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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.1136 of 2002
Cuttack, this the 25 th day of March, 05

Subel Ch. Mallick

.... Applicant

-VERSUS-

Union of India & others

.... Respondents

FOR INSTRUCTIONS

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

Subanty

(M.R. SUBANTY)
MEMBER (JUDICIAL)

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(B.N. SUD)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 1136 of 2002
Cuttack, this the 15th day of March, 2005

CORAM :

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

.....

Shri Subal Ch. Mallick, son of late Dinbandhu Mallick of village
Rajendra Nagar, P.S. Madhupatna, P.O. Kalyaninagar, Dist-Cuttack-
13.

..... Applicant

BY the Advocates - M/s. G.K.Mishra, G.N.Misra,
S.C.Sahoo.

VERSUS

1. Union of India, represented by Director, General of Posts,
Dak Bhawan, New Delhi-110001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar.
3. The Senior Superintendent of R.M.S., 'N' Division, Cuttack.
4. The H.R.O., 'K' Division, Cuttack.

..... Respondents

By the Advocate - Mr. R.N.Mishra.

.....

Q R D E R

SHRI B.N.SOM, VICE-CHAIRMAN: This O.A. has been filed by Shri Subel Chandra Mallik a retired employee of the Respondent Department in the Cadre of Higher Selection Grade-I (HSG in short) praying for the following reliefs:

- " a) to pass appropriate order for modifying the Annexure-3 so as to allow the applicant to get his full consequential financial benefit including fixing his retirement benefits in higher scale i.e., in the scale the applicant could have reached after getting his promotion to cadre of HSG-I in due date, had he not been proceeded against.
- b) to pass appropriate order to pay the interest @ 16% per annum on the amount of retirement benefits held up for the period of three years after retirement of the applicant till the departmental proceedings was dropped.
- c) to pass further order as deemed proper in the facts and circumstances of the case by allowing original application with cost."

2. The undisputed facts of the case are that applicant was working in the post of B.C.R. sorting Assistant in the year of 1995 when he was promoted to HSG-I against a leave vacancy for about three weeks and in the same year his name was approved for promotion on regular basis to the cadre of HSG-I in the RMS wing. While he was officiating in the post of HSG-I, a departmental proceeding under Rule 14 of CCS (CCA) Rules, 1965 was initiated. He was not, therefore, given regular promotion and was reverted to the lower post with effect from 9.2.1996. In his place, one Shri Duryedham Sethi was given promotion to HSG-I. The applicant retired on superannuation with effect from 30.4.1996. The disciplinary case was converted into a Rule 9 case after his superannuation. Finally, by order dtd. 9.12.99, that is about three years after

his superannuation, the disciplinary case initiated against him was dropped. The applicant's grievance is that after his repeated representation, the Res. No. 2 was kind enough to pass an order dtd. 10.3.92 giving him promotion to the cadre of HSG-I only on notional basis with effect from 1.2.1996; the said order deprived him of the actual financial benefits. To that extent, he has assailed the order passed by the President vide his order dtd. 19.4.1999 (Annexure-1)

3. The Respondents in their counter have taken the position that the applicant although was eligible for promotion to HSG-I, he could not be given that benefit as a disciplinary proceeding was pending against him, and that he has been given the said benefit on notional basis from 1.2.1996 as he had never actually held the charge of that office or because that the post was not filled up by regular appointment before September, 1996, whereas the applicant retired on 30.4.96.

4. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

5. The short question to be answered in this case is whether the plea of the applicant that he should be given financial benefits for promotion from 1.2.1996 in stead of giving him promotion on notional basis is tenable or not in the eye of law. The fact of the matter is that the applicant was approved for promotion to HSG-I on regular basis by the DPC held on 28.12.95. It is also an admitted fact that the vacancy for promotion had occurred on 1.2.1996. Had the applicant not been served

with a Memo under Rule 14 of the Rules, he would have got regular promotion from 1.2.96 and would have enjoyed that benefit till the date of his retirement, that is, 30.4.96. It is only the disciplinary authority who had taken three years to find that there was no case against the applicant. It has been admitted by the President that the allegation against him was that he had issued a certificate in respect of a casual Mazdeer which was on enquiry found to be a mere statement of fact. In other words, the applicant was unnecessarily involved in a major penalty case by mindless exercise of power and as it appears that there was total non-application of mind. Due to such mind less exercise of power it had not only snatched away from the applicant the benefit of promotion to the highest echelon of his cadre at the twilight of his career, but also threw him to ignominy and faced untold miseries for three years after his retirement. Surely, being a victim of such daleus and capricious treatment from the disciplinary authority, he is entitled to full relief ~~to~~ to erase some of his mental agony.

