

In the Central Administrative Tribunal  
Calcutta Bench

OA 575/97

27-4-2004

Present : Hon'ble Mr.N. Prusty, Member(J)  
Hon'ble Mr.G.R. Patwardhan, Member(A)

Nepal Chandra Dutta

-Vs-

C B D T

For the applicant : Mr.S.K. Gupta, Counsel

For the respondents : Mr.M.S. Banerjee, Counsel

ORDER

Mr.G.R. Patwardhan, Member(A)

The applicant Nepal Chandra Dutta has approached the Tribunal with a prayer that the mistake in the promotion order dated 29-9-93 issued by the respondents, especially the Respondent No.3, Chief Commissioner of Income Tax, where the office to which he was posted was incorrectly mentioned and which delayed his joining the promotional post should not be held against him for not having joined the promotional post in right time and thus holding him ineligible for further promotion to the post of Inspector for which the order was issued by the Chief Commissioner of Income Tax on 20th March, 1997. The brief facts of the case are that the applicant was promoted to the post of Head Clerk from the post of Tax Assistant vide order dated 29-9-93. He was working in the Office of Dy.Commissioner Income Tax, Range 20. The order of promotion showed his posting in the Office of Dy.Commissioner, Range 21. Because of this mistake the applicant could not join the higher post of Head Clerk till the corrigendum was issued on 6-10-93 by the Chief Commissioner, which enabled him to join the promotional post only on 8-10-93.

2. It is his case that under the Recruitment Rules one becomes eligible for promotion to the post of Inspector only on completing a minimum of 3 years service under the respective

lower grades. Though the applicant qualified himself in the examination for Inspectors, and was thus eligible for promotion, he could not be considered along with all others who joined as Head Clerk etc. on 1-10-93 having completed 3 years of minimum service in their respective grades. He therefore prays that if only the original notification dated 29-9-93 was correctly issued, he could have joined on 1st October, 1993 and would not have been made to wait till 8th October, the date when as per the the corrigendum he could join. The shortfall of minimum period of 3 years, therefore, the applicant submits is all due to the carelessness of the respondents. This resulted in even junior persons in the promotional list of Head Clerk of 1993, like one Smt Maya Maiti getting promoted as Inspector superseding his just claim.

3. The applicant submits that he preferred a representation to respondent No.3, the Chief Commissioner of Income Tax on 5-1-94 and 31-10-96 requesting that his date of joining the post of Head Clerk be taken as 1st October, 1993. So that he could be considered eligible for the post of Inspector. However, these do not seem to have been replied to.

4. Reply has been filed by the respondents.

5. We have heard the learned counsel of both the parties.

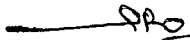
6. The respondents have supported their action by quoting a particular rule which says that the cut off date for determining the eligibility is 1st October of the year and as in the instant case the applicant had clearly joined on 8th October, his representation was rightly rejected by the authorities, since the rule does not provide for any relaxation.

7. During the course of arguments the learned counsel for the respondents admitted that it was the mistake on their part that the 1993 promotion order was incorrectly typed. However he also submitted that it was the duty of the applicant to get it corrected.

8. It is a settled principle of law that one cannot

be allowed to capitalise his own mistake and deny the just rights of others. Primarily it is the duty of respondents to issue all communication with due diligence and regard to details of the person to whom they concern and in such a situation when a mistake occurs and is used as a defence for disallowing the claim of the individual, the same cannot be allowed as it is not sustainable in the eyes of law.

9. Consequently, the petition is allowed and the respondents are directed to promote the applicant from the same date from which his juniors were promoted i.e. 20th March, 1997 with all consequential benefits. Rs500/- awarded as costs.

  
Member(A)

  
Member(J)