

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.489 of 2002.

Allahabad, this the 13th day of January, 2005.

Hon'ble Mr. V.K. Majotra, V.C.
Hon'ble Mr. A.K. Bhatnagar, J.M.

Prem Kumar Talwar,
aged about 68 years,
S/o Late Shri Roashan Lal
Talwar, R/o 16, Ilbert Road
(S.P. Marg), Allahabad. Applicant.

(By Advocate : Shri Rakesh Verma)

Versus

1. Union of India,
through the Secretary,
Central Board of Excise
and Customs, North Block
New Delhi.
2. Principal Collector,
Customs and Central Excise,
Kanpur.
3. Collector,
Central Excise,
Allahabad.
4. Additional Collector (P&V)
Allahabad. Respondents.

(By Advocate :Shri A.N. Shukla)

O R D E R

By Hon'ble Mr. A.K. Bhatnagar, J.M. :

By this OA, the applicant has prayed for following
relief(s) :-

- (i) To issue a writ, order or direction in the nature of Certiorari quashing impugned order dated 23.11.2000 passed by the respondent No.1 as communicated to the petitioner vide letter dated 5.1.2002 received by him on 18.1.2001 issued by the respondent No.4 one to direct payment of full pay and allowances and arrears thereon of the higher post of Inspector (Selection Grade) (Rs.550-900) with effect from

✓

....2.

31.12.1982 and to the post of Superintendent 'B' (Rs.2000-3500) with effect from 30.6.1989 alongwith interest on the entire arrears @ 18% per annum till the payment is actually made (Annexure-A-I).

(ii) To issue a writ, order or direction in the nature of Mandamus directing the respondents to refix the pension and DCRG of the petitioner and to pay arrears thereof alongwith interest thereon @ 18% per annum till the payment is actually made."

2. The brief facts, giving rise to this OA are that by order dated 16.7.1990 (Annexure-A-2), the applicant was to have been confirmed in the Grade of Inspector (O.G.) with effect from 1.8.1972 instead of 4.8.1984 and was assigned seniority on this basis. He was promoted as Inspector (S.G.) on notional basis with effect from 31.12.1982 in the scale of Rs.550-900. He was thereafter assigned seniority of Superintendent Central Excise with effect from 30.6.1989 by order dated 31.12.1990 issued by Collector Allahabad. The applicant claims his arrears of difference of pay and allowances. The Principal Collector by letter dated 22.10.1991 asked the Collector Allahabad to take suitable action for immediate payment of arrears of pay and allowances to the applicant under intimation to the office of Principal Collector. Since the arrears were not paid, the applicant addressed a letter to the Secretary, Central Board of Excise and Customs, New Delhi in which he requested the Secretary to pay him arrears of pay and allowances with effect from 31.12.1982 as Inspector (S.G.) and also pay him arrears of pay and allowances with effect from 30.6.1989 as Superintendent and also revise his pension and pay arrears of the same. A reminder was sent by the applicant on 30.12.1992 of his representation dated 10.8.1992. The applicant was informed by letter of under Secretary to the department of Revenue, Ministry of

W

.....3.

Finance, Government of India dated 10.2.1993 that his case was under consideration in consultation of the Principal Collector, Central Excise, Allahabad and he was advised to remain in touch with Principal Collector, in Allahabad regarding early settlement of the case, When no action was taken, the applicant sent a representation dated 10.8.1992 to the Secretary, Central Board of Excise and Customs, North Block, New Delhi, when no action was taken on this representation, he filed an OA No.1475 of 1993 which was disposed of by order dated 30.8.2000 by issuing a direction to respondent No.1 i.e. Secretary, Central Board of Excise to decide the same by a reasoned and speaking order within a period of three months. In compliance of Central Administrative Tribunal's orders the representation of the applicant was disposed of by respondent No.1 with the following orders reads as under :-

".....In so far as the question of notional promotion and payment of arrear is concerned, it is informed that you are not entitled to payment of any arrears in the light of the instructions as laid down in Para 17.61 of Department of Personnel P.G. & Pension, Department of Personnel & Training, O.M. No.22011/5/86-Estt. (D) dated 10.4.1989 and also on the basis of Principal of 'No work No pay' under FR 17 (1) as you were given notional promotion."

which is under challenged in this O.A.

3. Learned counsel for the applicant submitted that the respondents confirmed the applicant with effect from 1.8.1972 very late as such, his juniors were promoted earlier as an Inspector (S.G.) in grade Rs.550-900 (R.S.) and Superintendent 'B' grade Rs.2000-3500 (R.S.) and the applicant was made junior. Due to the fault of the respondents the applicant could not be confirmed and

