

212
213

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

Original Application No. 04/2003
Date of decision: 25.01.2007

**Hon'ble Mr. J K Kaushik, Judicial Member.
Hon'ble Mr. R R Bhandari, Administrative Member.**

Bhanwar Singh Badgujar, S/o Shri Ratan Singh aged about 49 years
r/o Gol Jogmaya Ka Mandir Maderna Colony, official address Clerk,
Office of the Joint Commissioner of Income Tax (DR) ITAT, Jodhpur.

: Applicant.

Rep. by Mr. Kamal Dave: Counsel for the applicant.

VERSUS



1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. The Chief Commissioner of Income Tax (Administration) Central Revenue Building, Bhagwandas Road, Jaipur.
3. The Commissioner of Income Tax ITAT Jaipur.
4. The Addl. Commissioner of Income Tax(System) Aayakar Bhawan, Lal Maidan, Jodhpur.
5. Shri Prem Singh Tanwar, Tax Assistant, office of the Deputy Commissioner of Income Tax, Sriganganagar through the Chief Commissioner of Income Tax (Admn) Jaipur.
6. Shri Kamlesh Kumar Meena, Tax Assistant, Office of the Income Tax Officer (in charge) Hanumangarh through Commissioner of Income Tax Bikaner.
7. Shri Sandeep Chaterjee, Tax Assistant Office of the Income Tax Officer (in charge) Hanumangarh through the Chief Commissioner of Income Tax(Admn) Jaipur.

: Respondents.

Rep. by Mr. Vinit Mathur : Counsel for respondents 1 to 4
None present for respondents 5 to 7

ORDER

Per Mr. J K Kaushik, Judicial Member.

Shri Bhanwar Singh Badgujar has prayed for his promotion from a date, prior to the date when his juniors were so promoted, by modifying the impugned orders Annex. A/1, A/2 and A/2-A, with all the consequential benefits.

2. We have heard the learned counsel representing the contesting parties at a considerable length and have carefully perused the

RF

123
2/4

- 2 -

pleadings as well as records of this case. The factual background of this case depicts that the applicant was initially appointed as Peon on 13.05.1977. He earned promotion to the post of LDC with effect from 13.03.95. As per the normal avenue of promotion for the post of UDC from the feeder post of LDC, one is required to qualify in the departmental examination and the promotion is to be granted on availability of vacancies. The applicant has qualified in the departmental examination for the post of UDC in the year 1999 vide order-dated 16.02.2000, wherein his name is placed at Sl. No. 23, against Jodhpur Centre. Subsequently, the requirement of passing the computer examination was introduced replacing the post of UDC by new post of Tax Assistant providing various channel of promotion. Instructions were issued to supplant the rules. The case of persons who had earlier passed the departmental competitive examination were being ignored. Number of employees were promoted as Tax Assistant for the reason that they have qualified in the computer test vide order dated 29.09.2001 (Annex. A/2) including his juniors at Sl. No. 2,3,4,5,6,7 and 8. The applicant also qualified in the computer test on 19.02.2002, but vide Annex. A/1 juniors to the applicant such as S/Shri Prem Singh Tanwar, Kamlesh Kumar meena and number of others were accorded promotion. Being aggrieved, the applicant has moved this Bench of the Tribunal and during the pendency of this O.A, an order dated 30.10.2003 (Annex. A/2-a) came to be passed, according to which the applicant has been granted promotion at par with his next junior on notional basis and without actual arrears, for the period during which he remained in the feeder post. The Original Application has been filed on numerous grounds mentioned in para 5 and its sub paras, which shall be dealt with in the later part of this order.

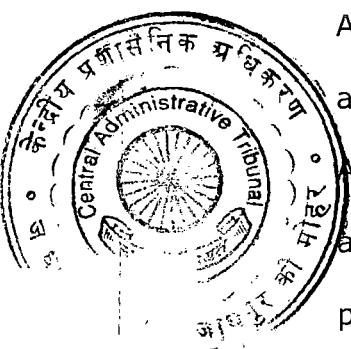


DR

524
2/15

3. The official respondents have contested the O.A by filing a detailed and exhaustive reply. Though notices were served on the private respondents yet they have not chosen either to be represented by counsel or in person. In the reply, the official respondents have averred that though the applicant had qualified in the departmental examination, his case could not be considered at the relevant time as the intimation regarding the passing of the departmental examination could not be placed before the DPC and thereafter as per embargo put through the instructions dated 26.09.2002, no DPC for the cadre of Office Superintendent and Tax Assistant could be convened since new recruitment rules for the above posts were under preparation. Thus, the applicant in this case could not be promoted to the post of Tax Assistant as per his turn. It is further averred that as per the rules as and when the pre-restructuring LDCs get promoted to the post of Tax Assistant, they will regain their original seniority and therefore, the applicant will never suffer any amount of loss and his case will be placed at par with his juniors. Subsequently, a review DPC was convened and he was promoted to the post of Tax Assistant with effect from 25.03.2002, the date from which his immediate junior was promoted. The respondents have relied on the case of Parvez Ahmed vs. UOI [OA. No. 174/2003 decided on 16.04.2004], wherein it has been held that the applicant therein is not entitled to back wages and arrears on the analogy of 'no work no pay'. The grounds raised by the applicant have generally been denied.

