

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.OA 663 of 96

Present : Hon'ble Mr.S.K.Hajra, Administrative Member
Hon'ble Mr.K.V.Sachidanandan, Judicial Member

ASIT BARAN BISWAS,
S/O Late Biswambhar Biswas,
Asstt. Chief Accounts Officer,
Central Excise, working in the
Central Excise, Revenue Audit,
Govt. of India, Bolpur, W.B.,
R/O Qrt.No.B-2/21, GE Block,
Salt Lake, Calcutta - 91.

.....APPLICANT.

VERSUS

1. Union of India, service through
the Secretary to Govt.of India,
Ministry of Finance, Dept. of
Revenue, New Delhi.
2. The Secretary,
Central Board of Excise and
Customs, New Delhi.
3. The Chief Commissioner,
Central Excise & Customs,
East Zone, Customs House,
15/1 Strand Road,
Calcutta - 700001.
4. The Commissioner,
Central Excise,
Commissionerate,15/1 Strand
Road, Calcutta - 700001.

.....RESPONDENTS.

For the applicant : Mr.D.C.Bhattacharyya, counsel

For the respondents: Ms.U.Sanyal, counsel

Heard on : 4.8.04

Order on : 9.8.2004

O R D E R

K.V.Sachidanandan, J.M.

The applicant who has retired by now from the respondents' department while in service has filed this OA with a grievance that seniority was wrongly confirmed from 16.5.81 instead of 1.11.66, also fixing his pay arbitrarily vide order dated 27.12.91 ordering not to pay any arrears despite the order of the Ministry of Finance to disburse full pay and allowances for the period of suspension from 18.1.71 to 16.7.79.

2. The applicant has filed this OA seeking the following reliefs :

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a) an order to issue directing the respondents specially No.2,3 & 4 to quash the impugned order dated 27.12.91 (Annexure 'J') and 27.8.92 (Annexure 'P').

b) an order to pay the arrears of pay and allowances as prayed in Annexure 'Q' dated 2.11.93, Annexure 'K' dated 2.3.92.

c) an order to recalculate the fixation of pay.

3. The applicant's case is that he belonged to SC community, joined on 27.10.64 in the post of Lower Division Clerk and those who have joined along with him were promoted on an earlier date and he should have been promoted as Upper Division Clerk from 24.12.70. As his immediate junior was promoted to the said post, he was not promoted as on 24.12.70 as he was falsely incriminated in a Disciplinary Proceeding consequent to which he was placed under suspension from 18.1.71. It is further averred that Hon'ble President of India in consideration of his memorial pointing out the injustice meted out to him was pleased to order that the entire period of his suspension from 18.1.71 to 18.7.79 be treated as duty for all purposes and he was promoted at a deferred date i.e. 31.3.83.

4. The respondents have filed a detailed reply statement contending that one of his representations has been duly replied with a speaking order and the promotion to the cadre of Upper Division Clerk is based on seniority-cum-merit and the recruitment panel did not find the applicant fit at the appropriate time. This is borne out from Annexure R/1 the order which is produced along with the ply. He was confirmed w.e.f. 1.9.73 in the cadre of Lower Division Clerk the date from which his immediate junior was confirmed. His allegedly junior P.K.Mondal was promoted to the cadre of Upper Division Clerk earlier on the basis of his early confirmation and according to the merit in the recruitment panel Shri Mondal was senior and therefore it cannot be faulted. The applicant never assumed the charge as Upper Division Clerk and DOS L-III and did not work in these cadres at the disputed period. Therefore he is not entitled to any arrears as claimed by him and he has been given appropriate promotion in giving effect to the order of the President of India.

5. The applicant has filed a detailed rejoinder reiterating his

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case in the OA.

6. Mr.D.C.Bhattacharyya, ld.counsel appears for the applicant and Ms.U.Sanyal, ld.counsel appears for the respondents. Ld.counsel for both sides have taken us to the various pleadings, evidence and averments made therein.

