

(X)

CAT/7/11

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No.
T.A. No.

1695/92

199

1-8-97

DATE OF DECISION

Shri Tarif Singh	Petitioner
Shri B.S. Mainee	Advocate for the Petitioner(s)
UDI & Ors	Versus
	Respondent
None	Advocate for the Respondent(s)

CORAM

The Hon'ble Shri S.P. Adiga, Member (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1695/92

(8)

New Delhi this the 1st day of August, 1997

Hon'ble Shri S.R. Adige, Member(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Tarif Singh,
Assistant,
Director General,
All India Radio,
Akashvani Bhawan,
New Delhi.

... Applicant.

By Advocate Shri R.R. Rai, proxy for Shri B.S. Mainee,
learned counsel.

Versus

Union of India through

1. The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi.
2. The Director General,
All India Radio,
Akashvani Bhawan,
New Delhi.

... Respondents.

None present.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 15.5.1992 rejecting his claim for arrears of pay on his promotion as UDC and Assistant and fixing his pay on notional basis. The applicant has alleged that since the order dated 20.2.1992 has been passed by the President of India which has set aside the punishment awarded to him earlier and has fully exonerated

B

9

him of all the charges as if he was in service throughout, he is entitled to arrears of pay on his promotions.

2. The brief history of the case is given in the order passed by the President dated 20.2.1992. From this order, it is seen that the Tribunal by order dated 13.3.1987 had quashed the order of punishment of removing the applicant from service and directing the disciplinary authority to conduct de novo disciplinary proceedings against the applicant with respect to the chargesheet which had been initiated against him under Rule 14 of the CCS (CCA) Rules, 1965 in 1973. In compliance with the Tribunal's order, the applicant was reinstated and deemed to have been placed under suspension with effect from 2.12.1975 and de-novo disciplinary proceedings were initiated. At the conclusion of the proceedings, the penalty of reduction by five stages in the time scale of pay for a period of three years was imposed on the applicant by order dated 15.1.1988. The order of suspension was revoked by order dated 1.2.1988. In this order, it has been stated that the period from 13.11.1972 to 31.01.1988 was treated as period not spent on duty in terms of FR 54-B. A show cause notice was also issued to the applicant as to why for the period from 13.11.1972 to 31.01.1988 i.e. the period of his absence from duty, his pay should not be restricted to the subsistence allowance already sanctioned to him. After considering the reply of the applicant dated 27.4.1988, the disciplinary authority passed the order dated 12.8.1988 holding that the pay and allowances for the said period will be restricted to the

10

subistence allowance already sanctioned. Against this, the applicant filed an appeal on 7.3.1988 and the appellate authority considering the facts of the case, including the fact that the case has been pending since 1972, reduced the penalty and imposed on him the penalty of reduction in his pay by one stage from the stage at which it is fixed in the time scale of pay with effect from the date of reinstatement for a period of one year without cumulative effect vide order dated 20.7.1988. However, the appellate authority upheld the disciplinary authority's order dated 12.8.1988 regarding restricting the pay and allowances payable to him for his absence from 13.11.1972 to 31.1.1988 to the subsistence allowance already paid. Against this order, the applicant made a representation on 5.7.1989 against the treatment of his suspension period as not spent on duty restricting his period to the subsistence allowance already paid.

3. In the order passed by the President of India dated 20.2.1992 in exercise of the powers conferred by Rule 29-A of the CCS (CCA) Rules, 1965, it is stated that after careful consideration of the applicant's representation dated 5.7.1989 with reference to all the relevant records, facts and circumstances of the case, the President had come to ~~the~~ conclusion that the period of applicant's suspension from 13.11.1972 to 31.1.1988 was wholly unjustified as the purpose could have been served by transfer of the applicant. Therefore, the President set aside the Ministry's orders dated 31.3.1988, 12.8.1988 and 26.5.1989 and ordered that (i) the period of applicant's suspension from 13.11.1972 to 31.1.1988 shall be treated as period spent on duty for all purposes; and (ii) the applicant

