

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

No.
Registration 855 of 1986 (T)

(O.S. No.49 of 1985)

O.P.Sinha Plaintiff

Versus

Union of India Defendant

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

Suit No. 49 of 1985 O.P.Sinha Versus Union of India has been received on transfer from the Court of Civil Judge Mohanlalganj Lucknow. The plaintiff retired as Assistant Commissioner Income Tax, Satna on 31.7.84. Before he joined the Income Tax Department he was working in the Military Accounts Department ³⁸ *He was given the benefit of his service in that department* subject to the condition that confirmation and promotion already made would not be disturbed. This became a subject of a writ petition No. 1112 of 1972 filed by the plaintiff in the High Court of Judicature at Allahabad Lucknow Bench. This Writ Petition was decided on 12.5.78 quashing the condition contained in the Commissioner of Income Tax letter counting his previous Military Accounts Department service. As a result of quashing of the condition his seniority was redetermined in the various grades in which he had progressed in 1981. In all the

orders in which his seniority was refixed in the grades of the Inspector, Income Tax Officer grade 'B', Income Tax Officer grade 'A' and ultimately Assistant Commissioner Income Tax he was allowed benefits in proforma fixation of his pay upto the various dates on which he actually started working in the various grades ^{or but} ~~to which~~ he was not given arrears of pay etc. for the period from which he was actually considered to have been promoted to the period he actually took over charge. The non payment of the arrears of pay for those periods is the subject matter of this suit. The plaintiff has attached two Schedules I & II to his plaint praying for a decree for declaration that he is entitled for recovery of arrears of Rs. 1,10,946-00 with interest and payment ^{of} ~~of~~ the revised pension as given in his calculation in Schedule II of the plaint and any other reliefs.

2. The prayer for allowing the benefit of payments of arrears for the periods prior to his actual promotion has been contested by the Union of India in their reply. They have said that the plaintiff was deemed to have been promoted/appointed to the various grades and his arrears of pay have been paid only for the period commencing from the date he actually started officiating and he is not entitled to any arrears of pay on refixation of seniority ^{or} ~~not~~ in the different grades. According

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to the defendant the plaintiff had not actually performed the duties of the promoted post during the period between the deemed dates and actual dates of promotion. He had therefore no claim for those arrears for the periods when he did not actually perform the duties assigned to those posts.

3. We have heard the learned counsel for both parties. The short question that ^{arises} ~~arises~~ is whether the theory of 'No work no pay' which has been applied in the case of the plaintiff for rejecting his request for payment of arrears of salary from the date he was notionally promoted can hold ground, even in ^{the} ~~case~~ ^{where} ~~whether~~ the person is prevented from performing the duties ^{by} ~~of~~ the employer himself and whether if a notional promotion is given to a person he can be granted the other privileges alongwith ^{the} ~~the~~ promotion. The factual position in this case is not disputed. The learned counsel for the plaintiff further contended that the Union of India cannot take the advantage of its own wrongs and say that the plaintiff did not actually perform duties therefore he cannot be paid the arrears of salary. A number of citations have been quoted on the subject and extracts of some of these are as follows :-

(a) In Sadhu Ram Kodumal Versus Union of India and Others (ATR 1986(2)CAT 639) Central Administrative Tribunal Delhi Bench, in this case of wrongful retirement at the age of 58 years instead of 60 years, ^{for} ~~was~~ the period between date of wrongful retirement and date of rejoining service had held that

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the applicant was entitled to his full salary and emoluments and other consequential benefits as if he was in service till he attained the age of 60 years.

(b) In S.N.Das Versus General Manager and Others (ATR 1986(2) CAT 110) the Central Administrative Tribunal Calcutta Bench had held in respect of 'Notional Promotion' that a promotion stalled because of pending disciplinary proceedings and their subsequently being dropped in such cases the date of promotion should revert back thus entitling payment of arrears due in the promoted post. In this case the applicant was promoted retrospectively and was granted all the arrears of pay which would have been due to him in the promoted post from the retrospective date of promotion.

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(c) In Phani Bhushan Deb Roy Versus Union of India and Others, C.A.T. Calcutta Bench (ATR 1987(1) CAT 114) had held that where the applicant promotion was ignored and juniors were promoted; ~~but~~^{if} the senior was entitled to promotion from the date his junior was promoted including stepping up and consequential benefits. It was ~~in~~^{ordered} in this case that his pay will also be stepped up and he ~~was~~^{should} be entitled to receive the stepped up pay and allowances as was allowed to his juniors with all consequential benefits from the date the junior was promoted.

(d) In Roshan Lal Versus Union of India The Central Administrative Tribunal Chandigarh (ATR 1987(1) CAT 121) had ~~in this case~~^{it held that} where the review DPC adjudged^{ed} the applicant senior to another person, ~~and~~^{and} the applicant was entitled to the emoluments of higher post from the date the junior was promoted notwithstanding that he ~~had~~^{had} actually worked against the higher post or not.

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(e) In Sheikh Mahboob Versus Railway Board and Others the Hon'ble Karnatka High Court had decided that if a Civil Servant was denied promotion at proper time the denial of arrears of salary to the petitioner cannot be supported. The petitioner had a right to be considered for promotion on dates when it was due in view of the right of equality guaranteed under Articles 14 and 16 of the Constitution. The said valuable rights guaranteed by the Constitution could not be denied in the first instance by denying the Civil Servant the opportunity to render service in the higher post and subsequently making it a ground to justify non-payment of the arrears of salary even after giving him retrospective promotion at some point of time later.

