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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH, JODHPUR**

**ORIGINAL APPLICATION NO. 174/ 2003**

Date of decision: this the 16 day of April, 2004

**CORAM:**

**Hon'ble Mr. M.L. Chauhan, Judicial Member**

**Hon'ble Mr. G.R. Patwardhan, Administrative Member**

Parvez Ahmed S/o Sh. Nasrullah Siddique, Aged about 32 years, R/o 1/7, Income Tax Colony, Mandore Road, Jodhpur (Rajasthan).

Presently working on the post of Senior Tax Assistant in the office of Commissioner of Income Tax II, Paota C-Road, Jodhpur (Rajasthan).

...Applicant.

(Rep. By Mr. S.K. Malik, counsel for the applicant)

**v e r s u s**



- (1) Union of India, Though the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
- (2) The Chief Commissioner of Income Tax, Statue Circle, C R Building C-Scheme Jaipur (Rajasthan).
- (3) The Chief Commissioner of Income Tax, Paota, C- Road, Jodhpur (Rajasthan).

....Respondents

(Rep. By Mr. Vinit Mathur, for the respondents)

**ORDER**

**PER M.L. CHAUHAN, JUDICIAL MEMBER**

The sole question which requires our consideration is as to whether the person who has been given notional promotion, is entitle to back wages for the period during which he has not worked on promoted post. For deciding this question, few facts, which are relevant, may now be noticed. The applicant along with Smt. Pinky Lakhani and Shri Rajeev Agarwal (respondent

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No. 4 & 5, respectively, in earlier O.A. No. 255/2000,) were selected as LDCs by Staff Selection Commission in the year 1993. In the merit list, the applicant was placed above the said two persons. The applicant was given placement in All India Radio at Bikaner whereas the aforesaid two persons were given appointment in Income Tax Department in Rajasthan. Since, the applicant could not be appointed in All India Radio at Bikaner for want of vacancy, he was offered an appointment vide letter dated 22.2.1996 in Income Tax Department in Rajasthan and he joined his duties on 07.03.1996. Subsequently, seniority list for the post of LDCs as on 01.01.1998 was issued vide letter dated 25.02.1999, whereby the applicant was shown at Sl. No. 106 whereas the aforesaid two persons were shown at Sl. No. 94 and 95, respectively.

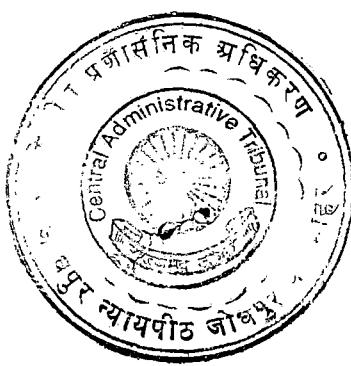
2. The applicant aggrieved with the seniority list, filed an OA before this Tribunal which was registered as O.A. No. 255/2000 alongwith the application for condonation of delay. The said Original Application was allowed vide order dated 24.07.2001 and this Tribunal in operative para of the order directed the respondents No. 1 and 2 to assign seniority to the applicant as per his merit position in the recruitment panel to the post of LDC and place him above respondents No. 3 & 4 in the impugned seniority list dated 25.2.99. It was further observed that the applicant is also entitled to all consequential benefits at par with his next junior.



3. It is not disputed that the applicant has been assigned seniority over and above the aforesaid two persons and he has also been granted consequential benefit at par with his next junior, so far as the post of LDCs, is concerned.

4. The grievance of the applicant is that he has been notionally promoted to the post of U.D.C. and then on the post of Senior Tax Assistant vide order dated 9<sup>th</sup> July, 2002 (Annexure A/1), but he has been declined the arrears of pay and allowance on account of notional promotion. It is this order against which the present O.A. has been filed by the applicant and in relief he has prayed that respondents be directed to grant arrears of pay and allowances w.e.f. 14<sup>th</sup> October 1998 to 9<sup>th</sup> July, 2002 on the promotion to the posts of UDC and Senior Tax Assistant along with interest @ 12% p.a.

5. Notices of this application were given to the respondents. Respondents have filed reply to the Original Application. In the reply, it has been stated that in compliance of the direction issued by this Hon'ble Tribunal, the applicant has been granted all the benefits due as per law applicable in the present case. The case of the applicant for granting arrears on account of promotion to the post of UDC and Senior Tax Assistant was examined by the competent authority and the same was rejected vide order dated 09.07.2001 (Annexure A/1). It is further stated that on receipt of this Hon'ble Tribunal's order dated 24<sup>th</sup> July, 2001, the seniority list of the L.D.C. was revised granting the higher seniority position to the applicant above the aforesaid two



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private respondents and the action was also taken simultaneously for the grant of all other consequential benefits by means of reference being made to CBDT seeking relaxation in the recruitment rules for promoting the applicant as UDC. It is further stated that the representation of the applicant dated 16<sup>th</sup> July, 2002 was received by the respondents and the same was submitted to the Board for seeking instructions in the matter of arrear and the Board vide letter dated 3<sup>rd</sup> June, 2002 has already denied the payment of arrears to the applicant. The Board vide letter dated 20<sup>th</sup> Jan., 2004 also forwarded a copy of the DOP&T's notings containing their view on the issue. In terms of F.R. 17, arrears of pay and allowances are not admissible on notional promotion.

