

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2378/2004

This the 24th day of April, 2006

HON'BLE SH. SHANKER RAJU, MEMBER (J)
HON'BLE SMT. CHITRA CHOPRA, MEMBER (A)

O.P.Bansal
R/o House No. 1433/3.
Wazir Nagar,
Kotla Mubarak Pur,
New Delhi-110003.

(By Advocate: Sh. M.K.Bhardwaj)

versus

Union of India & Ors.
Through

1. The Secretary,
Ministry of Communication,
Govt. of India,
Sanchar Bhawan, New Delhi.
2. Executive Director,
Telephones MTNL,
Khurshid Bhawan,
Janpath, New Delhi.

(By Advocate: Ms. Nidhi Bisaria)

ORDER (ORAL)

Hon'ble Sh. Shanker Raju, Member (J)

Applicant, who is a retiree, has challenged an order passed by the respondent on 13.10.2003 giving break up of the benefits accorded to him in compliance of orders passed by the Tribunal in OA-1955/2003 on 11.8.2003.

2. It is no more res integra that on the ground that the respondents have not followed a proper procedure in a disciplinary proceeding pre-retirement upon the applicant on consultation with the CVC recommendation to exonerate him on the ground that the prescribed procedure would not be followed, resulted in accord of promotion to the applicant by an order dated 14.6.2002 whereby it is stated that the applicant would be

promoted from 16.11.90 and his pay would be fixed under FR 22 (1) (i) and also simultaneously decided to restrict the actual benefits and arrears therefrom to 80%. This has been reiterated by decision taken on 6.7.2002.

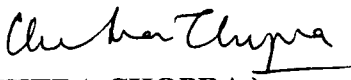
3. Counsel of the applicant would contend that having decided to promote the applicant from back date treating the exoneration as on merit and subsequent act of fixation of FR 22 (1) (i) would certainly indicate that there is no iota of assumption against the applicant. Counsel of the applicant would further contend that if the applicant would be promoted from a back date with actual benefits thereof, it cannot be restricted to less than 100% as for want of any provision of law in this regard or rule as well.

4. On the other hand, counsel for respondent has opposed the aforesaid and stated that as per letters, referred to above, and decision taken on 9.11.2004, the reason for restricting the actual benefits to 80% is that applicant's exoneration in a disciplinary proceeding is an outcome of technicalities. Counsel for respondent also contended that break up of arrears has been given in compliance of the decision of the Tribunal in OA-1955/2003.

5. I have heard the rival contentions of the parties and perused the material on record.

6. As a modal employer, respondents being Government cannot be allowed to simultaneously approbate or reprobate. Having exonerated the applicant in a disciplinary proceeding and right of the applicant for promotion to be extended from the back date, the pay fixation and arrears thereof be granted in consequence of it and also decide to fix the pay of the applicant and in that event he is also entitled to the arrears thereof and the same cannot be restricted to less than full, i.e., 100% for want of any rule or provision in this regard. Moreover, in the matter of reduction of pay, civil consequences ensue upon a Government to give a show cause notice or reasonable opportunity in consonance of principles of natural justice. Having denied the aforesaid, decision of the respondents cannot be countenanced in law.

7. In this view of the matter, OA stands allowed. Impugned order is set aside to the extent of restricting the arrears upto 80% and the respondents are further directed to accord to the applicant rest of the 20% amount, within two months from the date of receipt of the order. Retiral benefits be re-fixed accordingly.


(CHITRA CHOPRA)
Member (A)


(SHANKER RAJU)
Member (J)

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