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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2523/90

New Delhi this the 9th Day of March, 1995.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

A. Sankaran,
C/o Sh. A. Jayaraman,
Joint Secretary,
D-II, Vinay Marg,
New Delhi. ...Applicant

(By Advocates Sh. M.M. Krishnamani with Sh. S.
Madhusudhan Babu and Sh. Vijay Shankar)

VERSUS

1. The Secretary to the
Government of India,
Ministry of Urban Development,
'C' Wing, Nirman Bhavan,
New Delhi-110 011.
2. The Director General (Works)
Central Public Works Department,
Nirman Bhavan,
New Delhi. ...Respondents

(By Additional Standing Counsel Sh. M.K. Gupta)

ORDER(Oral)
Hon'ble Mr. N.V. Krishnan

We have heard the learned counsel for both the parties.

2. The applicant, who has since retired, is aggrieved by the Annexure-I order dated 21.9.89, which reads as follows:-

"The President is pleased to appoint Shri A. Sankaran, an officer of the Central Engineering Service Group 'A' Works Department to officiate as Additional Director General (Works) in the C.P.W.D. in the scale of pay of Rs.7300-100-7600 ,notionally with effect from 19th August 1988 (Forenoon) and actually from the date of promotion and until further orders but with no arrears of pay for the period preceding date of his actual promotion.

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3. It is stated that for two vacancies of Additional Director General (Works) lying vacant from 1.9.87 a meeting of the Departmental Promotion Committee (DPC) was held on 18.10.1987. It is alleged that the applicant was also recommended by the DPC for promotion and was placed as Sl. No.2 in the panel. His senior Sh. Koundinya was promoted on the basis of this DPC in November, 1987. The applicant, however, was not promoted.

4. Instead, it appears, certain adverse remarks were communicated to him in regard to which he submitted the Annexure-4 representation dated 14.1.88. It would appear that the adverse remarks related to his integrity. In the representation, among other things, he pointed out that these remarks would have no basis for the simple reason that in October, 1987 his name was considered by the DPC for promotion to the post of Additional Director General, C.P.W.D. and this would not have been done but for the fact that a certificate in respect of his integrity had also been given by the Department.

5. In respect of his not being promoted on the basis of the DPC held in October, 1987, he made a representation on 25.1.88 (Annexure-5), to which no reply was received.

6. Subsequently, another DPC was held in 31.3.88. It is stated that the DPC decided to place its recommendation in respect of the applicant in a sealed cover based on the request of the Department, which it

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proposed to hold a disciplinary proceeding against him. However, all such proposals were finally dropped and the sealed cover was finally open and the Annexure-I order dated 21.9.89 was passed. By this order the applicant has been promoted notionally with effect from 19.8.88, (i.e., the date with effect from which the applicant's junior was promoted on the basis of the DPC held in March, 1988.) and actually from the date of issue of the Annexure A-I order. *It was directed &* that he would not receive any arrears of pay for the period preceding the date of his actual promotion. In response to his representation dated 25.9.89, he was informed on 12.12.89 (Annexure VII) that the Annexure A-I order is based on existing government orders. He was also informed that, to mitigate hardships, it has been ordered that the notional pay would, however, count for reckoning average emoluments for pension. He found that these orders are in pursuance of the standing instructions of Government in the OM dated 12.1.88 (Ann-VIII).

7. It is in this circumstance that the applicant has prayed as follows:

"(a) Issue appropriate directions directing the respondents to grant promotion to applicant as Additional Director-General with effect from 18-11-87;

(b) Issue orders striking down OM No.(Sic) dated 12-1-1988;

(c) Issue appropriate directions directing the respondents to pay the arrears of difference in pay and other consequential benefits flowing from relief No.(a) & (b);"

8. The respondents have filed a reply contesting these claims stating that what has been done is in accordance with law and the instructions on the subject.

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9. We have heard the learned counsel for the parties. In so far as the claim relating to promotion w.e.f. 18.11.87 is concerned, we wanted to know whether that claim is not barred by limitation, as contended in the reply. The learned counsel for the applicant pointed out that the applicant had not only made a representation on 14.1.88 (Annexure 4) but the respondents themselves took the initiative of considering the applicant's case again in 1988 and giving him promotion by the Annexure A-1 order. In addition, when he received the Annexure A-I order, he filed the Annexure-6 representation dated 25.9.89, in which a specific request has been made regarding giving him benefit of the promotion from 19.11.87. This has been rejected only on 12.12.89 (Annexure 7). As the OA has been filed on 4.10.90, it is within the time.

