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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 322 OF 1995.  
cuttack, this the 1st day of January, 2002.

Banshidhar Sethy. ... Applicant.

-Versus-

Union of India & Others. ... Respondents.

FOR INSTRUCTIONS.

- ✓ 1. Whether it be referred to the reporters or not? Yes
- ✓ 2. Whether it be circulated to all the Benches of the  
Central Administrative Tribunal or not? Yes.

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN

Nityananda Prusty  
(NITYANANDA PRUSTY)  
MEMBER (JUDICIAL)

(7)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 322 of 1995.  
Cuttack, this the 1st day of January, 2002

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
A N D

THE HONOURABLE MR. NITYANANDA PRUSTY, MEMBER(J) .

....

Banshidhar Sethy, Aged about 50 years,  
Son of late Madan Sethy, Village Narayanpur,  
P.O. Gatanai, P.S. Patkura, Dist. Kendrapara. .... Applicant.

By legal practitioner: M/s .R.B. Mohapatra, J.K. Nayak,  
N.J. Singh, N.R. Routray,  
Advocates .

-Versus-

1. Union of India represented by the Chairman,  
Central Board of Direct Taxes, Department of  
Revenue, New Delhi.
2. Chief Commissioner of Income-tax, Central Revenue  
Building, Patna, Dist. Patna (Bihar) .
3. Commissioner of Income Tax, Orissa, At-15 Forest park,  
Bhubaneswar-1, Dist. Khurda ( Orissa ) .
4. Satyabadi Sahoo, Income tax Officer,  
Office of the Income Tax Officer, Dhenkanal,  
PO/Dist. Dhenkanal.
5. Chinmoy Baleswar patra, Income Tax Officer,  
Jharsuguda Income Tax Office, At/po/Dist. Jharsuguda .
6. P.C. Mishra,  
Income Tax Officer,  
Central Information Branch,  
Income Tax Office,  
At/po: Rourkela,  
District-Sundergarh.

.... Respondents .

By legal practitioner : Mr. A.K. Bose,  
Senior Standing Counsel  
(Central) .

....

W. S.

O R D E R

MR. NITYANANDA PRUSTY, MEMBER (JUDICIAL):

The applicant, who is presently working as Income-tax Officer, Central Information Branch, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 for a direction to the Respondents 1 to 3 for making payment of the arrear dues of the applicant for the period from 20-1-1988 to 9-12-1990 in the prevalent scale of pay of I.T.O. Gr. 'B' and to revise the All India Seniority List of I.T.Os (Annexure-A/13) re-fixing the position of the applicant above Respondents 4 to 6 and for other ancillary reliefs.

2. In this case, since most of the facts are not in dispute, it is not necessary to go into too many facts of this case. However, it would suffice to say that the applicant in this case was initially appointed and joined as Upper Division Clerk on 12-9-1966 and confirmed in the said post on 6-12-1971. After passing Departmental Examination, he was promoted to the post of Inspector of Income-tax and joined the post on 12-4-1978. While working as such, the applicant appeared at the departmental examination for the purpose of his promotion to the post of I.T.O. Gr. B and has been declared passed in the said examination vide office order dated 6-11-1980 w.e.f. 7-6-1980 (Annexure-A/2). The case of the applicant for promotion to I.T.O. Gr. B, could not be considered by the D.P.C. held in 1981 as by the relevant time, the applicant even though was having the requisite qualification and eligibility was not coming within the zone of consideration and none of his juniors were promoted to the post of I.T.O. Gr. B.

The applicant, due to pendency of Criminal proceedings instituted against him, in the court of Special Judge, Bhubaneswar, was placed under suspension w.e.f. 17.11.1982. However, the order of suspension was revoked and he was re-instated on 11-5-1987 and on 19.6.1987 he was discharged by the Special Judge, Bhubaneswar as per the charges framed against him by the C.B.I. It is worthwhile to mention that while the disciplinary proceeding as well as Criminal proceeding was in progress, a D.P.C. was held on 14.11.1986, considered the cases of applicant and other officers, who were coming within the zone of consideration, but the applicant was not found fit for promotion to the I.T.O. Gr.B in the said D.P.C. Even though the applicant was discharged on 19.6.1987 by the Special Judge, Bhubaneswar, a Departmental proceedings was initiated against the applicant on 22-12-1987. The applicant submitted his explanation on 28.12.1987, enquiry officer was appointed, conducted the enquiry and submitted his report on 9-4-1990. After going through the report of the I.O. and necessary records, the Disciplinary Authority exonerated the applicant from the charges as per the order passed on 24-7-1990. While the proceeding was in progress, next D.P.C. was held on 1-1-88 and the findings of the D.P.C. with regard to the petitioner, was kept in a 'sealed cover' on account of the pendency of the disciplinary proceedings against the applicant and after the applicant was exonerated from the charges, vide order of the Disciplinary Authority dated 24.7.1990, sealed cover was opened and on the basis of the recommendations of the DPC, he was promoted to the post of I.T.O. Gr.B w.e.f. 20.1.1988

