

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Payment of
arrears

O.A. No.
~~XXXXXX~~

356 OF 1991.

DATE OF DECISION 10.2.1993.

Shri C.K.Vohra. Petitioner

Shri M.R.Anand Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri R.P.Bhatt Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V.Krishnan : Vice Chairman

The Hon'ble Mr. R.C.Bhatt : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Shri C.K.Vohra,
Commissioner of Income Tax
(Appeals)-II, Ahmedabad.

...Applicant.

(Advocate : Mr.M.R.Anand)

Versus

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.

2. Central Board of Direct Taxes,
through its Secretary,
Department of Revenue,
North Block,
New Delhi.

...Respondents.

(Advocate : Mr.R.P.Bhatt)

JUDGMENT

O.A.NO. 356 OF 1991.

Dated : 10.2.1993.

Per : Hon'ble Mr.N.V.Krishnan : Vice Chairman

This is a sequel to O.A./332/88, disposed of by the New Bombay Bench of the Tribunal on 09.03.1990, by the Annexure-A/1 order. The applicant was the Senior Authorised Representative, before the Income Tax Appellate Tribunal, Bombay, and his grievance related to his being superseded for promotion to the rank of Income Tax Commissioner.

Hence, he filed the above O.A. in the New Bombay Bench.

This was allowed with a direction to constitute a review DPC for considering the applicant's case on 8th September, 1987, and "if the applicant is found suitable, to promote him with effect from 04.01.1988, and give him seniority and all other consequential benefits arising from that date".

This order was complied with by issuing an order on

10th April, (Annexure-A/2) promoting the applicant as Commissioner of Income Tax from 04th Jan.1988, but it was added that he will not be entitled to any arrears of pay from the date of his deemed promotion upto the date of his actually taking charge as Commissioner of Income Tax.

2. Aggrieved by this order, he made a representation dated 22.4.1991, which is disposed of by the Annexure-A/3, order dated 29.5.1991, which reads as follows :

"I am directed to refer to your representation dated 22.4.1991 on the subject ~~new~~ mentioned above and to say that the term ~~new~~ "consequential benefits" normally entitles an officer for availing the benefits of notional promotion and pay fixation, revision of seniority and counting of the period for higher promotion but it does not include payment of arrears of pay for the period of notional promotion. Since you did not actually hold charge of the higher post of Commissioner of Income-tax during the period in question, you are not entitled to the payment of arrears of pay, as claimed by you!"

3. Earlier, the applicant had filed before the ~~new~~ Bombay Bench a Contempt Petition No.22/90, on receipt of the reply dated 29.5.1991, referred to above. This was disposed of on 2.8.1991, by the Annexure-A/4 order. It was heard by a Bench other than the Bench which had passed the original order Annexure-A/1. The alleged Contempt that remained was only in regard to non-payment of arrears. The Contempt Application was disposed of as follows :

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"Normally we would have directed that this C.P. should, therefore, be placed before the same Bench which had delivered the earlier judgment dated 9.3.90 as it is not clear what was their intention when they directed consequential benefits to be paid to the applicant. But since the Judicial Member in that Bench had come from outside we would now direct, that since it is the letter dated 29.5.1991 to the applicant by the Ministry of Finance, Government of India, rejecting the claim for arrears that has given rise to the present cause of action, the applicant may file a fresh application if he wants to agitate this matter before the Tribunal. The C.P. is accordingly rejected."-

4. That is how this application has been filed for a direction to the respondents to pay the applicant his arrears of salary from 4.1.1983, the date of deemed promotion to 22.4.1991, the date of taking over of charge as Commissioner of Income Tax. The applicant has also prayed for interest and cost.

5. The respondents have resisted the application. They have placed reliance on certain observations of the New Bombay Bench in the order at Annexure-A/4, disposing of the Contempt Petition no.23/90, that the question whether consequential benefits should include benefits of arrears of pay and allowances with retrospective effect, had to be decided on the merits of each case. The applicant's name was not included in the original panel of promotion and he was considered fit for promotion. Subsequently by a review DPC, on the direction of this Tribunal and therefore, he cannot claim salary retrospectively for the period he was not

working in the promoted post and not discharging the duties of the higher grade. It is also contended that in this view of the matter the expression "consequential benefits" do not include payment of arrears of pay.