6. We have heard the learned counsel for the parties and carefully perused the records of the case.

7. The learned counsel for the applicant submits that in view of the law laid down by the Hon'ble Apex Court in the case of **Union of India vs. K.V. Jankiraman** reported in AIR 1991 SC page 2010, **Vasant Rao Roman vs. Union of India, through the Central Railway, Bombay and Others** reported in 1993 Supp (2) SCC 324, **Food Corporation of India vs. S.N. Nagarkar** reported in 2002 (1) Supreme 364, the applicant is entitled to the arrears of emoluments on the promoted post. The learned counsel for the applicant has also relied upon the decision of the Hon'ble Rajasthan High Court [Jaipur Bench] in the case of **Dr. Ram Kumar & Anr. Vs. State of Rajasthan**



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**and others** reported in 1998 (3) WLC (Raj.) page 140 whereby the applicant was granted only 10% allowance for a period of six months, as per Rules, and the State was directed to pay the arrears of salary till the date of their regular selection.

8. On the contrary, the learned counsel for the respondents submits that the applicant is not entitled to any arrear of pay on account of his promotion on notional basis, in view of the provisions contained under FR 17 as well as law laid down by the Apex Court in the case of **State of Haryana and others vs. O.P. Gupta and others** reported in 1996 SCC (L&S) page 633 and also decision of **A.K. Soumini vs. State Bank of Travancore and another** reported in (2003) 7 SCC 238. The learned counsel for the respondents has also drawn our attention to the decision of Hon'ble Rajasthan High Court in the case of **Union of India & Ors. vs. C.A.T. & Ors.** reported in 2004 (1) ATJ 141 whereby it was held that where the promotion is made on notional basis, on the principle of "no work no pay", person is not entitled for back wages.

9. We have given our due consideration to the submission made by the learned counsel for the parties and the case law referred to by both the parties. We are of the view that the applicant has not made out any case for our interference.

9.1 So far as in the case of **Union of India vs. K.V. Jankiraman** (supra), is concerned, the facts of that case are entirely different. That was a case where the respondents were kept under suspension during the



departmental inquiry and sealed cover procedure were adopted because of criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, the Apex Court held that he was entitled to arrear of the salary. That ratio has no application to the cases where the claim for promotion are to be considered in accordance with the rules and the promotion are to be made pursuant thereto.

9.2 Similarly, the applicant cannot take any assistance from the decision of the Hon'ble Apex Court in the case of **Vasant Rao Roman vs. Union of India, through the Central Railway, Bombay and Others** (supra). The facts of that case are entirely different. In that case, the Tribunal has denied the arrear of emoluments to the promotion post on the basis of instruction issued on Dec. 22, 1964 and also on the principle of 'no work no pay'. The Apex Court in para 4 has specifically held that the Tribunal has wrongly applied aforesaid memorandum in the case of applicant as the applicant was neither under suspension nor any disciplinary proceedings were pending against him. Rather; the Tribunal has allowed the petition filed by the applicant regarding seniority over his junior and as such in the facts and circumstances of the case, Apex Court held that we do not find any justification whatsoever for not allowing the arrear of emoluments to the appellant on the post of Shunter "B". Thus, from the



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observation made above, it can safely be concluded that the Apex Court has not decided as a matter of principle that where junior person has been promoted, the senior person who has been granted notional promotion should also be granted back wages in all cases. Rather; as stated above, the relief was granted to the appellant thereof, in the facts and circumstances of that case as can be seen from para 4 of the judgement, thus, the applicant cannot be taken any assistance from this decision also. Further no finding was given by the Apex Court on the point that on the principle of 'no work no pay' on a particular post, the appellant therein was not entitled to any arrear of pay.

