

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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O.A. No. 690 of 1994

Shankar Lal Sharma Applicant.

Versus

The Collector of Central Excise
Kanpur and others Respondents.

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(By Hon. Mr. S. Das Gupta, Member(A))

Heard the applicant in person. The applicant in this case had earlier filed a Writ Petition in the High Court of Judicature at Allahabad which was later transferred to this Bench of the Tribunal and it was numbered as T.A.No. 719 of 1987. The said T.A. was decided by the judgment and order dated 26.3.1992 passed by a Bench of this Tribunal. The impugned orders dated 2.11.1987 by which the respondents had imposed a deduction of 1% of the pay and allowances to which the applicant was entitled during the period of suspension, and the order dated 11.3.1991 by which an appeal against such order was dismissed, were quashed, and it was directed that the applicant would be entitled to all consequential benefits as if no punishment order subsists. Pursuant to this judgment and order of this Tribunal, the Collector Central Excise, Allahabad passed an order dated 2.1.1993 (Annexure- A 2) by which the applicant was given notional promotion to the grade of Superintendent (Group-B) in the pay scale of Rs. 350-900 and was

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reassigned ~~the~~ seniority. It was also ordered that the applicant shall be entitled for all consequential benefits retrospectively of ~~its~~^{his} notional promotion to the Grade of Superintendent (Class-II). It was further directed that the pay of the applicant on his notional promotion to the grade of Superintendent (Class-II) be fixed accordingly.

2. The case of the applicant now is that neither his pay has been fixed in accordance with the orders contained in Annexure- A 2 nor the arrears given. He ~~contained~~^{contends} that his pension and other retiral benefits have not also been revised on the basis of the revised pay. In these facts and circumstances, he prayed for several reliefs which are;

- (i) that a direction be issued to the respondents to immediately fix the pay, allowances, revise pension, gratuity of the applicant as are admissible and due to him with retrospective effect in the Grade of Superintendent Class-II to which he is entitled ~~to~~ in terms of the order dated 2.4.1993 (Annexure- A 2).
- (ii) that a direction be issued to the respondents to allow the applicant interest at the rate of 15% per annum on the total amount of the emoluments due to him from the date of the order dated 2.4.1993 till the date on which the applicant actually receives payment.
- (iii) take such action against the respondent Nos. 1 & 2 under the provisions of Sec.17 of the Central Administrative Tribunals Act,

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1985 for not executing the final order.

3. The application suffer multiplicity of the reliefs as the relief at Sl. No. 3 is ^{a distinct} ~~distinguished~~ one from the other two. However, the applicant submits that he is not pressing for this relief.

4. The facts of the case are quite clear from the submissions made in the application as well as the Annexures. In view of this, I do not think it necessary at this stage to obtain a written reply from the respondents. It would be sufficient, in my opinion, at this stage to give a direction to the respondents to implement, if ^{not} any already done, their own orders stated to have been passed by the letter dated 2.4.1993 (Annexure- A 2).

5. I, therefore, direct the respondents to refix the pay of the applicant, if not already done, within a period of 1 month from the date of communication of this order and pay to him all dues accruing therefrom including the dues on account of retiral benefits within a period of 3 months from the date of refixation of pay as per rules.

6. With these directions, the application is disposed of at the admission stage.


Member (A)

Dated: 11.8.1994

(n.u.)

CENTRAL ADMINISTRATIVE TRIBUNAL
APPELLATE BENCH

Review app 21 of 1995

O.A.No./Trib.No. 690 of 1994

DATE OF DECISION

7/6/96

--- Union of India & others ---

--- APPLICANT (S) ---

--- Sh. S. C. Tripathi ---

--- ADVOCATE FOR THE
APPLICANT (S) ---

V E R S U S

* * Shankar Lal Sharma

--- RESPONDENT(S) ---

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--- ADVOCATE FOR THE
RESPONDENT(S) ---

COMMISSION

The Hon'ble Mr. Justice B. Chakravarty also Chairman
Member (C)

The Hon'ble Mr. S. Das Gupta - Member (A)

1. Whether reporters of all newspapers may be allowed to see the judgment?
2. To be referred to the newspaper or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether to be circulated to all other Bench?

