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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 137/1996.

Jodhpur the 3rd day of Oct. 1997.

M.S.Dhillon S/o Shri Achhar Singh
aged 51 years, Senior Technical
Assistant, Central Customs,
Division Jodhpur. Applicant.

Vs.

1. Union of India through the
Secretary to the Government,
Ministry of Home Affairs,
New Delhi.
2. Commissioner, Central Customs
and Excise, Rajasthan, Jaipur. Respondents

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CORAM :

THE HONOURABLE MR.A.K.MISRA, JUDICIAL MEMBER.

Mr.Vijay Mehta, counsel for the applicant.
Mr.P.P.Choudhary, counsel for respondents.

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BY THE COURT :

The Applicant has filed this Original Application with the prayer that the order passed by the respondents Annex.A/1 be quashed and respondents be directed to pay arrears of Pay with interest of the

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promoted post , to the applicant w.e.f. 26.8.1992 and make fixation accordingly.

2. Notice of this Original Application was given to the respondents who have filed their reply in which they have said that the applicant was given notional promotion under the orders of the Tribunal from the date his junior was promoted i.e. 26.8.1992. Since the applicant had not worked on the promotional post, he is not entitled to pay and allowances of that post. The O.A. is not maintainable.

3. I have heard the learned counsels for the parties and gone through the record.

4. The applicant in an earlier O.A. No. 252 of 1993 had challenged the promotion of Shri V.P.Tak, w.e.f. 24.8.1992. That O.A. was accepted on 11.7.1994 and the order to the following effect was passed in that O.A.:-

"we accept the petition and quash the order Annex.A/1 dated 24.8.1992 by directing the respondents to consider afresh the matter of appointment without applying the policy of reservation if there is only one post."

Thereafter, the concerned authorities considered the case of the applicant and passed an order on 17.2.1995 (Annex.A-2) , promoting the applicant w.e.f. 26.8.1992 in the grade of Senior Technical Assistant in the Pay Scale of Rs. 1640-2900. Consequently, the Senior Technical Assistant Shri V.P.Tak was reverted. After promotion the pay of the applicant was fixed vide order Annex.A/3 against which the applicant preferred a representation which was rejected vide letter dated 9.8.1995 (Annex.A/1). The applicant has now come up before the Tribunal with the claim that from the date he was promoted i.e. 26.8.1992, he should be paid

arrears alongwith interest. The respondents have refuted the claim on the ground that applicant is not entitled for arrears of pay because he had not worked on that promotional post.

5. I have considered the rival arguments. In the order passed relating to the applicant's earlier O.A. there was a direction to the respondents to consider the case of the applicant afresh without applying the policy of reservation. In the order, it was not mentioned that in case the applicant is found fit to be promoted then he should be promoted with all consequential benefits. The Department considered the case of the applicant without applying the policy of reservation and promoted him from the back date vide its order at Annex.A/2 dated 17.2.1995. But he was not allowed arrears of pay in terms of Government order which I think is correct according to the present position. Earlier, promotion of Shri V.P.Tak was done keeping in view the Government Circulars on the subject. The Departmental interpretation of those circulars was held not correct by the Tribunal and consequently, the promotion of Shri Tak was set aside. There is nothing on record to show that the Department omitted to promote the applicant intentionally or the claim of the applicant regarding promotion was unlawfully not considered. This is a case in which reservation policy was followed by the Department and promotion of Shri V.P.Tak was made. There is no observation in the earlier judgment that the Department had intentionally given a wrong interpretation to the promotional reservation policy of the Government to Shri Tak. The Tribunal in its previous order had only observed that the respondents have not correctly applied the reservation policy in case of one vacancy.

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6. The learned counsel for the applicant has cited AIR 1991 SC 2010 - Union of India etc. Versus K.V.Janakiraman and Others, and has argued that the employee cannot be denied salary of promotional post on the principles of 'no work no pay' because the employee was kept away from work by the authorities for no fault of his, therefore, the applicant is entitled for arrears of pay.

7. I have gone through the ruling but in my opinion the rule propounded in this case is not applicable in the case in hand. In this case, the authorities adopted sealed cover procedure pending preliminary investigation whereas, the requirement is that sealed cover procedure should be followed when the employee has been chargesheeted and it is in these circumstances, the Hon'ble Supreme Court held that the employee was wrongfully deprived of his dues. However, the present case is absolutely different than the case cited supra. For the same reason, the judgment rendered in O.A.No.249 of 1993 - Chandra Dutt Sharma Versus Union of India and Ors. by the Jaipur Bench of the C.A.T. cannot be made applicable. The rulings cited by the learned counsel for applicant do not help the applicant. The payment of arrears from the date of notional promotion cannot be ordered in a routine manner. In this case , as observed earlier, there was no intentional deprivation of the applicant's promotion by the respondents. Moreover, the applicant himself had filed earlier O.A. almost one year after the original order promoting Shri Vijay Pal Tak,, was passed. The Department had not unusually delayed the matter of promotion after the direction of the Tribunal. For all these reasons, I am of the opinion that applicant is not entitled for arrears of pay of the promotional post from the date he was given promotion vide order Annex.A/2. The

12

Original Application in my opinion, deserves to be dismissed.

8. The Original Application is, therefore, dismissed. The parties are left to bear their own costs.

3/3 in 3/10/97

(A.K.MISRA)

Member (Judicial)

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