6. We have heard the parties and perused the records. A number of authorities have been cited in para-6, of the application. The learned counsel for the applicant submitted that it was not the fault of the applicant that he was not promoted from 1.4.1988. The Annexure-A/1, judgment in O.A./332/88, discloses the vindictive attitude of Shri P.K.Gupta, the then Commissioner of Income Tax, who not only spoiled his record but also took steps, behind his back, to paint him as a unreliable official whose integrity is to be doubted. That, is the reason why the First DPC did not include him in the panel. The justice done to him was rectified by the Tribunal in the Annexure-A/1, order and a direction was given to the review DPC not to take into account the letter written by Shri P.K.Gupta, to Shri Roy on 23.7.1986, behind the applicant's back and also to ignore the correction of the 86/87, character roll recorded from "very good" to "good", under the influence of another letter written by him on 22.5.1987.

7. It is contended by the applicant that under the earlier order of the Tribunal, the review DPC which was held found him fit for promotion after ignoring the appending letter remarks. Therefore, the respondents alone were responsible for keeping him out of promotion from 1.4.1988,

and therefore, they are liable to pay arrears of pay.

8. The learned counsel for the respondents submits that it is because of the remarks in the character roll that the applicant was superseded in the first instance and therefore, he cannot now ask for arrears of salary for the period he did not work as a Commissioner of Income Tax. The learned counsel had relied on the judgment of the following authorities for this proposition. A.I.R. 1991 - SC.958, Virendra Kumar G.M. Northren Railway Vs. Avinash Chandra Chada and 1987 (1) SLJ C.A.T. 293.

9. We have carefully considered the rival contentions. We are of the view that the directions of the Tribunal in the Annexure-A/1, order are unambiguous in this regard. The directions are "to promote him w.e.f. 4.1.1988, and give him seniority and all other consequential benefits arising from that date." Obviously, therefore, if the applicant was promoted from 4.1.1988, as he indeed was by the Annexure-A/2, letter, then the first consequential benefit which arises from that date is that he gets a higher pay as Commissioner of Income Tax. If the expression, "Consequential benefits" had been left unqualified, one could have argued whether the benefits ought to be given from the date of promotion, or from the date of judgment or from any other date. The Tribunal has left no room for doubt in this regard and has also left nothing to the discretion of the respondents. The direction is that if the benefit is a consequential benefit it shall be given from 4.1.1988. Undoubtedly, on his

promotion as Income Tax Commissioner from 4.1.1988, the applicant's pay has necessarily to be refixed, even if no arrears had to be given. In fact, the Annexure-A/2, order makes it clear that the period from the date of his deemed promotion to the date of actual joining as Commissioner of Income Tax shall count towards the drawing of increments. For this purpose, necessarily, the applicant's pay as Commissioner of Income Tax had to be fixed as on 4.1.1988, and in accordance with the Annexure-A/2, order, after considering the increments which arose till he actually joined as Commissioner of Income Tax on 22.4.1991, the pay on the actual date of assuming office should be determined. Thus, if the pay as Income Tax Commissioner had to be worked out on 4.1.1988, it is a consequential benefit. The Tribunal's order makes it clear that this benefit shall be given from 4.1.1988, itself.

10. In this view of the matter it is, perhaps, not necessary to look into the various citations relied upon by the applicant's counsel.

11. 1987 (1) SLJ C.A.T. 293 cited by the respondent is irrelevant. In so far as AIR 1991, SC-958, which is relied upon by the respondents is concerned, this case is distinguishable and is not at all applicable to the facts of the present case. That was a case of a dispute of seniority between direct recruits and promotees. The respondent who were direct recruits, were given the benefit of deemed appointments on the basis of the quota rule, as a result of which deemed appointments were given to some of them even

from dates when they were not only not in service but might even have/been in the schools and colleges. The respondents were granted the back wages by the Central Administrative Tribunal, that decision was set aside by the Supreme Court, holding that there was no equity nor justice in favour of the respondents to award them the emoluments of higher posts with retrospective effect. In the present case we have found that both equity and justice favour the applicant.

12. In the circumstances, this application deserves to be allowed. So far as interest and costs are concerned we are of the view that this is not an appropriate case where either can be granted, because the decision of the New Bombay Bench, at Annexure-A/4, undoubtedly left, the issue as a dispute issue to be decided by the Tribunal.

13. We therefore, allow this application in part with a direction to the respondents to ~~pay~~ the arrears of pay to the applicant for the period from 4.1.1988 to 23.4.1991, as Commissioner of Income Tax and pay the arrears due within a period of three months from the date of receipt of this order. If the payment is not made within the stipulated period, interest at 12 % shall be paid to the applicant from the date of this judgment until it is paid fully.

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(R.C.Bhatt)
Member (J)
10.2.1993.

10.2.93
(N.V.Krishnan)
Vice Chairman
10.2.1993.