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(SIGNATURE)

Remitted to/-

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

A L L A H A B A D

DATED: THIS THE 7th DAY OF MAY 1996

REVIEW APPLICATION NO.21 of 1995

IN

TRANSFER APPLICATION NO.719 OF 1987

WITH

MISC. APPLICATION NO. 249 OF *1995

AND

MISC. APPLICATION NO. 250 OF 1995

IN

ORIGINAL APPLICATION NO. 690 OF 1994

CORAM : Hon'ble Mr. Justice B.C. Saksena V.C.
Hon'ble Mr. S. Das Gupta. A.M.

UNION OF INDIA AND OTHERS - - - - - Applicants

C/A Sri S. C. Tripathi.

VERSUS

Shanker Lal Sharma s/o Ram Swaroop Sharma

resident of 44-Jawahar Nagar,

Hapur, District: Ghaziabad. - - - - - Respondents

ORDER

By Hon'ble Mr. S. Das Gupta. A.M.

This review application was filed by the respondents in TA.No.719/87, seeking recall of the order dated 6.3.1992, by which a bench of this Tribunal had disposed of the said transfer application. It has also been prayed that another opportunity be given to the respondents to file the relevant documents, to produce the relevant records and to decide the case on merit after hearing the respondents.

2. It appears from the facts which emerged in the transfer application no.719/87 that the applicant was Dy.Suptd.Customs and Central Excise, Gorakhpur till 2.8.67. Later, he was transferred to Chandausi in district Moradabad. and was put under suspension by the Collector, Customs and Central Excise, Allahabad on 6.1.1968 during the pendency of the disciplinary proceedings. in respect of certain irregularity alleged to have been committed by him during

his tenure at Gorakhpur. The suspension order was revoked on 13.10.1970 during the pendency of the ~~pendency~~ of the disciplinary proceedings, which was initiated on the basis of a charge sheet in which there were three article of charges. The applicatn retired in the year 1974 and as the disciplinary proceedings were still to be concluded, the same were forwarded to the President of India under section 9 of the Central Civil services (Pension) Rule, 1972. The President of India vide order dated 31.1.1978 came to the conclusion that it was not a case of misconduct. Accordingly the disciplinary action against the applicant was dropped. However, thereafter a show cause notice was issued to the applicant on 4.6.1978 by one of the respondents to which the applicant submitted reply, stating therein that as the proceedings had already been dropped, no further proceedings could be initiated against him. Despite this, the aforesaid respondent by order dated 2.11.1978 decided to impose penalty on the applicant and directed that one percent of his pay and allowances to which he was entitled during the period of suspension be deducted. It was this order, which was challenged by the applicant before the High court of Judicature at Allahabad and it was subsequently transferred to this bench and was renumbered as TA No.719/87. A bench of this Tribunal, which heard this matter came to the conclusion that the applicant having retired in the year 1974, Employer ~~and~~ Employee relationship already came to an end and therefore, no fresh show cause notice could have been issued against the applicant. The Tribunal therefore, quashed the order dated 2.11.1978 and also the order dated 11.3.1981 by which the applicant's appeal was rejected. It was also held that the applicant would

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be entitled to all consequential benefits as if no punishment order subsisted against him.

