

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.236 of 1990.

Date of decision: August 23, 1991.

Alekh Chandra Benera ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.Devanand Misra,
Deepak Misra,
R.N.Naik, A.Deo,
B.S.Tripathy, Advocates.

For the respondents ... Mr.K.K.Roy,
Standing Counsel (Income-Tax)

C O R A M :

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? NO
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

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JUDGMENT

K.P.ACHARYA, VICE-CHAIRMAN, In this application under section 19 of the Administrative Tribunals Act,1985, the applicant prays to direct the respondents to pay to the applicant his arrear salary with effect from 21.1.1980 according to the pay scale prescribed for an Assistant Commissioner of Income-Tax and further more, to give him arrears as mentioned in his letter dated 17.5.1990 (Vide Annexure-4) and also to give direction to the respondents to consider his case for promotion ^{to} for the post of Deputy Commissioner of Income-Tax with effect from the date when his juniors were promoted to the said cadre.

2. Shortly stated, the case of the applicant is that while he was working as an Income-tax Officer stationed at Dhenkanal a disciplinary proceeding was initiated against him alleging that he had granted registration to

M/s. Narsidas & Co and M/s.G.B.Das& Brothers under section 185 of the Income Tax Act. According to the departmental authorities grant of this registration was against the provisions contained in the Income Tax Act andtherefore, a proceeding under the Central Civil Services (Classification, Control & Appeal) Rules, was initiated against him and ultimately the disciplinary authority ordered removal of the applicant from service. Being aggrieved by this order of removal the applicant invoked the extraordinary jurisdiction of the Hon'ble High Court of Orissa praying therein to quash the order of removal from service and this formed subject matter of O.J.C.No.1105 of 1983. By operation of Section 29 of the Administrative Tribunals Act,1985, the case was received on transfer by the Cuttack Bench and it was renumbered as T.A.308 of 1986. TheCuttack Bench vide its judgment dated 7th July,1987 passed in T.A.308 of 1986 quashed the order of punishment of removing the applicant from service and directed the respondents to reinstate the applicant into service entitling him to all his emoluments and other service benefits including financial benefits. In furtherance thereof the applicant was reinstated into service and subsequently he was given promotion to the post of Assistant Commissioner of Income.Tax with effect from 21.1.1980. The grievance of the applicant is that though the authorities gave him promotion with retrospective effect from 21.1.1980 yet it was mentioned in the order contained in Annexure-5 dated 15.3.1990 that the applicant will not be entitled for any arrear of pay etc. Hence, this application has been filed with the aforesaid prayer.

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3. In their counter the respondents maintained that the applicant is not entitled to arrear pay in view of the provisions contained in F.R.17(1) read with instructions of the Government of India contained in Department of Personnel, Training Office Memorandum No.22011/2/86-Estt.(A), dated 12.1.1988. Hence, it is maintained by the respondents that rightly it was ordered that the applicant shall not be entitled to the emoluments prescribed for the post of Asst. Commissioner of Income-Tax prior to 8.6.1990 as the applicant worked as such with effect from 8.6.1990.

As regards the second prayer of the applicant to give him arrears as mentioned in his letter dated 17.5.1990 contained in Annexure-4 it is maintained by the respondents that the matter is being looked into and steps have been taken by way of reference to the Accountant General and payment of such salary if not drawn would be made soon and the matter would be finalised after clarification.

4. I have heard Mr.Deepak Misra, learned counsel for the applicant and Mr.A.K.Roy, learned Standing Counsel(Income-Tax) for the respondents at a considerable length. At the outset I must state that Mr.Misra did not press the prayer No.(c) i.e. to direct the respondents to consider the case of the applicant for promotion to the post of Deputy Commissioner of Income Tax. The moot question that needs determination is as to whether the applicant is entitled to his financial benefits with effect from 21.1.1980 or from 8.6.1990 i.e. the actual date from which the applicant worked as Assistant Commissioner of Income Tax. Before opinion is expressed on this point it is necessary to state certain important