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i.e. the date on which his immediate Senior Shri N.Gupta was promoted. The applicant was allowed the benefit of the pay fixation on account of promotion w.e.f. 20.1.1988 but as has been directed by the Commissioner of Income-tax, the applicant was not allowed to draw the pay in the scale attached to the post of I.T.O. Gr.B from the said date (20.1.1988), but he was only allowed the pay scale of I.T.O. Gr.B from the date he actually assumed his duty as I.T.O. Gr.B i.e. w.e.f. 10.12.1990 and he was allowed the seniority from the date of his notional promotion i.e. 20.1.1988 and accordingly, his name was mentioned in the All India seniority list of I.T.O.Gr.B below Shri N.Gupta, who is his immediate senior as I.T.O. As such, the pay of the applicant was notionally fixed as per Annexure-11 dt. 3-1-1991. It goes without saying that even though the applicant was promoted and his pay was fixed notionally w.e.f. 20.1.1988 vide order dt. 3.1.1991 at Annexure-A/11 and even though the actual payment was not made w.e.f. 20.1.1988, the applicant did not bother to challenge the same before the appropriate forum or authority. Only after publication of the gradation list of ITO Gr.B, on 21.10.1993 (Annexure-A/13) the applicant filed his representation on 2-11-1993 to the authority challenging his placement in the gradation list of ITO Gr.B with a prayer to place his position in the seniority list above Shri SS Sahu and 2 others his junior in the ITO vide Annexure-A/14 dt. 2-11-93. Thereafter, applicant vide his letter dated 3.11.94 (Annexure-15) and 25-4-95 (Annexure-16) submitted reminders for consideration of his earlier representation with the self same prayer. Since nothing was done, the applicant has approached before

11/11/95

this Tribunal with the prayers referred to earlier.


3. Respondents have filed their reply admitting all the above facts but they have challenged the maintainability of the present O.A. on the ground of limitation and plural remedy.

4. We have heard Mr. R. B. Mohapatra, learned counsel for the applicant and Mr. A. K. Bose, learned Senior Standing Counsel for the Departmental Respondents and have also perused the records and pleadings of the respective parties.

5. In view of the pleadings of the respective parties, the main points to be determined in this case is as to whether the applicant is entitled for his arrear emoluments for the period from 20.1.1988 to 9.12.1990 and re-fixing his position in the seniority list of I.T.O. Gr.B above respondents 4 to 6 and as to whether the present O.A. is maintainable in view of the plural remedy and on the point of limitation.

6. Though the private Respondents 4 to 6 were duly noticed but they did not appear and file their counter in this case.

7. The fact remains that the Respondents 4 to 6 were promoted on the basis of the recommendations of DPC held in 1986 and the applicant was promoted on the basis of recommendation of the DPC held in 1988 and the applicant did not challenge the findings of the DPC held in the year 1986 or the promotion given to the Respondents 4 to 6 on the basis of the recommendations of the DPC held in 1986. Since the applicant did not bother to challenge the same in time and remained silent for years at this stage the prayer of the applicant for placing him above Respondents 4 to 6 in the All India Gradation list of ITO can not be entertained. As such the placement of the



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Respondents 4 to 6 in the All India Gradation list of ITOS are justified and can not be interfered with. Hence the present prayer of the applicant in the Original Application, to unsettle a settled thing is not sustainable in the eye of law, The same is being barred by limitation. Therefore, the only prayer of the applicant remains for consideration is as to whether, the applicant is entitled to his arrear salary w.e.f. 20.1.1988 to 9.12.1990 as has been claimed by him in the O.A.