10. We have carefully considered this in the light of Section 21 of the Administrative Tribunals Act, 1985. matter. The first representation regarding non-promotion from 18.11.87 was sent on 25.1.88 (Annexure-5). As the respondents neither gave him a reply nor gave him relief, the cause of action had arisen on the expiry of six months from that representation, i.e., on 25.7.88. The O.A. should have been filed on or before 25.7.89, but it is filed only on 4.10.90. Obviously, it is barred by limitation.

11. The plea that a subsequent representation was made on 25.9.89 (Annexure-6) which was rejected only on 12.12.89 (Annexure-7) does not in any way extend the

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period of limitation. For, by that time, the matter had already become stale. That issue could not have been revived by the subsequent representation dated 25.9.89. In the circumstances, we are of the view that the applicant is not entitled to any relief in respect of prayer (a).

12. In regard to the prayer regarding granting him arrears the learned counsel for the applicant submitted that the applicant's case is ^{& Covered} ~~covered~~ by the judgement of the Supreme Court in Union of India & Others vs. K.L. Jankiraman and Others (1991 (4) SCC 109). In that case para 3 (iii) of the standing instructions of Government in OM dated 30.1.82, among other things came up for consideration. That para provided as follows:

"In the normal course, on the conclusion of the disciplinary/court proceedings, the sealed cover or covers may be opened, and in case the officer is completely exonerated i.e. on statutory penalty, including that of censure, is imposed, the earliest possible date of his promotion but for the pendency of the disciplinary/court proceedings against him may be determined with reference to the position(s) assigned to him in the findings in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The officer concerned may then be promoted, if necessary, by reverting the juniormost officiating person, and he may be given a notional promotion from the date he would have been promoted as determined in the manner indicated above. But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion."

13. The court also noticed that a similar stipulation was made in the subsequent memorandum dated 12.1.88 issued in supersession of all earlier

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instructions. With reference to para 3(iii) of the order dated 30.1.82, the court held as follows in para 26 of their judgement:

"While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., 'but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion', we direct that in place of the said sentence the following sentence be read in the Memorandum: 'However, whether the officer concerned will be entitled to any 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 concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.'"

14. That equally applies to the same direction contained in the OM dated 12.11.88 (Annexure VIII) relied in this case by the respondents. Hence, the applicant is entitled to actual promotion and not notional promotion from 19.8.88.

15. It was also observed by the Supreme Court that the principle of no work no pay will not apply to cases where though the government employee is willing to work he was not given work. That principle would be appropriate where, for example, the government employee either goes on strike or absents himself and does not discharge his duties. In the present case, the applicant was not promoted on the due date on account of some suspicion entertained by the respondents which later turned out to be unfounded.

16. The learned counsel for the respondents submits that the Annexure-A-1 order need not be tampered with, for the applicant was under a cloud during the relevant period. It is only after he was cleared that it was decided not to proceed further against him departmentally and to open the sealed cover. He has been given the promotion w.e.f. 19.8.88, only arrears have been denied to him full justice has been done to him for pensionary purpose also.

17. In our view the learned counsel for the applicant is on strong grounds. Inded, the arguments based on Janakiraman case are relevant.

18. The only question is whether we should give the relief admissible or this should be left to the Department. The ratio of the Janakiraman's case is that there might be cases where ^{criminal} ~~service~~ proceedings or departmental proceedings might have been delayed by the Government employee and, therefore, it would not be proper for the Tribunal to pass an order directing the payment of the arrears. It should be left to the Department to consider all such circumstances and pass appropriate orders. That situation does not obtain in the ^{present} ~~present~~ case, as no DE or criminal case was started at all. We are of the view that this is a fit case where the applicant should be given the benefit of arrears of pay by treating the promotion made from 19.8.88 as actual promotion and not merely as a notional promotion.

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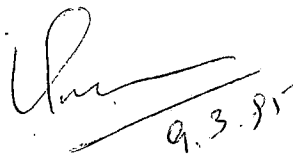
19. Hence, we dispose of this OA with a direction to the respondents to give to the applicant within a period of two months from the date of receipt of this order the benefit of the arrears of pay by treating his promotion as actual promotion w.e.f. 19.8.88 and also grant him consequential benefits in respect of the pensionary claim, if not already done.

20. The O.A. is disposed of accordingly. No costs.



(Dr. A. Vedavalli)
Member(J)

'Sanju'



(N.V. Krishnan)
Vice-Chairman(A)