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facts leading to the filing of this case. Actually the applicant was due to be promoted with effect from 21st January, 1980 but sealed cover procedure was adopted by the Selection Committee (Departmental Promotion Committee) as a disciplinary proceeding was said to be pending against the applicant, which ultimately ended in an order of punishment passed against the applicant who filed an application under Article 226 of the Constitution of India before the Hon'ble High Court of Orissa and it was ultimately transferred to this Bench and formed subject matter of T.A. 308 of 1986 disposed of on 7.7.1987. In the said judgment, due to several infirmities appearing in the said case, the Bench held that the order of punishment cannot be sustained and therefore the applicant was exonerated from the charges and the order of removal was quashed and the Bench held that the applicant was entitled to all his service benefits. Accordingly, the applicant was reinstated and promotion has been given to the applicant as stated in the order dated 15.3.1990 contained in Annexure-5 to the effect that promotion is given with effect from 21st January, 1980 but the applicant will not be entitled to any arrear pay. In paragraph 8 of the counter it is also stated that since the applicant actually worked as Assistant Commissioner of Income-Tax from 8.6.1990 onwards, he is therefore, entitled to his pay in the promotional post from such date onwards and not earlier.

In support of the stand, ~~of the~~ respondents relied upon
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the provisions contained in F.R.17(1) read with Office memorandum No.22011/2/86-Estt.(A) dated 12.1.1983 issued by the Government of India in the Department of Personnel and Training. Both in F.R.17(1) and in the Office memorandum no doubt it is stated that the officer will be entitled to his pay from the date from which he actually works. This provision is based on the wholesome principle 'no work no pay'. There cannot be any dispute regarding the fact that normally an Officer is entitled to his pay with effect from the date he works but so far as the present case is concerned there are certain striking and distinguishing features for which there has to be a departure from the normal procedure. There cannot be any dispute relating to the fact that if a proceeding would not have been pending then in normal course the applicant would have been promoted with effect from 21.1.1980 and he would have been entitled to all his financial emoluments relating to the said post. But in the present case because of the proceeding the applicant was not given promotion. In this connection it is worthwhile to state the views of the Full Bench of the Central Administrative Tribunal in the case of K.Ch.Venkata Reddy and others v. Union of India and others reported in 1987(2)SLJ (CAT) 117. At paragraph 36 of the reported judgment the Full Bench held as follows:

" With holding of salary of the promotional post for the period during which the promotion has been withheld, while giving other benefits will clearly violate Articles 14 and 16 when compared with other employees against whom disciplinary proceedings had not been initiated. "

At paragraph 38 Their Lordships further held as follows:

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" To make the sealed cover procedure quite valid and beyond attack under Arts.14,16 and 20(2), we strike down that portion of para 2 of the instructions dated 30th January,1982 which says, " but no arrears are allowed in respect of the period to the date of actual promotion" and direct that on exoneration, the salary, which the person concerned would have received on promotion if he had not been subjected to disciplinary proceedings, should be paid along with other benefits such as promotion and fixation of increments, etc. "

(Emphasis is mine)

5. It is also worthwhile to note that this wholesome principle of law laid down by the Full Bench(relating to which I am bound to follow)hasnot yet been set aside by the Apex Court and this still stands as a good law in the field. In view of the law laid down by the Full Bench it cannot but be said that in the present case, the applicant having been exonerated from the charges and there being no dirty linen pending against the applicant on the due date of promotion, rightly the authorities have given promotion to the applicant with retrospective effect and to avoid violation of Articles 14 and 16 of the Constitution the applicant is entitled to his arrear pay with effect from 21st January,1980. It is therefore, directed that his arrear pay with effect from such date be paid to the applicant within 120 days from the date of receipt of a copy of this judgment.

6. As regards the second prayer of the applicant stated above, it is very fair on the part of the respondents to state in their counter that the matter is being looked into and the applicant would be paid all his dues. But I may state that long time has elapsed in between and in case the

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applicant has not been paid his dues which he has claimed in his second prayer, be finally disposed of and paid to the applicant according to Rules, if entitled, within 120 days from the date of receipt of a copy of this judgment.

7. Thus, the application stands allowed leaving the parties to bear their own costs.



[Handwritten Signature]
23/8/91
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
August 23, 1991/Sarangl.