

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 2870/91.

Date of decision 19-2-93

BALBIR SINGH

...

Applicant

V/s

Union of India
and Others.

...

Respondents

For the applicant

...

Shri S.C. Luthra, counsel.

For the respds.

...

Ms. Jaswinder Kaur, counsel.

GORAM:

The Hon'ble Mr. Justice S.P. Mukherji, Vice-Chairman(A)

The Hon'ble Member Mr. C.J. Roy, Member (J)

(1) Whether Reporters of local papers may be allowed
to see the Judgement ?

(2) To be referred to the Reporter or not ?

J_U_D_G_E_M_E_N_T

[Delivered by Hon'ble Shri C.J. Roy, Member (J)]

This is an application filed by the applicant
under Section 19 of the Administrative Tribunals Act
1985, seeking a relief to direct the respondents to
modify their orders at Annexure A-2 by deleting the
word 'national' and to pay the arrears of pay and
allowances with effect from 18.9.1986 till 31.7.1990
the date on which the applicant superannuated.
Succinctly stated the facts of the case are
that the applicant is a deputationist Police Officer
and was absorbed in the Intelligence Bureau on 1.8.1986
when he was ACIO-II to which rank he was promoted.

on 30.11.1968. He was further promoted as ACIO-I on 25.7.1978 and was treated in the same cadre in accordance with existing rules of Government of India issued and amended from time to time with regard to the direct recruits.

2. The applicant also filed O.A. No. 1303/88 for fixation of his seniority as ACIO-I w.e.f. 25.7.1978 to grant him promotion to the next rank of DCIO as and when due (according to rules (Annexure A2)). In the Judgement given in R.A. No. 28/89 in O.A. No. 1323/80 the Principal Bench of CAT issued the following directions :-

" In the result, therefore, we direct the respondents to calculate the seniority of the applicant Shri Balbir Singh in the cadre of ACIO-I from 25.7.1978 and that of Din Dayal from 14.11.1977. We order accordingly. The Review Applications are accordingly disposed of. "

3. Consequent upon the judgement^{my} cited by the Principal Bench in RA No. 28/89 in OA No. 1323/88 dated the 26th July, 1990 the direction as cited supra had been executed to the extent indicated below by the Deputy Director (IB), Ministry of Home Affairs, Government of India, New Delhi and following orders were issued :-

" Director, Intelligence Bureau, hereby appoints

Shri Din Dayal, ACIO-I as DCIO in an officiating capacity until further orders.

Consequent upon his appointment, Shri Din Dayal assumed the charge of DCIO at I.B. Headquarters in the forenoon of 09.11.1990.

Director, Intelligence Bureau further orders grant of notional promotion to Shri Din Dayal and Shri Balbir Singh, ACIOs-I to the grade of DCIO w.e.f. 29.05.1986 with reference to the date of their juniors."

4. By the above orders, the applicant claims that his promotion had been ^{ordered} ~~issued~~ to the grade of DCIO from the due date i.e. 29.5.1986 when the juniors to the applicant get promotions. But he says that the order is meant for granting notional promotion meaning inter-alia that no benefit for the back period will be given in this higher grade of DCIO which is absolutely contrary to the spirit of the order passed by the Tribunal (Ann.A-2).

5. The applicant further alleges that to deny the consequential benefits with retrospective effect is injustice, injurious. So he claims that by way of fixation and annual grade increments regularly in the next higher scale of pay etc. has been confiscated for over four years

right from 29.5.1986 till the date of his superannuation affected on 31.7.1990. This action of the respondents is attacked by them. He further avers that the order cited supra of the Deputy Director promoting the applicant from the previous actual date of his promotion and snatching away the old financial benefits, without giving any reasons by refusing the payment of past arrears from the date of promotion is against natural justice. Though the impugned order is not a complete and speaking order and it is not fair and just and genuine as per the decision of the Tribunal as the Hon'ble Tribunal does not permit so in its above referred order. However, the applicant further states that the judgement does state why the back wages as admissible by virtue of the promotion be denied to the applicant at all. The order, thus passed by the respondents can easily be said to be baseless, capricious.

