

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 645 OF 1996 WITH MA 239 OF 1996

Present : Hon'ble Mr. Justice S. N. Mallick, Vice-Chairman

Hon'ble Mr. S. Dasgupta, Member (A)

SUSHIL KUMAR DEY
VS

1. Union of India through the Secretary, Deptt. of Personnel Govt. of India, New Delhi
2. Director, C.B.I., CGO Complex, Lodi Road, New Delhi- 110 003
3. Dy. Director (Admn.) C.B.I., CGO Complex, Lodi Road, New Delhi-110 003
4. Superintendent of Police (Hqrs.) CBI, CGO Complex, Lodi Road, New Delhi- 110 003
5. Joint Director, Eastern Zone, CBI, 234/4, AJC Bose Road, Nizam Palace, 15th Floor, Calcutta-700 020
6. Superintendent of Police, CBI, ACB, 234/4, AJC Bose Road, Nizam Palace, 15th Floor, Calcutta-700 020
7. Sri B.B.Mahapatra, U.D.C., CBI, Bhubaneswar Branch through Dy. Director (Admn.) CBI, New Delhi-110 003

..... Respondents

For the applicant : Mr. Samir Ghose, Counsel

For the respondents : Mrs. Kanika Banerjee, Counsel

Heard on : 22.6.98 : Order on : 29.7.98

O R D E R

S. Dasgupta, A.M.:

At the material point of time, the applicant was working as Upper Division Clerk in the office of C.B.I., Calcutta. His next promotional post is the post of Head Clerk / Head Clerk-cum-Accountant which is a non-selection post and the promotion is to be effected on the basis seniority subject to elimination of unfit. The applicant claims that he has

been working all along without any complaint and to the entire satisfaction of the authorities concerned and that his service records are without any blemish. Despite this, one Shri B.B. Mahapatra, who was junior to the applicant was given promotion to the post of Head Clerk-cum-Accountant by an order dated 29.12.94 superseding the claim of the applicant to such post. It is further stated by the applicant that as the said Shri Mahapatra was working in the Bhubaneswar Branch of CBI, he (the applicant) was unaware of the fact that he (Shri Mahapatra) had been promoted and it was only in July 1995 that he came to know of his supersession by Shri Mahapatra and thereafter he submitted a representation dated 31.7.95 to the Director, CBI, New Delhi praying for consideration of his case for promotion which was followed by reminders. But this representation did not receive any response. This has led to the instant OA u/s 19 of the Administrative Tribunals Act, 1985 seeking cancellation of the order dt. 29.12.94 by which Shri Mahapatra was promoted and also for a direction to the respondents to promote the applicant on the post of Head Clerk-cum-Accountant retrospectively from the date his junior was promoted with all consequential benefits. *the filing of*

2. The basic facts have not been disputed by the respondents who have filed a reply. It has been disclosed in the reply that the applicant was considered by the DPC but was found unfit on the ground of certain adverse entries in his ACRs for the years 1990, 1991 and 1992. These remarks, however, were not communicated to the applicant. Subsequently the matter was considered and it was decided to hold a review DPC after taking appropriate action with regard to communication of the adverse remarks. The adverse remarks were thereafter communicated to the applicant on 4.10.96. But the applicant was yet to submit a representation against such adverse remarks.

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3. It, however, appears from the reply filed by the respondents to the Misc. Application No. 239 of 1996, which had been filed by the applicant subsequently seeking an interim order, that the applicant submitted a representation against the adverse remarks in his ACRs on 25.3.97 and the competent authority ordered expunction of the said adverse remarks. Thereafter a review DPC was held on 30.6.97 and the said review DPC recommended promotion of the applicant with effect from the date on which his junior Shri B.B.Mahapatra was promoted. The applicant was accordingly promoted by an order dated 10.7.97 with effect from 3.3.97. Copies of the minutes of the review DPC and the order of promotion dt. 10.7.97 are annexed to the reply to the MA.