7. Ld.counsel for the applicant argued that though the applicant was placed under Disciplinary Proceeding in early 1971 and ultimately dismissed from service in 1979 on contemplated charges when he was Lower Division Clerk, after acquittal from the Court of Law he was exonerated in the Disciplinary Proceeding as well and the entire period of suspension from 18.1.71 to 16.7.79 was treated as spent on duty for all purposes except for pay which was restricted to the subsistence allowance already granted. He has also admitted that his seniority was restored and the applicant deemed to have been promoted in the grade of Upper Division Clerk in 1972, DOS (L-II) in 1985 and DOS(L-I) in the year 1988 vide order dated 1.6.89. Although such notional and deemed promotion was granted no arrears were sanctioned and he is entitled for all arrears with retrospective effect from the respective dates of promotion. He has also cited two decisions of the Hon'ble Supreme Court in (a) State of Mysore -vs- C.R.Seshadri reported in AIR 1974 SC 462 and (b) Ms.Asha Rani Lamba -vs- State of Haryana & Ors. reported in 1983(1) SLR 400 and argued that the Hon'ble Supreme Court has laid down a dictum that arrears of pay resulting from retrospective promotion should be paid even though the employees had not worked in the higher post.

8. Ld.counsel for the respondents on the other hand vehemently argued that the applicant had no occasion to work on the promoted post and the claim of arrears that he is now making for the disputed period was when he was out of employment. The dictum laid down by the Supreme Court is to the effect that when an employee continues in work and his legitimate promotion is not granted and subsequently notional promotion is granted, it is the employee's right to get all arrears despite the fact that he has not worked in the promoted post. Here the

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fact of situation is different i.e. the applicant has never worked at the appropriate time since he was out of employment. Therefore the decisions of Supreme Court relied upon is not applicable in this case.

9. We have gone into the consideration of the arguments advanced by the ld.counsel for both sides. It is an admitted fact that the applicant was dismissed from service and he was out of employment and by the intervention of the Presidential order he was directed to be reinstated with a specific direction that the applicant was exonerated in the Disciplinary Proceeding and the entire period of suspension from 18.1.71 to 16.7.79 be treated as spent on duty for all purposes except for the pay which was restricted to the subsistence allowance already granted. This was reflected in the order dated 27.1.91 (Annexure 'J') wherein the respondents have made it clear that the applicant is not entitled to get any monetary benefit with retrospective effect. Neither of the parties were able to produce the Presidential order which is very crucial but on going through the impugned order and other materials produced before us we find that the spirit of the Presidential order is to reinstate the applicant with retrospective effect notionally but not to grant the arrears. On the other hand it is made clear that except for the pay he should be treated as spent on duty for the suspension period from 18.1.71 to 16.7.79 and the pay was restricted to the subsistence allowance already granted. In other words it only means that the applicant must be satisfied with the subsistence allowance and nothing more that he can claim on this ground. We have also analysed the judgments cited above by the ld.counsel for the applicant and we are of the considered view that in these judgments of the Apex Court the applicants have been in continuous employment in the lower post and this was in actual service of the Govt. in the lower capacity but subsequently promoted with retrospective effect, then the Supreme Court said that since they were in employment, actual arrears cannot be denied to them, no matter whether they are holding the lower post. But in this case the situation was entirely different. The applicant was not in employment

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and he was under suspension and dismissal thereafter and receiving subsistence allowance for the suspended period. The presidential order which was reflected through the subsequent orders and the representation made by the applicant dated 12.11.93 at page 65 of the OA is very clear on the point and we are of the view that the applicant is not entitled for any arrears of pay as claimed by him. Since the applicant has already been promoted on notional basis the question of seniority does not arise for the time being. The only grievance of the applicant left is arrears of pay which in our view the applicant is not entitled to get as observed above.

10. With the above observation we are of the view that the OA does not merit and it has to be dismissed.

11. The OA is accordingly dismissed. No order as to costs.



MEMBER (J)

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MEMBER (A)