

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.66/92.

Date of decision 9/12/92

Shri Prem Pal Chaddha .. Applicants
Smt. Raj Kumari
Shri Ram Suaroop

V/s

Union of India & Ors. .. Respondents

O.A. No. 162/92

Shri Dalip Parkash .. Applicant
Sethi

V/s

Union of India & Ors. .. Respondents

CORAM:

Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

Hon'ble Mr. I.P. Gupta, Member (A)

For the applicants .. Shri G.K. Agrawal, counsel

For the respondents .. Shri K.C. Sharma, counsel

(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 I.P. Gupta, Member (A)]

In O.A. No. 66/92 the applicant ⁽¹³⁾ has prayed for a direction to the respondents to pay to the applicant all arrears of pay and allowances, special pay, increments, bonus, leave encashment, leave credit, L.T.C. etc. with 10 per cent interest from due date to the date of payment, including ad hoc as well as regular promotions from due dates for all purposes.

2. The applicants are aggrieved by non-grant of retirement benefits, of arrears in promotion posts and other back-wages/ dues consequent upon their reinstatement in service (following suspension order dated 27th February, 1976 [A/1]) and acquittal in criminal case and dismissal of appeal thereagainst.

3. After acquittal the order of suspension was revoked by order dated 12th February 1990. Subsequently, an office order of 29th May, 1990 issued to the effect that the applicants' period of suspension would be treated as duty under FR 54(a)(3) on their having been exonerated by the court of law. The word used in the office order of 29th May, 1990

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is 'exonerated'.

4. The Learned Counsel for the respondents contended that the acquittal was on benefit of doubt and for want of substantial evidence. However, the period of suspension has been treated as on duty and the applicants have been paid full pay and allowances of the posts they were holding on the date of suspension. Besides, they have been given notional promotions in accordance with their original seniority with effect from the date it was due and their pay has been fixed giving benefit of the notional promotion, even though they had not worked during this period on the higher posts nor on the lower posts and there was no basis to judge their suitability and performance. It has also been stated in the counter that the applicant had been paid the arrears of bonus as per entitlement even though they did not work during the period. They have been paid the arrears of pay and allowances for the period of suspension. They have also been allowed leave which would have been earned by them and the same have been credited to their leave account. They are, however, not entitled

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to any L.T.C. as the L.T.C. can be availed of only when a person is on leave and actually undertakes his journey on leave. This facility cannot be granted notionally or retrospectively.

5. In O.A. No. 162/92, the applicant has prayed that he should be considered for all promotions as per rules on relevant dates, and if he made the grade, he should be promoted and all arrears and other dues to which he would be entitled, should be given with 23 per cent interest from retrospective effect. In this case also the applicant was placed under suspension by order dated 27th February, 1976. He was acquitted and the appeal against acquittal was dismissed. A disciplinary case in this case was also proceeded against the applicant. The applicant had filed an O.A. No. 1883/90 which was decided on 21st December, 1990 and the charge-sheet was quashed as also the subsequent proceedings pursuant to the said charge-sheet. The respondents were directed to pay to the applicant full pay and allowances for the period from 27.2.1976 to date. The judgement also said

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that the applicant should be entitled to all consequential benefits. Thereafter the respondents issued an office order dated 11th March, 1991 saying that the period of suspension in respect of the applicant with effect from 27.2.1976 to 12.7.1990 should be treated as duty under Rule 54(a)(3) on his having been exonerated by the court of law. The applicant filed a CCP No.12/1992 which was decided on 8.1.1992. In the course of arguments on the CCP it was not disputed that nothing had been done in pursuance of the charge-sheet having been quashed by the Tribunal. It was not disputed that the pay and allowances for the period from 23.2.1976 to date have been paid with interest. What was, however, maintained by the Counsel of the applicant was that the petitioner had lost the benefits of certain promotions and that if those promotions were given he would be entitled to higher emoluments. The following extract from the judgement is quoted :-

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' It is not the case of the petitioner that he lost in promotion after the issuance of the charge-sheet dated 9.7.1990. It is also

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not the case of the petitioner that any of his junior has been promoted after 9.7.1990. We do not find any discussion in this behalf.

In this background it is not possible to examine the case of the applicant of non-consideration of promotion which, according to him, he is entitled to and consequent entitlement for higher emoluments. If the petitioner has any grievance in this behalf, it is open to him to work out his rights in appropriate manner in accordance with the law. C.C.P. is accordingly disposed of.'