9.3 Similarly, the decision of the **Food Corporation of India vs. S.N. Nagarkar** (supra) was also rendered in the facts and circumstances of that case. In that case Hon'ble High Court has given specific direction to the respondents to give benefit of pay fixation to the petitioner as Assistant Grade II and Assistant Grade I and also to consider his case for promotion to the post of Assistant Manager (D) from a date persons junior to him have been promoted. It was further observed that this exercise must be completed within a period of four months from the date of submission of a certified copy of this order. The arrears of pay shall be paid to the petitioner within one month thereafter. In case the amount of arrears is not paid



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within this period, the petitioner shall get interest @ 18% from the date of this order. In view of the specific direction given by the Hon'ble High Court, it was observed that while disposing of the writ petition, it was held that the respondents (petitioner in the writ petition) was entitled, in terms of the order dated 6<sup>th</sup> May, 1994, to arrears of pay and allowances with effect from the date he was granted the two promotions, and not from the date he joined the promotion posts. It was further observed that the name of the applicant was not included in the relevant panel by mistake, thus, he was deprived of his promotion to Assistant grade I and his further promotion to the cadre of Assistant Manager (D). It is on the basis of these facts, the Apex Court in para 20 of the judgement held that their Lordships are not called upon to pass a judgement on the correctness of the order passed by the learned Judge in Civil Writ Petition No. 4983 of 1993 dated 6<sup>th</sup> May, 1994. The only question that arises for consideration is whether under the said judgement and order, the respondents is entitled to the arrears of pay and allowances from the date of promotion. In the view of the Apex Court, the learned Single Judge as well as the Division Bench has held that the respondents in the writ petition is entitled in terms of the order dated 6<sup>th</sup> May, 1994, to arrears of pay and allowances with effect from the dates he was granted the two promotions, and not from the date he joined the promotional posts. Thus,



on the question whether on notional promotion, person is entitled for back wages on the principle of 'no work no pay' no finding was given by the Apex Court. As such the case law as cited by the learned counsel for the applicant is of no assistance in the facts and circumstances of this case.

9.4 Similarly, the decision rendered by the Hon'ble Rajasthan High Court in the case of **Dr. Ram Kumar & Anr. Vs. State of Rajasthan and others** (supra) is also not attracted in the present case.

9.5 According to us, the case is squarely covered by the decision of the Apex Court in the case of **State of Haryana and others vs. O.P. Gupta and others** (supra) where the question involved was whether respondents are entitled to the arrear of salary on account of notional promotion. In that case Supreme Court directed the Department to prepare fresh seniority list strictly in accordance with rules and any promotion already made shall not be disturbed. Following the directions, seniority list was prepared and promotions were also given from the due date, though there was no specific direction in that behalf given by the Apex Court. Only direction given was to prepared seniority list. In the instant case also, the direction had been issued by this Tribunal to assign the seniority to the applicant as per merit position in the recruitment panel to the post of LDC



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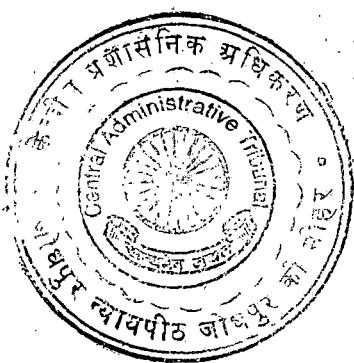
and place the applicant above the respondents No. 3 and 4 in the impugned seniority list dated 25.02.1999 and the applicant was also held entitled to all consequential benefits at par with his next junior. There is no specific direction that applicant be also promoted to higher posts.

The respondents has not only prepared the fresh seniority list pursuant to direction given by this Tribunal in the category of LDC but the applicant has also been given back wages on the said post. There is no direction that on the basis of fresh seniority list, the applicant be given promotion from the due date. Thus, the facts of this case are almost identical to the facts, which was before the Apex Court in the case of **State of Haryana and others vs. O.P. Gupta and others** (Supra). At this stage, it will be useful to extract para 7 of the judgement, where the Apex Court has relied on the earlier decision in order to decide the matter in controversy, which reads as under:

"7. This Court in *Paluru Ramkrishnaiah v. Union of India* (SCR at p. 109; SCC p. 556, para 19) considered the direction issued by the High Court and upheld that there has to be "no pay for no work", i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in *Virender Kumar, G.M., N. Rlys. V. Avinash Chandra Chadha* (SCC p. 482, para 16)."

Ultimately, Apex Court in para 9 held that "Consequently, the payment of arrears of salary does not arise since, admittedly the respondents had not worked during that period."

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Thus, in view of the law laid down by the Apex Court in the case of **State of Haryana and others vs. O.P. Gupta and others** (Supra), the applicant is not entitled to any relief. Similarly, the Apex Court in the case of **A.K. Soumini vs. State Bank of Travancore and Another** (supra) has held that where retrospective promotion is given, person is not entitled to arrear of pay on account of 'no work no pay'. Similarly, the Hon'ble Rajasthan High Court in the case of **Union of India & Ors. vs. C.A.T. & Ors.** reported in 2004 (1) ATJ 141 whereby the applicant was not at all entitled for arrears on account of notional promotion on account of no work no pay.

10. What has been said and discussed above, the Original Application is dismissed with no order as to costs.

  
**(G.R. PATWARDHAN)**  
**Adm. Member**

  
**(M.L. CHAUHAN)**  
**Judl. Member**

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