

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 529/90
T.A. No.

198

DATE OF DECISION 20.07.1990.

Shri S.S. Sirohi Applicant (s)

Shri S.C. Luthra Advocate for the Applicant (s)

Versus

Union of India & Another Respondent (s)

Shri K.C. Mittal Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant who has worked in the Intelligence Bureau as ACIO-II filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that he should be paid arrears of pay and allowances from 25.2.1985 to 30.6.1988 and that he should be declared to be entitled to all pensionary and terminal benefits.

2. The applicant had filed OA 1870/88 in this Tribunal in which he had sought directions of the Tribunal to re-fix his seniority on the basis of continuous appointment/officiation in the grade of ACIO-II and after re-fixing his seniority, he should be promoted to the next higher rank as a consequential relief. By judgment dated 27.10.1988, the Tribunal directed the respondents

to consider the case of the applicant for further promotion on the basis of revised seniority accorded to him in ~~the~~ terms of the decision of this Tribunal in another case (Baldev Singh's case). In compliance with the judgment, the respondents re-fixed the seniority of the applicant and after holding a review DPC, promoted him as ACIO-I retrospectively with effect from 25.2.1985. He has, however, not been paid the arrears of pay and allowances from 25.2.1985 to 30.6.1988, i.e, till the date of ^{his} ~~the~~ superannuation.

3. The applicant made a representation to the respondents in this regard. The respondents have taken the stand that he would not be entitled to arrears of pay and allowances and that they have actually treated his promotion as notional promotion.

4. The respondents have contended in their counter-affidavit that the notional promotion granted to the applicant is governed by the instruction issued by the Ministry of Personnel, Public Grievances and Pensions in their OM dated 10.4.1989. According to the said OM, on promotion, the pay is to fixed under FR 27 at the stage he would have reached, had he been promoted from the date the officer immediately below him was promoted but no arrears would be admissible. They have also contended that there is no provision in the rules to pay arrears of pay and allowances for the period the applicant did not

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actually perform the duties of the higher post.

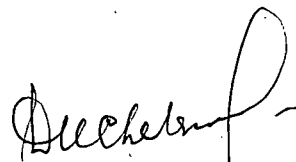
5. We have heard the learned counsel of both parties and have gone through the records of the case carefully. The learned counsel of the applicant relied upon some judicial pronouncements in support of his contention* and we have also carefully considered them. In the recent case of Virender Kumar, General Manager, Northern Railway, New Delhi Vs. Avinash Chadha & Others, 1990(1) SCALE 857 at 861-862, the Supreme Court has considered whether on notional promotion an employee would be entitled to payment of arrears of pay and allowances. In that case, the Principal Bench of the Tribunal had held that the employees would be entitled to payment of arrears. The Supreme Court observed that the employees had not actually worked in the higher posts and, therefore, on the principle of "no work no pay" they would not be entitled to higher salary. It was observed that "there is, therefore, neither equity nor justice in favour of the respondents to award them emoluments of the higher post with retrospective effect. It is for this reason that we are of the view that the decisions of this Court such as in P.S. Mahal & Others Vs. Union of India & Others, 1983(3) SCR 847 directing the payment of higher emoluments with retrospective effect on account of

*Cases relied upon by the learned counsel of the applicant
(1) P.S. Mahal Vs. U.O.I., 1984(2) SLJ 197; (2) R.K. Ramchandra Iyer Vs. U.O.I., 1984(1) SLJ 475; (3) State of Mysore Vs. C.R. Seshadri, AIR 1974 SC 461; (4) Thakur Surender Singh Vs. Lt. Governor, of Delhi, 1990(1) ATJ 263; and (5) Sohan Lal Sharma Vs. U.O.I., 1990(1) ATJ 540.

deemed promotions of earlier dates will not be applicable to the facts of the present case and have to be distinguished."

6. In the light of the aforesaid judicial pronouncement of the Supreme Court, we are of the view that the applicant is not entitled to arrears of pay and allowances with retrospective effect from the date of his notional promotion. The respondents have re-fixed the pay of the applicant consequent upon his notional promotion vide order dated 15.2.1990 at Annexure A-2. We, therefore, direct the respondents to revise the pensionary and terminal benefits of the applicant on the basis of the re-fixed pay, if this has not already been done.

7. The application is disposed of accordingly. There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER (A)

20/7/1990


(P.K. KARTHA)
VICE CHAIRMAN (J)