

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 794/93

New Delhi, this the 28th day of October, 1998

(A)

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A. Vedavalli, Member (J)

Shri Jai Parkash ... Applicant
(By Advocate Shri O.P. Sood)

Versus

Union of India & Others ... Respondents
(By Advocate Shri Madhav Panikar)

1. To be referred to the Reporter or not? YES
2. To be circulated to other Benches of the Tribunal or not? NO

(Dr. A. Vedavalli)
Member (J)

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Shri Jai Parkash,
S/o Shri Babu Lal,
R/o DG II/126,
A. Vikashpuri,
Delhi-110018.

...Applicant

(By Advocate Shri O.P. Sood)

Versus

1. Union of India through
the Director General EME,
EME Directorate, Army HQ,
New Delhi-110011.
2. Officer-in-charge,
E.M.E. Records Office,
Secundrabad (A.P.).
3. Commandant,
505, Army Base Workshop,
Delhi Cantt-110010.

...Respondents

(By Advocate Shri Madhav Panikar)

ORDER

By Hon'ble Dr. A. Vedavalli, Member (J):

The applicant, Jai Prakash who was promoted as a Senior Storekeeper in the Army Base Workshop Delhi Cantonment is aggrieved by the impugned order dated 19.12.92 (Annexure J) and seeks quashing of the same to the extent that it permits pay and allowances only from the date of his assumption of charge of the said post whereas his antedated promotion/seniority has been approved from 4.3.78. He also prays for a writ/direction/order to the respondents to consider his promotion to the post of Senior Storekeeper w.e.f. 4.3.78 and Store Superintendent w.e.f. 27.3.88 when his immediate junior was promoted with all consequential benefits.



2. The O.A. is contested by the respondents who have filed their counter-reply. They have raised a number of preliminary objections before giving their reply on merits. However, the main preliminary objection regarding maintainability of the OA is that it is pre-mature due to non-exhaustion of the remedies available to the applicant and is, therefore, barred by Section 20 of the Administrative Tribunals Act, 1985.

3. We have heard the learned counsel for the parties and have gone through the pleadings, material documents and papers placed on record. Matter has been considered carefully.

4. Re the aforesaid preliminary objection as to the maintainability of the present OA the respondents have not even bothered to mention the statutory remedies, if any, which are available to the applicant in the facts and circumstances of this case which have to be exhausted before approaching this Tribunal, with supporting material/papers etc. In the circumstances we are of the view that the said preliminary objection is vague and is not sustainable. It is, therefore, over-ruled and we proceed to dispose of the case on merits.

5. The facts of this case, briefly stated, are as under:

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5.1 The applicant was appointed as a civilian Storekeeper in the Army Base Workshop, Delhi Cantt, w.e.f. 31.8.59. He was involved in a criminal case and was arrested on 10.11.64. He was released on bail on 12.11.64. He was suspended for two days. On the revocation of his suspension he resumed duty w.e.f. 13.11.64. He was promoted as a Senior Storekeeper w.e.f. 4.3.78 and was absorbed in situ. His promotion was cancelled by an order dated 15.6.78 with a directive that it will be reviewed if and when the decision of the Court is received. Since then his particulars for promotion to the post of Senior Storekeeper placed before the respective Departmental Promotion Committees (DPC) subject to availability of vacancies the findings of the DPCs were kept in sealed cover. Subsequently, the criminal case was withdrawn by the prosecution. The said case was dismissed and the accused applicant was acquitted by an order of the Metropolitan Magistrate dated 19.8.89 (Annexure E). Thereafter, the applicant was promoted as Senior Storekeeper w.e.f. 8.2.90 and was absorbed in situ, i.e., with respondent No.3. His case for antedating his promotion/seniority w.e.f. 4.3.78 was taken up with the Army Headquarters and the Ministry of Defence. The Ministry of Defence, as intimated by the Army Headquarters approved the antedating of the promotion/seniority of the applicant as Senior Storekeeper w.e.f. 4.3.78 and his pay and allowances are stated to be admissible from the date of assumption of duty of the said post as per the order dated 19.12.92 (Annexure J) which has been impugned

in this OA to the extent mentioned supra. The applicant assumed duty of the aforesaid post w.e.f. 5.6.90. His case for promotion to the post of Store Superintendent is also stated to be before the DPC to be convened in June/July, 1993. It is stated by the respondents that the said post is a selection post and the applicant is not entitled for the same without being empanelled by the DPC and approved by DG EME Army Headquarters.

