for the period in question. The application is dismissed with costs.

P. T. Thiruvengadam

(P. T. Thiruvengadam)
Member (A)

S. C. Mathur
Chairman

/as/