promoted alongwith his juniors but they have promoted the applicant as Inspector (S.G.) with effect from 31.12.1982 in grade Rs.550-900 (R.S.) but no arrear of pay and allowances were given to the applicant since 31.12.1982 onwards ~~and thus~~, the applicant suffered monetary loss without any fault. The applicant had to again suffered monetary loss when he was promoted as Superintendent 'B' grade Rs.2000-3500 with effect from 30.6.1989 due to ^{the} late confirmation which was due to / fault of the respondents. Learned counsel further submitted that the respondents have promoted juniors to the applicant prior to the applicant and allowed pay and allowances from the date of their promotion but at one place they have confirmed the applicant late and when he was promoted late, no arrear of pay and allowances were paid to the applicant and which is violative of Principles of natural justice and Article 14, 16 and 20 (2) of the Constitution of India. Learned counsel further submitted that inspite of the letter issued by Principal Collector, Customs and Central Excise, Kanpur dated 22.1.1991 his arrears of pay and allowances were not granted to the applicant. Learned counsel finally submitted that the respondents promoted the applicant as an Inspector (S.G.) with effect from 31.12.1982 in grade Rs.550-900 (R.S.) notionally and further as Superintendent 'B' Grade Rs.2000-3500 (R.S.) with effect from 30.6.1989 notionally due to their own fault as such, they have not followed the settled law on the basis of which the various court have allowed arrears of pay and allowances in many cases of notional promotions where the promotion of the employee was over looked against his juniors and it was later on corrected by giving notional promotion with arrear of back wages.

4. Learned counsel for the applicant placed reliance on the judgment of C.A.T. Ernakulam Bench in the case of P. Narayanan Nair & ors. Vs. Chief General Manager, Telecom Karala Circle, Thiruvananthapur & ors. (1994) 26 A.T.C. 883 in OA No.760/92 decided on 5.11.1993. Learned counsel also placed reliance on the preposition of law laid down in the case of Union of India & ors. Vs. K.V. Jankiraman & ors. (1991) 4 S.C.C. 109. In the case of P. Narayanan Nair & ors. (supra) it is held that back wages can not be denied when an employee is willing to work but it is wrongly denied to him.

5. Resisting the claim of the applicant, learned counsel for the respondents has filed the counter and submitted that the claim of the applicant for payment of arrears for his notional promotion to the post of Inspector (S.G.) with effect from 31.12.1982 and the claim of arrears of pay of his notional promotion to the post of Superintendent 'B' with effect from 30.6.1989 has been claimed after such a belated stage, therefore, the applicant is not entitled for the relief claimed and the order passed by the respondents are justified.

6. We have heard the learned counsel for the parties and perused the records.

7. We have also gone through Annexure-9 wide letter dated 10.2.1993 issued by Under Secretary to the Government of India to the applicant for payment of arrears and allowances which clearly speaks that the case of the applicant is being considered in consultation with Principal Collector Central Excise, Allahabad and he has been asked to settle down the case on priority basis. A compliance report from

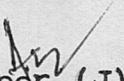
Collector, Central Excise, Allahabad is awaited. The applicant may also keep in touch with Principal Collector regarding early settlement of his case. In para 10 of the counter, the respondents have mentioned that after examining the case it was decided to give the applicant benefit of doubt on account of fact that no case formally instituted was found pending against the applicant. It is also admitted in Para 12 of the counter that the applicant was promoted notionally to the grade of Inspector (S.G.) and subsequently to the post of Superintendent grade 'B'. As a result of notional promotion to the grade of Inspector (S.G.) and Superintendent grade 'B', the applicant is not entitled to the arrears of the intervening period in terms of the Instructions contained in CA-1, CA-2 and CA-3 filed alongwith counter affidavit.

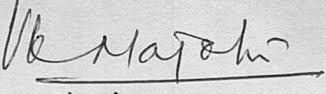
8. The applicant in his rejoinder clearly stated in Para-7 of the rejoinder that no case at the relevant point of time was pending against the applicant and accordingly, on account of the fact that no case was instituted and was found pending against the applicant during the relevant period for which the ACR was considered by the DPC, the applicant was given seniority as Inspector antedating the same with effect from 1.8.1972 vide order dated 30.12.1988. In view of the admitted position that the promotion of the applicant was wrongly withheld on a wrong presumption that departmental proceedings were pending against him which was subsequently granted from the due date. Since the promotion of the applicant was withheld for no fault of the applicant and it was just on account of administrative error that the applicant could not be promoted alongwith his junior at the relevant time, he is entitled to benefit of pay and allowances of the promotion post from the due date.

.....7.

9. After carefully considering the submissions made by the counsel for the parties, we find force in the arguments of learned counsel for the applicant placing reliance in the case of P. Narayanan Nair (supra) and K.V. Jankiraman case (supra). Therefore, we are of the view that the applicant is entitled for the relief claimed by him and the OA deserves to be allowed.

10. Accordingly, the OA is allowed. The impugned order dated 23.11.2004 is quashed and the applicant is entitled for full pay and allowances and arrears thereon of the higher post of Inspector of the Selection Grade with effect from 31.12.1982 and to the post of Superintendent grade 'B' in the scale of Rs.2000-3500 with effect from 30.6.1989. The respondents are further directed to re-fix the pension and pay the arrears due to him as per rules. This exercise should be completed within a period of four months from the date of receipt of copy of this order. No order as to costs.


Member (J)


Vice-Chairman

RKM /