In support of this prayer of the applicant, Learned Counsel for the applicant has relied upon the following decisions:

- a) AIR 1991 SC 2010 - Union of India and others Vrs. K.V. Jankiraman;
- b) Amarendra Kumar Das Vrs. OFDC and Ors - Vol. 81 (1996) CLT 393;
- c) State of M.P. & another Vrs. Syed Zahir and another - AIR 1993 SC 1165;
- d) State of Andhra Pradesh Vrs. K.V.L. Narasimha Rao and others AIR 1999 SC 2255;
- e) Manohar Sitaram Nandanwar Vrs. Union of India (1986) 1 ATC 531 (Bombay); (1987) 2 SLR 780;
- f) Bhupati Kumar Sardar Vrs. UNION of India - (1989) 10 ATC; 209 (Calcutta); (1988) 4 SLR (CAT) 424;
- g) R.A. Devasahayam Vrs. Union of India (1987) 4 ATC 149 (Delhi).
- h) P. Narayan Nair Vrs. Chief G.M. Telecom (1994) 26 ATC 883 (Ernakulam);
- i) P. Muthoswamy Vrs. UOI - (1991) 16 ATC 343 (Delhi).

Similarly, in support of the contentions of the Respondents, Learned Senior Standing Counsel (Central) has relied upon the following decisions:

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- i) AIR 2000 SC 2337 - Union of India and others Vrs. R.S. Sharma;
- ii) AIR 1997 SC 1434 - K.R. Bibhavnekar Vrs. State of Maharashtra and others;
- iii) AIR 1993 SC 1585 - Union of India Vrs. Kewal Kumar;
- iv) AIR 1993 SC 1488 - DDA Vrs. H.C. Khurana;
- v) No. 361 Swamy's case Digest 1997/1 - Prem Pal Nepalia Vrs. Union of India and others;

8. We have gone through the decisions cited by learned counsel for the respective parties.

9. So far as the decision cited by learned counsel for the applicant in the case of Union of India Vrs. K.V.

Jankiraman (supra), the Hon'ble Apex Court have been pleased to hold as follows:

"When an employee is completely exonerated in Crl./ Disciplinary proceedings and is not visited with penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of "no work no pay" is not applicable to such cases where the employee although he is willing to work is kept away of the work by the authorities for no fault of his. This is not a case where the employee remains away for work for his own reason although the work is offered to him. It is for this reason that FR 17(1) will also be inapplicable to such cases".

(emphasis supplied)

Following the above said decision and the ratio decided in the K.V. Jankiraman's case, the Hon'ble Apex Court in the case of Syed Naseem Zahir and others (supra) at paragraph-6 have been pleased to observe as follows:

"xxx xxx . In case he is completely exonerated, "the sealed cover" shall be opened and if the recommendation is in his favour, he shall be notionally promoted with effect from a date when a person junior to him was promoted to the post of Jr. Engineer. In that event he shall be entitled to all consequential benefits including the backwages."

(emphasis supplied)

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"xxx xxx xxx. It becomes absolutely clear that once an employee is promoted w.e.f. a retrospective date, on being completely exonerated he can not 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 subsequently promoted. Any condition imposed to the effect that the said employee would not be entitled to pay and allowances as a result of promotion is illegal and unsustainable". xx.

Grant of back wages is not intrinsically inherent when retrospective promotion is granted.But it goes without saying that when no punishment is visited and there is no other factor concomitant, as indicated above, the employee is entitled to full backwages".

(emphasis supplied)

The Hon'ble Court, further in the above decision have been pleased to observe that when notional promotion is given with retrospective effect, without financial benefits, the same would be arbitrary. The principle behind this is that no one can be penalised for no fault of his and the employer can not take advantage of an illegal action. Even though the facts of other decisions of different Benches of the Tribunal cited by learned counsel for the applicant are different to the present case, but the ratio decided in the cases of K.V. Jankiraman (supra) has been followed while deciding the matter relating to payment of backwages in the above said cases. Therefore, it is needless for us to go into details of those decisions relied upon by the learned counsel for the applicant.



10. Learned Senior Standing Counsel has strongly opposed the argument advanced by the learned counsel for the applicant relying on the above said decisions with regard to payment of backwages and has also relied upon the decisions cited by him in support of their contentions which are discussed below.

In the case of Union of India and others Vrs. R.S. Shama (supra), the Hon'ble Apex Court have only upheld the adoption of the sealed cover procedure and have been pleased to hold that the said procedure adopted by the Department is justified. In the case of K.R. Bibhavnekar (Supra), the Hon'ble Apex Court have been pleased to hold that even if a person is acquitted in the Crl. Case, the Department is right in proceeding against the delinquent official treating the period of suspension as such. In case of Union of India Vrs. Kewal Kumar (supra) the Hon'ble Apex Court have dealt with regard to adoption of sealed cover procedure. In the case of DDA Vrs. H.C. Khurana (supra), the Hon'ble Apex Court have held that the issue of chargesheet is the date of initiation of the proceeding. As such, after going through the above said decisions, we are of the considered opinion that even though the fact of the said cases are relating to adoption of sealed cover procedure and initiation of disciplinary proceedings after acquittal in Crl. case and issue of chargesheet is the date of initiation of the proceeding, those decisions are not applicable to the present case at hand, in view of the fact that in the instant case the point is to be decided only as to whether the applicant is entitled for payment of backwages from the date of his notional promotion till the actual promotion. Further