11

shall be paid full pay and allowances for the period of his suspension vide Ministry's letter dated 30.4.1990. The applicant has submitted that since he has been fully exonerated of the charges levelled against him by the President of India who has passed the order, referred to above, he is entitled to all the benefits of service, promotion as UDC and Assistant in 1974 and 1979, arrears of pay on the promoted post and other consequential benefits. Shri Rai, learned proxy counsel for the applicant, has relied on a number of cases, Union of India & Ors. Vs. K.V. Janakiraman (ATJ 1992 (Vol.I) 371, C. Narayanan Nair and Ors. Vs. G.M. Telecommunication (ATC 1994 (26) 8883), Sri Abdul Majid Khan & Ors. Vs. State & Ors. (SLJ 1991(3) 95), Sri G. Chokkan & Ors. Vs. Assistant Engineer (SLJ 1991 (Vol.II) CAT 61) and Mohan Singh Vs. Union of India & Ors. (ATJ 1991 (Vol.I) 596). He submits that in Janakiraman's case (supra), the Supreme Court has held that the normal rule of 'no work no pay' is not applicable to the cases where the person is kept away from work by the authorities for no fault of his.

4. None appeared for the respondents even on the second call. However, we have perused the reply filed by the respondents. They have relied on Fundamental Rule 17 and instructions issued by the Government of India regarding procedure to be adopted in cases where disciplinary proceedings are initiated against an employee. They have submitted that in accordance with the Fundamental Rules and the relevant instructions, the applicant was promoted as UDC w.e.f. 1.2.1977 and as Assistant w.e.f. 20.2.1982 on notional basis with reference to the date of promotion of his next junior. His pay in the promoted

13

12

posts was notionally fixed with effect from the dates of notional promotion, but he was given the monetary benefit of the increased w.e.f. 1.2.1988, the date on which he assumed the duties of his promoted post. They have, therefore, submitted that the applicant has already been given due benefits flowing from the order of exoneration as if he was in service throughout with notional promotion as UDC and Assistant. The respondents have, therefore, submitted that the applicant is not entitled to any of the reliefs sought as he has already been given whatever was due to him.

5. In the order of the President of India dated 20.2.1992, it has been clearly stated that the applicant having been fully exonerated of the charges, he should be given all benefits as if he was in service throughout. In the light of this order, it is not open to the respondents to state that even though they have given the applicant his promotion as UDC w.e.f. 1.2.1977 and Assistant w.e.f. 20.2.1982 this will only be on notional basis and the monetary benefits flowing from the promotion i.e. increase of pay would be given only w.e.f. 1.2.1988, the date on which he actually assumed his duties in the promoted post. This contention of the respondents is contrary to the order dated 20.2.1992 which is a very detailed order in which the entire records, facts and circumstances of the case have been fully considered. The President has ordered that the applicant shall be entitled to all benefits as if he was in service throughout which would, therefore, mean that he would also be entitled to the backwages and arrears of pay on promotion and not just notional promotion only. To this extent the respondents' subsequent action is contrary to

YB:

13

law. In Harbans Singh Vs. State of Punjab & Ors. (1995(2) SLJ 441), the Supreme Court has held that since the Government itself has found himself to be eligible and was appointed w.e.f. 20.5.1977 i.e. the date on which his junior was promoted, it must be deemed that the appellant was duly promoted with effect from that date and he is entitled to all consequential benefits. (See also H.M. Ramaul Vs. State of H.P. & Ors. (1991(17) ATC 259). This is also in consonance with the judgement in Janakiraman's case (supra) and the other judgements relied upon by the applicant.

6. In the result, this application succeeds. The impugned order dated 15.5.1992 is quashed and set aside and the applicant shall be entitled to all monetary benefits flowing from the President's order dated 20.2.1992. The respondents shall pay the arrears of pay and allowances to the applicant from the date of his promotion as UDC and Assistant in accordance with law. This shall be done within a period of two months from the date of receipt of a copy of this order.

O.A. allowed as above. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

S.R. Adige
(S.R. Adige)
Member(A)

'SRD'