

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 24 DAY OF NOVEMBER, 2003

Original Application No. 519 of 1996

CORAM:

HON. MR. JUSTICE S. R. SINGH, V. C.

HON. MR. D. R. TIWARI, MEMBER (A)

K. K. Nigam, aged about 55 years
Son of Late Ganesh prasad Niqam,
Resident of Qr. No. IV/38, Post and
Telegraph Colony, Sector 'K' Aliganj
Lucknow 226 020

.. Applicant

(By Adv: Shri V. K. Goel)

Versus

1. Union of India through the
Director General, Department of
Posts, Dak Bhawan, New Delhi.
2. The Chief P. M. G, U. P.
Circle, Lucknow.

.. Respondents

(By Adv: Shri Satish Mandhyan)

O R D E R (Reserved)

JUSTICE S. R. SINGH, V. C.

The grievance of the applicant herein was in respect
of confirmation in IPO's Cadre and promotion to HSG-II,
ASPO's and HSG-I cadre and the reliefs claimed are as
under:-

- i) That the petitioner may be elevated to Group 'A'
service cadre fixing his seniority just above
Shri Dubey, C. P. M, who is working at Kanpur
Headquarters.

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- ii) to Issue a writ, order or direction in the nature of certiorary quashing the order dated 8.1.93 passed by the Chief Postmaster General to the extent the applicant has been deprived of arrears of salary on the posts of HSG-II ASPO, and HSG-I directed to be refined by the order dated 1.1.1993 itself.
- iii) To issue a writ, order or direction in the nature of mandamus directing the respondents to pay arrears of salary in the grade of HSG-II w.e.f 1.3.74 to 3.6.78 in the grade of HSG-II w.e.f. 4.6.78 to 16.7.1979, in the grade of ASPO w.e.f. 16.7.79 to 19.9.83 and in the grade of HSG-I w.e.f 30.9.1983 to 1.6.1989 on the basis of his revised pay as per the order dated 8.1.93.
- iv) To issue a writ, order or direction in the nature of certiorary quashing the order passed by the Director General Posts and communicated vide letter dated 2.5.92/2.6.92(Annexure A-6) with retrospective effect and also the pecuniary benefits accrued over the years the petitioner from time to time with retrospective effect which is calculated and reckoned by the department with retrospective effect since the date the actual promotion of the petitioner in Group 'A' and Group II services respectively occurred to the petitioner. Thus accordingly all the pecuniary benefits accrued over the years to the petitioner may kindly be allowed to the petitioner.

So far as the relief regarding promotion to various grades with retrospective effect is concerned, the same has since been granted vide order dated 8.1.1993 and the only relief that now survives is confined to arrears of salary admissible to the post to which the applicant has been promoted vide order dated 8.1.1993(Annexure A-4)

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The relief regarding salary admissible to the post to which the applicant has been given notional promotion vide order dated 8.1.1993 has been opposed by the learned counsel representing the respondents on the strength of F.R-17 which reads as below:-

F.R-17(1)

Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer, who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.

2. The date from which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed."

The learned counsel for the applicant, on the other hand, has submitted that FR-17 has no application to the fact of the present case. In that the applicant has been denied promotion due to the administrative lapses.

Having given our anxious consideration to the submissions made across the bar we are of the considered view that the applicant is entitled to the relief of arrears of salary for the post to which he has been promoted vide order dated 8.1.1993. FR-17 has no application to the case where a Government servant is precluded from discharging the duties of a particular post due to the reason of wrongful denial of promotion to that post. In 'Vasant Rao Roman Versus Union of India & ors 1993 Supreme Court Cases(L&S) 590 it has been held

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that where no fault on his part the claim of a Government servant was ignored and he was denied promotion while his juniors were promoted would be no justification whatsoever for not allowing the arrears of emoluments to him.

In Union of India and Others Vs. K.V. Janki Raman and Others, 1993 Supreme Court Cseas(L&S) 387 it has been held by their Lordships of Supreme Court that normal rule "No work no pay" is not applicable to cases when an employee is completely exonerated 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. The applicant in the instant case has been given notional promotion with retrospective effect but he has been denied back salary even though denial of promotion on due dates was purely due to the administrative lapses on the part of the respondents.

During the course of argument the learned counsel for the applicant also tried to raise the grievance regarding the applicant's claim for promotion to Group 'B' post which is otherwise not covered by any of the reliefs claimed in the OA. Since no such specific plea has been raised in the original application, we decline to go into the submissions made by the learned counsel but in the ends of justice liberty is given to the applicant to raise before the departmental authorities by means of a representation. We would, however, like to observe that in case any such representation is filed, the competent authority shall consider the same and take appropriate decision in respect to the applicants claim for further promotion to Group 'B' post by means of speaking and reasoned order as early as possible

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preferably within a period of three months from the date of receipt of the representation alongwith certified copy of this order.

Accordingly, the OA succeeds and is allowed with the direction firstly that the respondents shall work out the salary admissible to the post to which the applicant has been promoted and pay him the difference within a period of three months from the date of receipt of a certified copy of this order; and secondly, in case the representation is filed by the applicant in respect to his further promotion to a Group 'B' post, the same shall be considered and decided by a speaking and reasoned order within a period of three months from the date of receipt of a certified copy of this order. Parties are directed to bear their own costs.

Dhavin
MEMBER(A)

R&J
VICE CHAIRMAN

Dated: 24 November, 2003

Uv/