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(f) In Charan Das Chadha Versus State of Punjab and Another (SLR 1980(3) 702) the Punjab and Haryana High Court had drawn analogy from the case of State of Mysore Versus C.R. Sheshadri and Others (AIR 1974 SC. 460) where the petitioner was held to be entitled to promotion with retrospective effect and a direction was given to the Govt. to make the payment to the Govt. servant of the arrears of salary within the specified period. In this case it was held that once an order of Govt. is found to be void or unsustainable in law, and is quashed, the relief, may be a monetary relief, which flows from such a setting aside of the order has to be allowed to the successful petitioner. It was further held that once an employee is promoted with effect from a retrospective date, he cannot be deprived of the pay and other benefits to which he would have been entitled had he in fact been promoted to the said post on the date on which he has been later promoted. Any condition imposed to the effect that the said employee

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would not be entitled to the pay and allowances would be illegal the reason being that the Government had not promoted such an employee on the date on which he was entitled to be promoted cannot take advantage of its own wrong or illegal order in not promoting and then while conceding the claim of the employee for promotion with retrospective effect it cannot withhold what is due to the said employee on account of his promotion in the matter of pay and allowances.

A similar view was ^{is taken} held in K.K. Jagia Versus State of Haryana and Another (1972 SLR 578) that once an employee is promoted with effect from retrospective date he cannot be deprived of the pay and other benefits to which he would have been entitled had he in fact been promoted to the said post on the date on which he has been later promoted.

4. Similar views have been held in a number of other decisions by the various High Courts. In view of the above ^{the} law on the subject is very clear that a person who has been wrongly withheld from promotion and has been subsequently given the promotion from a retrospective date cannot be denied the actual payment of arrears of salary etc. irrespective of the fact whether he actually occupied the post from that date or not. In view of this the plaintiff's case must succeed as far as the payment of arrears of salary etc. for the periods for which he has not been paid in the various post that he occupied, is concerned. The contention of the learned counsel for the Union of India that since the plaintiff did not

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shoulder the responsibility ^{2x} of the higher post he is not entitled to be paid the salary for the period between the date of notional promotion and the date of his actual taking over charge can, therefore, not hold ground and is rejected.

5. The plaintiff has also prayed for the payment of interest on the arrears of salary. ^{3x} ~~The~~ ^{An} observation was made in Madar Union Sanitorium and Hospital Versus M.B.Sathe and Others a decision of the Rajasthan High Court given on 13.11.85 (1986(1) SLR 631) which reads as follows :-

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" ...I would like to make it clear that the authority while dealing with the beneficial legislation is duty-bound to pay by way of compensation the interest to the claimant. Recently, the Supreme Court while upholding the decision of this Court under Section 125 has also held that whenever there is no prohibition then the Court has inherent powers to compensate the deserving persons for the loss which has been caused to him. There is no provision which prohibits the payment of interest by way of compensation under the inherent powers also. It has also been upheld by the Supreme Court. The payment of interest is not by way of interest but it is by way of compensation for the delayed payment of the gratuity to a person who has worked for about 29 years or so...."

Similarly in I.S. Ramachandra Rao Versus Union of India and Others (ATR 1986 CAT 141) the Central Administrative Tribunal Delhi Bench had held :

" Although there is no specific provision for payment of interest on pension, that

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amount also being an amount to which the applicant was entitled and which was denied to him for no fault of his, the applicant must be compensated by way of interest. Since the pro-rate pension and gratuity due to the applicant were withheld illegally though bona fide, he is entitled to payment of interest for the period beyond 3 months of the date upto the end of the first year at the rate of 7% per annum and beyond one year at the rate of 10% per annum upto the date the entire amount due to him is paid."


37/ In both these cases the question was of delayed payment of legitimate retirement benefits to the employees. The plaintiff's case is not on all fours with the above case. It was not a case of delayed payment of something which was immediately due to the plaintiff. He was already paid what the Union of India thought as proper. It is only now that the Union of India's stand that arrears of salary, which were due to the plaintiff on his proforma promotion from retrospective date, should not be paid and withholding of same was not in keeping with the provisions of Articles 14 and 16 of the Constitution, that the payments become due to the plaintiff. Therefore the request of the plaintiff for payments of any interest on the arrears that will be due to him has no force and is liable to be rejected. There was no mala fide intention or inherent delay in the withholding of these payments. It was a legitimate decision which is subject of this litigation.

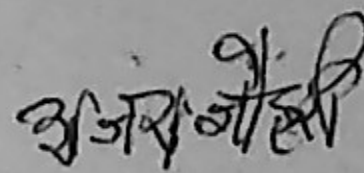
6. In the result we order that the Union of India will calculate the amount of arrears of salary etc. which have not been paid for the periods of notional

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promotion to the date the plaintiff actually started officiating as Inspector, I.T.O. Class II, I.T.O. Class I junior Scale and I.T.O. Class I Senior Scale and Appellate Assistant Commissioner and pay him the amount within a period of three months of this judgement. In regard to the pension already paid to the plaintiff this should also be recalculated on the basis that he actually got the payment as Assistant Appellate Commissioner from the date he was given proforma promotion and any arrears due on this account should also be paid within this time and his pension refixed. There are no orders as to costs.


V.C.


A.M.

Dated the 13th March, 1987

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