4. Learned counsel for the applicant has reiterated the facts and grounds mentioned in the pleadings of the application and has submitted that the Hon'ble High Court of Rajasthan in D.B. Civil Writ Petition No. 4227/2002 and ors- **Union of India vs. CAT & ors** decided on 10.09.2003, have held that each case shall have to be



sh

S/No 2/16

decided on its own merits. Certain other judgements have also been referred to.

5. Per contra, the learned counsel for the official respondents submitted that there was a mistake on the part of the respondent authorities and the fact of passing of the departmental test by the applicant in the year 1999 was not brought to the notice of the DPC. He has submitted that the mistake has been subsequently rectified and the applicant has now been granted the promotion from the due date by restricting the arrears of pay on the basis of 'no work no pay' and this position is amplified by one of the decisions of this Bench of the Tribunal in the case of **Parvez Ahmed** (supra). Therefore, no fault can be fastened with the action of the respondents and the O.A deserves to be dismissed.

6. We have considered the rival submission put forth on behalf of both the contesting parties. As far as the factual facet of the case is concerned, it is not in dispute that the applicant was entitled for consideration of his promotion from 25.03.2002, i.e. from the date his immediate junior was promoted. It is also admitted position of the case that the relevant papers were not placed before the regular DPC and there was a categorical mistake on the part of the concerned official(s). There was neither any mis-representation nor any fault on the part of the applicant. It is also not the case of any of the parties that there were some other contingencies like correction of seniority or assignment of appropriate seniority or delayed appointment etc. It is a simpliciter case of mistake committed by the authorities. There was negligence on the part of the official (s) of the respondents' department in not putting the proper facts and papers before the regular DPC.



7. As regards the case of **Parvez Ahmed** (supra) is concerned, the facts in that case are dissimilar in as much as in that case there was no dispute regarding the assignment of seniority and the seniority in that case was corrected at a later date. Further the said Parvez Ahmed was also not appointed in time and his appointment was also made belatedly. In the instant case such is not the position. Therefore, the said decision is not of any help to the respondents.

8. We have taken judicial notice of the judgement of the Hon'ble High Court of Rajasthan in the case of **UOI vs. CAT and ors** (supra) and following the ratio of the same, we proceed to examine the controversy keeping in view the merits of this case. The factual aspect of the case has been narrated above. As far as the legal aspect of the case is concerned, the Hon'ble Apex Court has exhaustively dealt with the concept of 'no work no pay' in a number of cases and the principle of law has been laid down when one is willing to work on a particular post and if he is prevented to perform his duties, he would be entitled to the due salary and in case of denial, the authority is required to give reasons for the same. The extracts from the relevant portions from the following judgements are reproduced as under:

"Union of India, etc. etc., v. K. V. Jankiraman, etc. etc., AIR 1991 Supreme Court 2010 (para 7). The relevant portion from the same is extracted as under:

We are not much impressed by the contentions advanced on behalf of the authorities. 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. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

**Sri Kantha S.M vs. Bharath Earth Movers Ltd. [2005 8 SCC 314]
Para 29**

"We must frankly admit that we are unable to uphold the contention of the respondent Company. A similar situation had arisen in J N



12/18

-6-

Srivastava [1998 SCC (L&S) 1251] and a similar argument was advanced by the employer. The court, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him

9. By applying the aforesaid principle of law, we find that the ratio laid down squarely applies to the facts and circumstances of the instant case. Therefore, there is force in the contention of the applicant that there being no fault on his part, the rule of 'no work no pay' should not have been applied in his case. There cannot be a premium for a wrong. However, we are also conscious as to why the Public Exchequer should be encumbered with the liabilities caused due to the wrong committed by official (s) responsible for putting up the papers to the DPC. We would be safeguarding the same by giving liberty to the respondents department for recovering the amount involved from the salary of the erring officials by fixing responsibility and serving them with show cause notice etc.

10. In the premises, we reach to an inescapable conclusion that there is ample force in this O.A and the same stands allowed accordingly. The respondents are directed to make actual payment of arrears for the period during which he had been granted the notional promotion. He shall be entitled to all consequential benefits. The impugned orders at Annex A/1, A/2 and A/2-a stand modified accordingly. Liberty is given the respondents department for recovering the amount involved from the salary of the erring official (s), but after following the due procedure and establishing the responsibility thereof and serving show cause notice etc. No costs.

R.R.Bhandari

(R.R Bhandari)
Administrative Member

J.K.Kaushik

(J K Kaushik)
Judicial Member.

Jsv.



Copy
M2112

copy few
R-RS order
G10

No need send copy
to R-RS to R-R
A5 order by 50%
new copy sent to library

for KANAL
DALE
6/10/13
appd
2/2

Q Y