7. The applicant claims similarly situated

persons are given the same benefits with effect from the date they are absorbed ^{and} they are drawing pay in the higher scale soon after the decision of the above Memo. which is at Annexure A-2.A dated 17.10.1988. He says that the respondents are not in the process of extending the benefits to the similarly situated persons mentioned in the above Memo. Hence, the applicant has claimed that he is entitled to the full payment for the past period of about four years arising on the post of DCIO according to the rules right from the date he has been promoted consequently until the date of his superannuation i.e. from 29.5.86 till 31.7.1990. He attacks the non-issuance of the consequential benefits passing of the word 'notional' but at the same time giving it to the similarly situated person is discriminatory in nature and the material benefit he claims ^{is} taken away and he retired on 31.7.1990 on superannuation. Thus the benefits of judgement ^{were} ~~was~~ not given to him for four years and he also claims that he filed a representation on 29th

January, 1991 vide Annexure A-3-C to give him actual promotion but not notional promotion and the said representation was disposed of in Annexure A-1.

8. Though he claims that the pay of the applicant has been fixed notionally on 13.2.1991, he has not ^{got} any pensionary benefits on account of the notional fixation of pay like revision of pension, gratuity, commutation of pension, Leave Encashment till this date although a period of 8 months has elapsed. Hence, he has filed this C.A.

9. The respondents have filed a counter. They state that according to the judgement filed in C.A. No. 1303/88 dated 26.7.1990, the seniority as per Tribunal in the cadre of ACIO-I was fixed from 25.7.1978 (Annexure R-1) but they contended in para 4.4 that as per the judgement of the Central Administrative Tribunal, Principal Bench in R.A. 28/89 in OA 1323/83 dated 26th July, 1990 that Shri Din Dayal actually assumed the charge of DCIO at IB Head Qrs. in the forenoon of 9.11.190 but they say that the applicant has retired as ACIO on 31.7.1990. Therefore, the applicant was given only notional promotion and his pay fixation was done as per Annexure R-2. They claim that the notional promotion given retrospectively, as per the Government's instructions on notional promotion and that no arrears of

pay and allowances are admissible as he did not actually perform the duties. It has also been held by the Hon'ble Supreme Court, in Virender Kumar, General Manager, Northern Railway, New Delhi v/s Avinash Chadha & Ors. [1990(1) SCALE 857 at P. 861-62 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 there is, therefore, neither equity nor justice in favour of the respondents to award them emoluments of the higher post with retrospective effect. " This judgement was followed by the Hon'ble Tribunal in the case of S.S. Sirahi Vs. UOI & Director, IB (OA 529/90 dated 20.7.90). They have also stated that as per Annexure R-2 the pay fixation order has rightly stated that the applicant will not get any arrear of pay and allowances with effect from the date of national promotion till the date of his superannuation on 31.7.1990 but only pensionary benefits on enhanced pay on the date of his retirement are taken into consideration. The action of the Department is, therefore, in order in consonance with the Supreme Court ruling and they further state that even in the case of Shri Din Dayal he was not paid arrears of pay and allowances from the date of national promotion ^{but} ~~only~~ from the date he took charge on 9.11.1990. Since the applicant retired on 31.10.1990 and has not actual

assumed charge in the higher post and not performed any duty, the rule of 'no work, no pay, is applicable and Shri Din Dayal assumed the charge of DCIO at I.B. Headquarters and started work, as there is no discrimination. They also state that all the orders issued with retrospective effect without Government servant's actually taking over charge are notional in character. So the fixation of notional pay and using the word 'notional' is correct and so they state that Annexure A-1 is correct. They also alleged that after revised PPO was issued vide Annexure R-5 the applicant was paid Rs. 5250/- on account of revised DCRG vide cheque No. 2666/80 dated 27.2.1992. They alleged that the applicant is wrong in citing some judgements in view of the recent judgement of Virender Kumar, General Manager, Northern Railway, New Delhi [1990(1) SCALE 357] referred to above. Therefore, their action is correct and the petition may be dismissed.

