

79

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.No.2866/2004

**Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Shri N.D.Dayal, Member (A)**

New Delhi, this the 16th day of January, 2006

Dinesh Jha
S/o Sh. Paras Nath Jha,
R/o Sector 11, Pocket-2
Flat No.23, DDA, SFS Flats
Dwarka, New Delhi. ... **Applicant**

(By Advocate: Sh. U. Srivastava)

Vs.

Govt. of NCT of Delhi, through

1. The Chief Secretary,
Govt. of NCT Delhi,
5, Sham Nath Marg,
New Delhi.
2. The Secretary (Services)
Govt. of NCT Delhi,
Service Department
Services-I Branch, Delhi
Sachivalaya
7th Level, B' Wing, IP State,
New Delhi.
3. The Joint Secretary (Services)
Govt. of NCT Delhi,
Service Department
Services-I Branch, Delhi Sachivalaya
7th Level, 'B' Wing, IP State
New Delhi.
4. The Superintendent (E-I)
Directorate of Education
Govt. of NCT Delhi
Old Secretariat Delhi. ... **Respondents**

(By Advocate: Mrs. Avnish Ahlawat through Ms. Simran)

ORDER

By Justice B. Panigrahi, Chairman

In this case, applicant has sought a direction to grant all the benefits
whatever available in the promotional post with effect from 25.06.2001 and not

from 22.9.2004. The direction of the respondents to give only notional benefit from 25.6.2001 without actual benefits is illegal, unjust and arbitrary.

2. The applicant was appointed as Sales Tax Inspector Grade-II (DASS) with effect from 6.6.1993. An order of suspension was passed under Rule 10(i) of CCS (CCA) Rules, 1965 vide order No.II/30/94-96/CC/CST/936-942, dated 15.07.1994 by the Commissioner of Sales Tax Department while the applicant was serving as Inspector in the Sales Tax Department.

3. A departmental inquiry was instituted against the applicant but finally he was exonerated of the charges leveled against him vide order No.DE-7/3NW/28/NG/Vig./99/12947, dated 01.11.2002. In the said disciplinary proceedings, the period of suspension was treated as period spent on duty for all purposes under provisions of Sub-Rule 3 and 8 of FR-54B.

4. It appears from the record that during the pendency of the departmental proceedings, a Departmental Promotion Committee meeting was convened by the respondents and a number of similarly situated persons, batch mates of the applicant and even juniors were also promoted on the recommendations of the Departmental Promotion Committee vide respondents' order No.65/67/99/S.I./ACP/Vol.I, dated 25.06.2001. The applicant being aggrieved by the promotion of his juniors to the Grade-I (DASS), purportedly submitted a representation on 18.12.2002 but the respondents' department sat over the matter without any positive direction. Therefore, he was obliged to file a case before this Tribunal being OA No.759/2004, in which the Tribunal directed the respondents-authorities to consider the applicant's representation within four months from the date of passing of the Judgement. The applicant has sent the said order by Registered Post with AD. Upon receipt of the aforesaid order, the respondents-authorities promoted him with effect from 28.7.2004 in Grade-II (DASS) in the scale of pay of Rs.6500-10500 on officiating basis with effect from 25.6.2001 (notionally). The applicant was, however, denied the actual scale of pay as Grade-I (DASS) with effect from the date when his juniors had been given such promotion. Therefore, he has filed this case for an appropriate direction.

5. The respondents have filed their reply and from the reply it appears that the applicant could not be given the financial benefits since he did not work in the promotional post as per the provisions of FR-17 (1).

6. Mr. U.Srivastava, learned counsel appearing for the applicant had submitted that the respondents have unreasonably, illegally and unilaterally withheld the applicant's promotion from the date when his juniors were given such benefit. It is true that the departmental proceedings were pending against the applicant but that by itself does not preclude the respondents-authorities to consider the applicant's case for promotion and keep the same in a sealed cover.

7. Ms. Simran, learned proxy counsel appearing on behalf of Mrs. Avnish Ahlawat, while reiterating the aforesaid submission, has stated that the matter of the applicant's promotion could not be taken up for non-availability of the integrity certificate, vigilance report and ACRs of the applicant for the period 1993-94, 1994-95 and 1995-96. Therefore, the applicant's case could not be considered by the DPC.

8. Upon extensive arguments of the learned counsel for both the parties, it is now to be seen as to whether the applicant was kept away from the promotional post on account of inaction of the respondents or he himself was responsible for such delay.

9. It is true that a departmental proceeding was initiated against the applicant, which culminated in his favour whereby the respondents-authorities exonerated him from all the charges. Even assuming that the departmental proceeding was pending, the respondents-authorities cannot take a ruse by ignoring the applicant's case for promotion. If the ACRs of the applicant were not written for the relevant period in time, the applicant cannot be held responsible for such inaction. The respondents-authorities should have pulled up the officers who ought to have written the ACRs for the relevant years. Had they considered the case of the applicant's promotion in the year 2001, he would have been given due promotion and would have worked in the promotional post. The applicant

cannot be made responsible for having not worked in the promotional post. Rather the respondents prevented him from discharging the duties of the promotional post.

10. Ms. Simran, learned proxy counsel appearing on behalf of Mrs. Avnish Ahlawat, has relied upon the Judgment of the Hon'ble Supreme Court in the case of STATE OF HARYANA AND OTHERS v. O.P. GUPTA AND OTHERS, (1996) 7 SCC 533. On a careful reading of the said Judgement, we found that the facts stated in the aforesaid case are quite distinguishable from the facts of the present case. In the aforesaid case, the Hon'ble Supreme Court did not grant actual benefits from the date when the applicant was entitled to on the ground that seniority list was in dispute. But in the instant case, no such occasion ever arose. It appears that the applicant was prevented from discharging the duties and responsibilities of the promotional post. The authorities concerned were also very careful in treating the period of suspension as period spent on duty.

11. Learned proxy counsel appearing on behalf of the respondents also relied upon the Judgement of the Hon'ble Supreme Court in the case of A.K. SOUMINI v. STATE BANK OF TRAVANCORE AND ANOTHER, (2003) 7 SCC 238. This also does not apply on the ground that the promotion was granted as a gratis and not by way of right. In the present case, the applicant was held to have been entitled as per his rights.

12. The Supreme Court in the case of UNION OF INDIA v. K. V. JANKIRAMAN, AIR 1991 SC 2010 had also taken into consideration the applicability of FR-17(1) and held that the said FR shall not be applicable in the event the applicant was found to have been kept out of duty for no fault of his. Therefore, keeping in view the ratio of the Judgement passed by the Supreme Court in **K.V. Janakiraman's case**, we are of the firm view that the respondents-authorities unreasonably, illegally and unilaterally deprived the applicant from getting the actual benefit from the date when it became due to him, i.e., from 25.6.2001. Therefore, in the above conspectus of the case, we hereby direct the

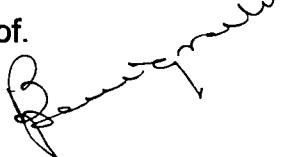


respondents-authorities to give actual benefit of the promotional post to the applicant from 25.6.2001 till 22.09.2004.

13. With the above directions, the application is disposed of.



(N.D.DAYAL)
Member (A)



(B. PANIGRAHI)
Chairman

/Rao/