4. When the case came up for hearing, the learned counsel for the applicant submitted that the only grievance which still survived was that the applicant had not been given promotion from the date his junior was ~~given~~ ^{originally} given promotion and moreover, the promotion of the applicant although given retrospectively w.e.f. 3.3.97, the same had been made a notional promotion and he had been denied the consequential benefits of arrear of salary for such promotion.

5. We have noticed that the junior to the applicant i.e. Shri B.B.Mahapatra was given promotion by an order dated 29.12.94 (Annexure-B). This order indicated that the promotion of Shri Mahapatra was to take effect from the date of his joining the promotional post. The learned counsel for the applicant submitted that Shri Mahapatra did not take up the promotional assignment until 3.3.97. This position was conceded by the learned counsel for the respondents as well. The learned counsel for the applicant submitted that since junior to the applicant was promoted on 29.12.94, there is no reason why the promotion of the applicant should not be antedated to that date. He also submitted that the applicant

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was also entitled to the arrears of salary appropriate to the higher post as the promotional benefits were wrongfully denied to him.

6. We have carefully considered the aforesaid submissions. There is no denial of the fact that the applicant's supersession on the basis of adverse reports was wholly illegal. This was because such supersession was on the basis of adverse remarks which were never communicated to him. It is settled law that uncommunicated adverse remarks cannot be considered by the DPC. The respondents thereafter communicated the adverse remarks and the same were also expunged by the competent authority. In that view of the matter, the applicant has been denied promotion which he would have normally got on 29.12.94 itself. If the junior of the applicant delayed acceptance of his promotion for his personal reasons, the applicant cannot be held responsible for the same and he cannot be denied promotion from the date when his junior was originally promoted. We are, therefore, of the view that the applicant's promotion should be given w.e.f. 29.12.94.

7. With regard to the question of payment of arrear salary, we have noticed that the order by which the applicant has been promoted specifically indicates that such promotion would be notional w.e.f. 3.3.97 and the actual benefit would be given only after he assumes higher responsibility. The learned counsel for the respondents argued that the applicant was not entitled to higher salary as he did not discharge the duties of the higher post. In support of her argument, she relied on the decision of the Hon'ble Supreme Court in the case of Paluru Ramkrishnaiah -vs- UOI, AIR 1990 SC 166.

8. It has been held by the Hon'ble apex court in a number of cases that the normal rule of no work no pay will not be applicable to those cases where a person has been prevented

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from working for no fault of his. In the case of UOI & Ors -vs- K.V. Jankiraman (1991) 4 SCC 109 it has been held -

" The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his.

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... when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings."

9. In the aforesaid case of K.V. Jankiraman, though the controversy was with regard to denial of promotion on the basis of disciplinary/criminal proceedings, the ratio decidendi with regard to back wages would be applicable with equal force to the case before us where the applicant was prevented from discharging the responsibilities of the higher post due to no fault of his but as a result of faulty administrative decision denying him promotion on the basis uncommunicated adverse remarks.

10. The facts in Paluru Ramkrishnaiah case are different from the facts of the present case. In Paluru Ramkrishnaiah case the appellants were given notional seniority on the basis of a circular which was issued long before the filing of the petition on the allegation that the benefit of that circular was not granted to the petitioners. The decision of the Paluru Ramkrishnaiah case, in our view, cannot be automatically applied to the case before us.

11. We are, therefore, of the view that the applicant is fully entitled to the arrears of salary.

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12. In view of the foregoing, we dispose of this application with a direction to the respondents to promote the applicant with effect from 29.12.94 and to grant him all consequential benefits including the benefit of arrears⁷ salary of the higher post with effect from that date. Let this direction be complied^{with} within two months from the date of communication of this order. MA 239/96 also stands disposed of. The parties are left to bear their own costs.



(S. DASGUPTA)

MEMBER (A)



(S. N. MALLICK)

VICE CHAIRMAN