Sharma

more the Learned Senior Standing Counsel for the Respondents has relied upon the decision of the Jodhpur Bench of the Tribunal dated 15.7.1996 in OA No. 171/94 wherein it has been held that "denial of benefits of actual promotion and arrears of pay from the date of giving promotion after exoneration in the disciplinary proceedings can not be sustainable". This decision rather supports the claim of the applicant and the contentions raised by learned counsel for the applicant.

11. After going through the above said decisions and considering the fact and circumstances of the case, we are of the considered opinion that the applicant is entitled for the backwages from 20.1.1988 to 9.12.1990 as has been prayed for by him in this O.A.' But the main point raised by the learned Senior Standing Counsel for the departmental Respondents while opposing the prayer made by the applicant is on the point of limitation.

12. So far as the point of limitation is concerned, the admitted fact is that the applicant's pay in the promotional post was notionally fixed from the date of his notional promotion vide order dated 3.1.1991 seen at Annexure-A/11 but the applicant never bothered to challenge the same within the period of limitation by way of filing any application before any available forum. Further more while the All India Seniority list of Income-tax Officer as on 1.11.1992 was communicated to the applicant vide letter dated 21.10.93, seen at Annexure-A/13, the applicant only submitted his representation on 2.11.93 and thereafter reminders on 3.11.94 and 25.4.95 vide Annexures-

*[Signature]*

A/14, A/15 and A/16 respectively challenging the position of the Respondents <sup>nos 4 to 6</sup> in the above seniority list, who were promoted on the basis of the recommendations of the DPC held in 1986. In the said representation and reminder, he had not sought for any relief with regard to the position in the seniority list published after the DPC held in 1988 or regarding payment of salary w.e.f. 20.1.1988 to 9.12.1990. We have already observed in the foregoing paragraph that so far as the dispute relating to the placement of Respondents 4 to 6 in the All India seniority List of ITOS Gr.B, the same having been done as per the recommendations of the DPC held in 1986 and the applicant having been remained silent for such a long period, the same can not be reopened at this stage as this would amount to unsettling a settled thing.

So far as the point of limitation raised by learned SSC for the Respondents is concerned, even though the applicant has not filed any separate application for condonation of delay in filing the present application, he has relied upon and cited the decision of the Hon'ble Apex Court in the case Collector, Land Acquisition, Anantanag Vrs Katiji reported in AIR 1987 SC 1353 (at Col.3 of the OA). In this regard we have also gone through the decision of the Hon'ble Supreme Court reported in AIR 2000 SC 2306 -State of Bihar and others Vrs. Kameswar pr. Singh and others Vrs. UOI and others, wherein the earlier decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition (supra) has been taken note of. In the case of Collector, Land Acquisition (supra), the Hon'ble Apex Court have been pleased to observe as follows:

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"Refusing to condone the delay can result in meritorious matters being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merit after hearing the parties.

Every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational commonsense pragmatic manner.

When substantial justice and technical considerations are pitted against each other cause of substantial justice deserves to be preferred for the other side can not <sup>claim</sup> to have vested right in injustice being done because of non deliberate delay.

There is no presumption that the delay is occasioned deliberately or on account of culpable negligence or on account of mala fide. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical ground but because of its capable of removing injustice and is expected to do so".

In the case of State of Bihar (supra), the Hon'ble Apex Court while affirming the decisions rendered in the case of Collector, Land Acquisition (supra) on the point of limitation have been pleased to observe that Courts/Tribunals in order to give justice, shall not base on the mere point of technicality of limitation while deciding the matter in issue but the delay should be reasonably explained by the applicant proving to be not deliberate or intentional.

In the instant case, the applicant having not filed any separate application as per Rules explaining the period of delay with a prayer to condone the same, we are not in a position to examine and interfere in the matter relating to payment of backwages, since he had filed the present application, much after the period of limitation keeping in view the order at Annexure-A/11, dt. 3.1.1991.

Why

13. In view of the discussions made above, the Original Application is dismissed as the same is hopelessly barred by limitation. However, there shall be no order as to costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

*Nityananda Prusty*  
(NITYANANDA PRUSTY)  
MEMBER (JUDICIAL)

KNM/CM.