5.2 Re the first relief sought by the applicant with reference to the quashing of the impugned order partly and for consideration of his promotion as Senior Store Keeper from 4.3.78 with arrears of pay and increments from the said date the main ground urged by him is that the original promotion to the said post w.e.f. 4.3.78 was given after due approval by the DPC by respondent No.1 and was notified in Daily Order Part-II No.13/78 and hence he was entitled under the law on his acquittal from the criminal case to get his promotion from the aforesaid date with the arrears of pay and allowances etc.

5.3 The learned counsel for the applicant relied strongly upon the order of the Tribunal (Madras Bench) in the case of S.G. Mohanan vs. G.M. Telecom (1987 (4) SLJ 67.) which was given in the light of a Full Bench decision in the case of K. Ch. Venkatareddy and Others vs. Union of India & Others (1987 (2) SLJ (CAT-Hyd.) 115 in this connection.

6. In reply to the aforesaid ground urged by the applicant, learned counsel for the respondents submitted that the applicant is not entitled for arrears of pay and allowances w.e.f. 4.3.78 particularly in view of FR 17 (1) as he had assumed charge of the higher post viz. Senior Storekeeper only on 5.6.90 after his promotion to the said post w.e.f. 8.2.90. He relied upon the judgement of the Apex Court in Sub Divisional Inspector (Postal) vs. K.K. Pavitheran(1996 (11) SCC 625 and K. Ponnamma vs. State of Kerala and Others (1997 (9) SCC 36 in support of his submission.

7. As noticed supra, the decision of the Madras Bench of this Tribunal in the case of S.G. Mohanan (supra) is based upon the order of the Full Bench (Hyderabad) in K.Ch. Venkatareddy's case (supra). However, the said order of the Full Bench itself has been partly set aside and modified by the Apex Court in the case of Union of India vs. K.V. Jankiraman (1991 (4) SCC 102).

8. It was held by the Hon'ble Supreme Court in the said case (at paragraph 25) thus:

"We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the

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authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although, the work is offered to him. It is for this reasons that F.R. 17 (1) will also be inapplicable to such cases."

It was also further held as under:

"26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee completely exonerated a meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post alongwith the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary/criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustably all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exsist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine disciplin in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion

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preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum :

"However whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reason for doing so."

27. To this extent we set aside the conclusion of the Tribunal from the said point."

The ratio laid down in the aforesaid case of K.Y. Jankiraman's case (supra), in our view, would be very much applicable to the present case. While so, the two decisions of the Apex Court cited by the learned counsel for the respondents in Pavitharan's and Ponnamma's cases (supra), to our mind, would not help the respondents' stand since the facts and circumstances of the present OA are quite different from those in the aforesaid cases. Moreover, it is noticed that in the impugned order dated 19.12.92 (Annexure J) the respondents themselves have antedated the promotion/seniority of the applicant w.e.f. 4.3.78. However, they have not recorded the reasons in the said order as to why his pay and allowances will be admissible only from the date of assumption of duty as Senior Storekeeper. Further, copy of specific order fixing his pay and allowances etc. if any after the issue of the impugned order has not been filed by either party.



10. In the facts and circumstances of this case and in view of the foregoing discussion the respondents are directed to consider applicant's claim for arrears of pay w.e.f. 4.3.78 on merits in the light of the law laid down by the Apex Court in K.V. Jankiraman's case (supra) and pass an appropriate order and communicate the same to the applicant within a period of three months from the date of receipt of a copy of this order.

11. Re the claim of the applicant for promotion to the post of Store Superintendent from 27.3.88 when his immediate junior is stated to have been promoted neither he nor the respondents have furnished any material as to the outcome of the DPC meeting scheduled to be convened in June/July, 1993 for selection to the said post. Moreover, in view of our direction given to the respondents supra, consideration of the question of promotion to the post of Store Superintendent would be hypothetical at the present stage.

12. In view of the above position and the peculiar facts and circumstances of this case the applicant is given the liberty to approach this Tribunal in fresh original proceedings, if so advised, in accordance with law, if he feels aggrieved by the outcome of the aforesaid DPC meeting.

13. The O.A. is disposed of accordingly.
No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

'Sanju'

Narasimha
(N. Sahu)
Member (A)