3. After the order of the Tribunal was communicated to the respondents, the Collector, Central Excise, Allahabad in whose jurisdiction, the applicant was working at the relevant point of time, passed an order on 2.4.1993 by which the applicant was given notional promotion to the cadre of Superintendent and was given reassigned seniority. It was ordered therein that the applicant shall be entitled of all consequential benefits retrospectively of the notional promotion to the grade of Superintendent and it was further directed that the pay of the applicant is to be fixed accordingly. However, when the copy of the order dated 2.4.1993 was received in the Collectorate Kanpur for necessary action, service record of the applicant was scrutinised and it was observed that the applicant was promoted from the post of Inspector (SG) to the post of Dy.Supt. in the year 1956, but he was reverted from the post of Dy.Supt. to that of Inspector (SG) retrospectively with effect from 15.10.1966 by an order dated 30.7.1974. In view of this fact, it has been alleged in the review application that the applicant could not be promoted to the next higher grade of Superintendent and on this ground, review of the order of the respondents has been sought.

4. We have gone through the records of the transfer application 719/87. Applicant's contention that he was Dy.Supt. at the time of his retirement has not been controverted in the counter affidavit. No mention was made therein about the alleged retrospective reversion of the applicant to the post of Inspector (SG). It is clear that the fact of his alleged reversion, which has

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now been pleaded was not brought to the notice of the Tribunal when the transfer application was heard and decided.

It is also significant to note that the alleged order of reversion to the grade of Inspector(SG) with retrospective effect was passed on 30.7.1974, whereas the applicant retired from service on 31.7.1974. In other words, the alleged order of reversion was passed a day before the applicant retired from service.

5. Whatever the facts be as regards the alleged reversion of the applicant, this fact was not brought to the notice of the Tribunal by the respondents, when they had the opportunity to bring out the same in their counter reply to TA No.719/87. Therefore, the findings of the Tribunal in its order dated 26.3.1992 do not suffer from any error apparent on the face of the records. We are also not convinced that the new fact of his alleged reversion, which is being brought out in the review application for the first time could not be brought out earlier before the bench of the Tribunal, which had disposed of the transfer application by the order dated 26.3.1992, with due diligence.

6. In view of the foregoing, we do not find any merit in this review application and the same is accordingly dismissed.

MISC. APPLICATION NO. 249 of 1995

AND

MISC. APPLICATION NO. 250 of 1995

IN

O.A.No. 690 of 1994

7. Misc. applications no.249 and 250 of 1995 in O.A.No.690/94 have been filed by the respondents seekin recall/modification of the order dated 11.8.1994

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by which the O.A. No.690/94 was disposed of.

8. The applicant in TA.NO.719/87 had subsequently filed O.A.No.690/94 in which he sought a direction to the respondents to immediately fix pay and allowances, revised pension and gratuity admissible and due to the applicant with retrospective effect in the grade of Superintendent to which he was entitled in terms of the order dated 2.4.1993 passed by the Collector Central Excise, Allahabad in pursuance of the Tribunal's order dated 26.3.1992 by which TA.NO.719/87 was disposed of. He also prayed for payment of interest at the rate of 18 percent per annum on the total amount of arrears. This application was allowed by order dated 11.8.1994 and the respondents were directed to re-fix the pay of the applicant, if not already done within a period of three months from the date of communication of the order and to pay him all dues accrued therefrom including the dues on account of perical benefits within three months from the date of re-fixation of pay. Respondents have now filed misc. applications no.249 of 1995 and 250 of 1995, seeking recall/modification of the aforesaid order on the same grounds, which have been traversed in the review application no.217 of 1995. For the reasons already recorded, we find no merit in these applications and the misc. applications are, therefore, rejected.

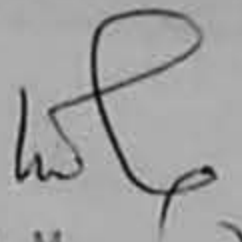
9. We now direct the respondents to comply with the directions contained in the order dated 11.8.1994 and ensure payment of all arrears to the applicant within a period of three months from the date of communication of this order. We further direct that


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in case payments are not made within three months from the date of communication of the order, all such payments shall bear an interest at the rate of 18 percent per annum from the date of communication of this order till the date of actual payment of the arrears. ^{by order 11.8.1994}

10.

Parties shall bear their own cost.


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