

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. O.A. 27 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. B.P. Singh, Administrative Member

K.K. SINGH

VS.

UNION OF INDIA & ORS.

For the applicant : Mr. R.K. De, counsel

For the respondents : Mr. S.K. Dutta, counsel

Heard on : 16.3.2001

Order on : 16.3.2001

O R D E R

D. Purkayastha, J.M.

In this O.A. the applicant has prayed for fixation of his pay in the promotional post of Deputy Director(Language) w.e.f. 23.8.1996 i.e. the date when he took over the charge of the post in accordance with the promotion order dated 21.8.1996 (Annexure A-1 to the O.A.) with all other consequential benefits.

2. The applicant while functioning as Assistant Director (Language) in the Central Hindi Directorate, New Delhi, was promoted to the post of Deputy Director(Language) in the scale of pay of Rs.3000-4500/- alongwith another person namely Dr. Vinendra Saxena as per promotion order dated 21.8.1996 (Annexure A-1). A gazette notification to that effect was also issued. The applicant by a representation dated 26.8.96 inter alia stated that he assumed charge of the post of Deputy Director on and from 23.8.96 (Annexure A-2 to the O.A.). However, an order was issued on the same date

i.e. on 23.8.1996 by which the applicant was posted at Guwahati as Deputy Director(Annexure A-3). Against the said posting order, the applicant made representation for posting at New Delhi on the grounds stated therein. The representation was replied to by a Memo dated 13.9.96(Annexure A-5) by which he was informed that his claim for posting against a particular post cannot be sustained and he was asked to take charge of the Guwahati office. The applicant made subsequent representations. By a memo dated 18.10.96 he was again asked to join at Guwahati and it was specifically ~~provided~~^{Stated} that if he failed to do so it would be presumed that he was not interested in promotion. The applicant again made representation and finally by a memo dated 6.11.96 he was posted at Calcutta and was directed to join there immediately. It is specifically mentioned in this order that his promotion in the post of Deputy Director(L) shall take effect from the date he actually takes over the charge of new assignment. The applicant took over the charge at Calcutta w.e.f. 18.11.96.

3. Grievance of the applicant is that although he assumed promotional charge of the post of Deputy Director(Language) as per order dated 21.8.96 at New Delhi office, he has not been paid the salary for the higher post till 18.11.1996 i.e. the date when he took over the charge at Calcutta office. Hence, he filed this O.A. for appropriate relief.

4. The application has been contested by the respondents by filing a reply. It is stated that the applicant was promoted to the post of Deputy Director(Language) as per notification dated 21.8.96, but his posting order was issued subsequently on 23.8.96 by which he was posted at Guwahati. The respondents have stated that since the applicant did not join his place of posting at Guwahati his salary in the higher post could not be paid. However, as soon as he joins his new post

said date and his pay will be fixed from the date of his joining at Calcutta.

5. We have heard the ld. counsel for both sides.

6. Ld. counsel, Mr. R.K. De appearing on behalf of the applicant, submits that it is a case of highhandedness on the part of the Director as a result of which the applicant has been denied the benefit of promotion to the higher post from the date of assuming the charge i.e on 23.8.96 in pursuance of the order issued on 21.8.1996. Mr. De has drawn our attention to the representation of the applicant dated 26.8.1996 at Annexure A-2 of the O.A. and submits that after assuming the charge of the post of Deputy Director(Language) on 23.8.96 the applicant made representation requesting the authorities for posting him at headquarters, but the respondents did not consider the same and issued another order on the same date by which he was posted at Guwahati. According to Mr. De, the applicant is entitled to get the benefit of the promotional post w.e.f. 23.8.96 i.e. the date on which he actually assumed the charge of the said post.

7. Ld. counsel for the respondents Mr. S.K. Dutta submits that though the applicant assumed the charge of the post of Deputy Director(Language) on 23.8.96 at New Delhi in pursuance of the promotion order issued on 21.8.96, he has been transferred to the Regional Office(North-East) Guwahati on the same date since there was no vacancy in the post of Deputy Director at headquarters(New Delhi). But the applicant did not join the post at Guwahati. So, he cannot be given the benefit of promotion from 23.8.96 as claimed for in this O.A. He further submits that the applicant joined the post of Deputy Director(Language) at Calcutta thereafter on 18.11.96 as per

subsequent order and has been granted the benefit of the pay scale of Deputy Director w.e.f. the said date in accordance with the rules. Therefore, no irregularity was committed by the respondents in this matter.

8. We have considered the submission of the 1d. counsel for both sides and have perused the records available with us. From the order dated 21.8.96 at Annexure A-1 to the application, it appears that the applicant and another person namely ~~Dr. Virendra Saxena~~ were promoted to the post of Deputy Director(Language) and the said order was communicated to them as Deputy Director(L). From the subsequent order of transfer dated 23.8.1996 (Annexure A-3) it is found that the applicant has been transferred to Guwahati as Deputy Director(L) and the said order also communicated to him as Deputy Director(L). So, it is clear that the order of promotion to the post of Deputy Director(L) has been given effect from the date the applicant assumed the charge of the said post at New Delhi on 23.8.96. It is not understood how the respondents denied the applicant the benefit of promotion to the said post from 23.8.96 though they addressed him as Deputy Director(L) in the aforesaid orders. Moreover, in the order dated 6th November, 1996 at Annexure A-12 to the application, the applicant was shown as Deputy Director(L). We fail to understand on what ground the applicant has been treated as Assistant Director after his promotion to the post of Deputy Director(L) has been given effect to which appears from the ~~Memo~~ dated 18.11.1996 at Annexure-A9 to the O.A.

9. In the aforesaid circumstances, we are unable to hold that the applicant is not entitled to get the benefit of pay scale of Deputy Director from the date of his assumption of charge as Deputy Director(L) at headquarters i.e. on the 23.8.1996 as claimed by ~~respondents~~. Denial of the benefit of

promotion w.e.f. the date the applicant assumed the charge of and the promotional post at New Delhi is arbitrary/ illegal action on the part of the respondents.

10. In view of the admitted position as reflected in the orders mentioned above, we hold that the applicant is entitled to get the benefit of pay scale of the post of Deputy Director w.e.f. 23.8.96 and his pay shall be regularised in the cadre of Deputy Director w.e.f. the said date. Difference of pay, if any, shall be paid to him within 2 months from the date of communication of this order. Lt. counsel Mr. R.K. De prays that there should be some direction upon the respondents to consider the case of the applicant for the purpose of his transfer from Calcutta to New Delhi. But we are not passing such order at this stage. However, we hold that the applicant may make appropriate representation to the authorities concerned seeking transfer from Calcutta to New Delhi stating the grounds and if such representation is made, the respondents shall be at liberty to consider his case sympathetically in accordance with the rules. Since the applicant was handled by the respondents most arbitrarily, we award a cost of Rs.5000/- upon the respondents which shall be paid to the applicant within 2 months from the date of communication of this order. With these observations, the application stands disposed of.

HMJ

MEMBER(A)

HMJ
16/3/2001

MEMBER(J)