10. We have heard the Ld. Counsel for the applicant. Shri S.C. Luthra and the Ld. counsel of the revival side, Ms. Jaswinder Kaur, proxy counsel of Shri Jag Singh, counsel and perused the records carefully.

11. The short point in this case for consideration is whether the applicant is entitled, as claimed by him, in his relief column to omit the word 'national' and is entitled for backwages etc. with effect from the date of his national promotion i.e. from 29.5.1986 till 31.7.1990 when he superannuated.

12. The applicant has cited some similar cases in which the respondents have given the consequential benefits. For instance in O.A.No. 933/PP/88, dated 24.1.1989 filed in Chandigarh Bench in the case of SS Pannu directed payment of consequential benefits specifically. Sanction of the consequential benefits when not given a contempt application was also moved (C.P.No. 89 of 1989 in O.A. No. 933-PH of 1989 (Annexure A-5/1)

13. In the instant case at Annexure A-2, the applicant has filed the judgement in O.A. No. 1323/88 in the Principal Bench wherein he questioned the fixation of seniority and sought consequential benefits. The Bench passed an order. In that order a slight error had crept in. On that the applicant had filed

a Review Petition by RA No. 28/89 in OA No. 1323/88 and on which a decision was handed down on 18.7.1990 in which it was held that there was an error and the error was to be rectified. In the RA of the same judgement the Hon'ble Chairman and the Vice-Chairman disposed of this matter by way of the following direction :-

" In the result, therefore, we direct the respondents to calculate the seniority of the applicant Shri Balbir Singh in the cadre of ACIO-I from 25.7.1978 and that of Din Dayal from 14.11.1977. We order accordingly."

The R.A. was disposed of with no order as to costs.

14. Neither in the O.A. 1323/88 nor in the RA 28/89 in OA 1323/88 filed in this Tribunal the applicant has not been allowed any consequential benefits by the Tribunal.

15. The respondents cited O.A. No. 529/90 of the Principal Bench (Annexure R.3) in which the arrears were ordered. Here also in this O.A. the applicant requested for the arrears. Therefore, when the applicant

has asked for the various reliefs in the said O.A. and that was disposed of and another RA was filed and that was also disposed of and when no specific back wages are ordered in the said judgement, this applicant was barred to file a fresh O.A. on the ground that what he could have raised originally in OA No. 1323/88 shall be deemed to have been raised and now he is barred to raise the point again by the principle of constructive resjudicata.

16. When he filed O.A.No. 1323/88 for fixation of his seniority in the cadre of ACIO-I w.e.f. 25.7.1978 and to grant him promotion to the next rank of DCIO as and when due according to the rules he could have raised the point of consequential benefits also. He could have raised this point but he did not raise.

If he had raised the point ^{in this} ~~the~~ Tribunal and the ^{TRIBUNAL} had not granted, in both the events the principle of constructive resjudicata ^{applies} ~~applies~~. ^{m/s.} ~~Ex 4 and Section 112 B.P.C~~

17. The resjudicata means -

" Res Judicata - No court shall try any suit or issue in which the matter directly and

substantially in issue has been directly
and substantially in issue in a former
suit between the same parties, or between
parties under whom they or any of them
claim, litigating under the same title,
in a Court competent to try such subse-
quent suit or the suit in which such issue
has been subsequently raised, and has been
heard and finally decided by such Court."

18. Under the circumstances, we are not inclined
to interfere with the impugned order and the petition
is dismissed with no order as to costs.

C.J. Rey
C.J. Rey
Member (J)

S.P. Mukherjee
S.P. Mukherjee
Vice-Chairman (A)