6. In his application the applicant has stated that he is aggrieved by the fact that he has not been given promotion and seniority as E.O. (Enforcement Officer) with effect from 1975 or 1977 and also has not been paid the arrears on the promotional post and other monetary entitlements and other benefits with interest. The Learned Counsel for respondents contended that there was no post of Enforcement Officer in 1975, the date from which the applicant was claiming his promotion. The promotion was not a

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matter of right but the applicant had only got the right based on his seniority and records and the applicant had been given all dues treating the period of suspension as on duty. Promotion to the grade of Provident Fund Inspector was based on seniority subject to fitness. In the case of applicant he was placed under suspension on account of criminal case against him and till he was exonerated his record was ^{blank} ~~blank~~ after the date of his suspension and, therefore, not sufficient to grant promotion on the basis of fitness. The acquittal does not automatically entitle him to promotion with retrospective effect but only review of his case based on record and all the factors pertaining to his performance. Further, if any of his juniors were promoted prior to 27.2.1976, the cause of action had arisen at that point of time and could not be agitated after a gap of 16 years. This was also without prejudice to the submission of the Learned Counsel of the respondents that the applicant was not due for promotion upto the date of his suspension. Several officers were, however,

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appointed on ad hoc basis against the vacancies belonging to the examination quota and direct recruitment quota and the applicant could not claim promotion on ad hoc basis retrospectively. The applicant has already been paid bonus for the period of his suspension even though he had not performed any work. The claim regarding children education allowance is not justified because of non-production of the receipt of the school fees of his children. Leave Encashment cannot be given retrospective effect as the applicant was required to take part of leave.

7. Having heard the arguments of either side in respect of both the applications, the basic point that remains to be decided is whether the applicant should not have the benefit of promotion as due. This issue cannot be raised for the period prior to the date of suspension or prior to the date of commencement of disciplinary proceedings, whichever is earlier. But if any promotion has been held up on account of suspension/ disciplinary proceedings, what should be the entitlement of the applicant in that regard.

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8. So far as ad hoc promotion is concerned, in regard to any junior, the applicant cannot claim any benefit. An ad hoc promotion by its very nature is a stop gap arrangement made for a variety of reasons including exigencies of service. An applicant acquires right to a post only as per terms of the appointment. In that sense an ad hoc appointment does not by itself confer any right on the appointee and consequently it cannot confer any right on the person who was under suspension and who could not be given ad hoc promotion though his juniors were given. In any case an exigency of public service cannot be met retrospectively nor can any stop gap arrangement be.

9. So far as regular promotions are concerned, it is found that in O.A. No. 66/92 the applicants have been given notional promotions from the due dates in accordance with their original seniority. The only point to be determined ^{is} whether this promotion should be notional or actual. The applicants in this case were not proceeded against in any disciplinary case. They were suspended because of the

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pendency of a criminal case which has resulted in his acquittal because the prosecution failed to prove the case beyond all reasonable doubts. The appropriate authorities later on did not attach any stigma to the applicant in so far as the criminal case was concerned and the suspension was revoked and the period of suspension was treated as duty for all purposes on their having been 'exonerated' by the court of law. It has been emphasised earlier that the office order used the word 'exonerated'. Therefore, since the delay in joining the higher post by the applicant cannot be attributed to them and since the delay occurred because of criminal case where the acquittal took place ^{because of} and suspension, which was wholly unjustified, the arrears of salary cannot be denied to the applicants. Therefore, the applicants are entitled to pay and allowances, including arrears, from the dates they have been given regular promotions notionally.

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10. In so far the applicant in O.A. No. 162/92 is concerned, the respondents have stated that many officials were appointed on ad hoc basis against

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vacancies belonging to examination quota and direct recruitment quota and the applicant had no claim for being appointed on ad hoc basis retrospectively. We agree with this contention in view of what has been said in para No. 8. If, however, any junior has been given regular promotion after the date the cause of action arose (date of giving of charge sheet or date of suspension, which ever is earlier) only then the applicant has a right to be so considered for regular promotion from that date and in the event of his being found fit, he is eligible for promotion with arrears. We, therefore, direct that his case should be considered for regular promotion accordingly provided any junior of his was promoted regularly and provided the promotion of the junior was after a date the cause of action arose (date of charge sheet or date of suspension which ever is earlier).

11. With the aforesaid directions, the O.As. are disposed of with no order as to costs.

I.P. Gupta
I.P. Gupta 9/12/92
Member (A)

Ram Pal Singh
Ram Pal Singh 9.12.92.
Vice-Chairman (J)