6. We accordingly order that order dtd. 19.4.99 passed by the Res. No. 2 deserves to be modified to met the ends of justice. We accordingly direct ^{that} as the disciplinary case initiated against the applicant was bad in all respects, the applicant is deemed to have been promoted to MSG-I with effect from 1.2.96 and he is entitled to full wages in that scale from 1.2.96 to 30.4.96, when he retired on superannuation, also with all consequential service benefits. We hold that on

account of initiation of an unjustified disciplinary case he is entitled not only to back pay and allowances but also to be compensated for the financial loss suffered by him on account of withholding his full pension, commutation of pension and non payment of other pensionary benefits all these years. We further held that the applicant is entitled to payment of interest at the rate of 11 percent per annum on all his retiral dues. It is needless to emphasise that the applicant had suffered because of the capricious/vindictive attitude of the functionaries of the Respondent Department who had failed to advise the President with due dedication and diligence in the matter of initiation of proceedings under Rule 9 of Pension Rules against the applicant. In the circumstances, we are of the opinion that it is high time the functionaries in the Government are called upon to discharge their functions sincerely, diligently and purposefully, strictly in terms of the D.G., P. & T. 's letter No. 6/19/72-Disc. I dtd. 29.11.1972 wherein the Director General had listed out the types of cases which may merit action for imposing one of the major penalties. A mere reference to the Annexure to that instruction would have made it clear to the concerned functionaries that there was no case for initiating the major penalty action against the applicant. It is also important to note that the Director General, Post and Telegraphs in the said letter of instructions has stated as follows:

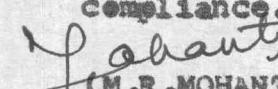
"All the disciplinary authorities may also ^{be} cautioned that failure to take appropriate disciplinary action against the delinquent officials will be viewed adversely"

In this particular case we had no hesitation to hold that the concerned functionaries had thrown to the winds the instructions given in Annexure to the D.G.&P.T. letter referred earlier. To drive home this message that they, under no circumstances, should deviate from the instructions as given in the letter dtd. 29.11.72, we are of the opinion, the amount of interest payable to the applicant should be realised from those functionaries who failed to act in terms of the said letter. ^{In result,} ~~has~~ put extra financial burden on the exchequer. We would here profitably refer to what their Lordships in the case of Ramachandra Keshav Adke Vrs. Govind Meti Chavare and others, AIR 1975SC 915 held that "where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other." In the light of the above postulation of the law of the land, we have no doubt that the concerned functionaries in this case had acted without authority and acted in a forbidden way. They cannot escape facing the consequences of such violation of instructions. We accordingly order that after effecting payment of interest to the applicant on account of delay in payment of his retiral benefits, the Respondents should fix responsibility on those who had recommended initiation of action under Rule 14 and under Rule 9.

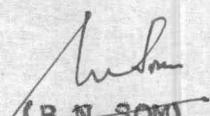
CCS (Pension) Rules against the applicant in total violation of the instructions dated 29.11.1972 referred to earlier. It is high time that the tormentors of the innocent employees are brought to book. No one should be allowed to let loose a reign of terror in the name of instilling discipline.

7. We accordingly order the fixing of responsibility on the erring functionaries and realisation of the amount of interest payable to the applicant from them as ordered above. In passing this order, we are following the ratio of the decision in the case of K.C.Brahmachari vs. Chief Secretary and ors (1998(1) (CAT) AISLJ 383) where the Tribunal was pleased to order fixing of responsibility for colourable use of power by the officers of the Respondent Department. The Respondents are also directed to comply with our orders within a period of 120 days from the date of receipt of this order. Accordingly this O.A. succeeds. No costs.

8. Registry is directed to send a copy of this order to Secretary, Department of Posts, Government of India and Director General of Posts, Dak Bhavan, New Delhi, for compliance.


(M.R. MOHANTY)
MEMBER (JUDICIAL)

SAN/


(B.N. SOM)
VICE-CHAIRMAN