

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.96/2002

Friday, this the 7th day of May, 2004.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

Dr.P.J.Alexander, IPS(Retired),
'Kripa',
Belhaven Gardens,
Kawadiar,
Trivandrum-695 003. - Applicant

By Advocate MR Rajendran Nair

Vs

1. The State of Kerala
represented by Chief Secretary,
Government of Kerala,
Trivandrum.
2. Union of India represented by
its Secretary to Government of India,
Ministry of Personnel,
Public Grievances and Pensions,
New Delhi. - Respondents

By Advocate Mr A.Renjith, G.P.(for R-1)

By Advocate Mr C.Rajendran, SCGSC (for R-2)

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The short issue for consideration in this O.A. is, as to whether the applicant is entitled to arrears of pay and allowances for the period covered by his notional promotion to the Grade of Director General and Inspector General of Police (DG & IGP for short). A-9 order dated 1.8.2001 denying such arrears of pay and allowances for the period covered by notional promotion is under challenge.

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2. The relevant facts are: The applicant, belonging to the 1961 batch of the Indian Police Service(IPS) had been holding the rank of DG & IGP when he retired on superannuation on 30.8.94 as the Chairman and Managing Director (CMD) of Kerala State Industrial Enterprises(KSIE). After protracted litigation and series of representations, the applicant was promoted to the grade of DG & IGP with effect from 1.5.93 notionally without arrears of pay vide A-5 order dated 28.1.98. The applicant's A-6 representation for grant of arrears met with a detailed rejection order A-7 dated 19.5.98. The main plank on which the rejection order rested was that the applicant's notional promotion was considered and granted on compassionate grounds and that the applicant did not expect any monetary benefit. This dragged the applicant into further litigation. He filed O.A.1663/98 before this Tribunal. The Tribunal by A-8 order dated 20.4.2001 remitted the matter to the respondents for fresh consideration and orders in accordance with law. In paragraph 6 of A-8 order, the Tribunal observed as under:

"6. What is the legal basis on which the claim has been turned down is not borne out by A2. No reason is stated in A1 for refusal of "back arrears". No legal basis for rejection of the arrears of pay and allowances is stated in the reply statement also. That being so, A1 to the extent of denying "back arrears" and A2 are liable to be quashed."

The respondents in purported compliance with the Tribunal's order issued the impugned A-9 order dated 1.8.2001. Paragraph 3 which contains the grounds for rejection of the applicant's claim for arrears of pay and allowances is reproduced below:

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"3. In compliance with the directions of the Hon. Tribunal the matter has been considered afresh carefully. As per rules an officer shall begin to draw the pay and allowances attached to a post with effect from the date he assumes the duties of that post. In the instant case, Shri Alexander had never assumed the duties of the post of Director General and Inspector General of Police during the period from 1.5.1993 to 26.4.1994. He was actually promoted to the grade of DG & IGP as per G.O.(Rt)3324/94/GAD dated 27.4.1994 and was allowed to continue as CMD, Kerala State Industrial Enterprises. Government have also taken a policy decision that no back arrears need be paid for notional promotions."

The applicant says that in the impugned order, the respondents have now taken recourse to an argument different from the one based on the theory of promotion on compassionate ground and implied waiver of monetary benefit advanced earlier. It is pointed out that the respondents rely on the theory of nonassumption of the higher responsibilities of DG & IGP and the policy decision taken by the Government not to grant "back arrears" in respect of notional promotions. These arguments are not tenable in the applicant's case as the post he was holding, viz, CMD of KSIE had, on earlier occasions, been held by IPS officers in the grade of DG & IGP and hence the principle of 'no work no pay' cannot be invoked, according to the applicant. Had the right thing been done at the right time, the applicant would have held the post of CMD of KSIE in his capacity as DG & IGP by operation of the excadre post from 1.5.93 onwards, it is urged. The policy decision not to grant arrears of pay in regard to notional promotions is justiciable as it is not shown as to how it is applicable in the applicant's case, it is submitted. On these facts and grounds, the applicant prays for the following reliefs:

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i) To quash A-9,

ii) Declare that the applicant is entitled to get his pay fixed in the scale of pay of Rs.7600-8000 as on 1.5.1993 and to get the arrears of pay and allowances on that basis, and to direct the respondents to fix his pay in the scale of pay of Rs.7600-8000 with effect from 1.5.1993 and to pay arrears of pay, allowances and pensionary benefits on that basis with 18% interest.

3. In the reply statement filed by the respondents, though the relevant facts are not seriously disputed, it is maintained that the reliefs sought for cannot be granted. According to the respondents, the antedated promotion of the applicant to the grade of DG & IGP was only on notional basis. No back arrears can be granted as the applicant had never discharged the duties of the DG & IGP for the period 1.5.93 to 26.4.94. He was actually promoted as DG & IGP with effect from 27.4.94. In order for him to be entitled to pay and allowances pertaining to the higher post, he ought to have assumed the duties of the higher post. Since this vital condition is not fulfilled, A-9 order rejecting the applicant's claim is well-founded. The respondents would refer to Rule 9(1) and (2) of the IPS Pay Rules and state that although he could be posted from a cadre post to an excadre post, he would become entitled to pay and allowances admissible to the excadre post only when such excadre post is declared equivalent to the cadre post. In the applicant's case, as CMD, KSIE, the post was declared equivalent in duties

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and responsibilities to that of DG & IGP under Rule 9 of IPS Pay Rules as per Government order dated 27.4.94. The applicant therefore was not entitled to claim monetary benefit attached to the post of DG & IGP with effect from a date prior to 27.4.94, according to the respondents.

4. We have heard Shri M.R.Rajendran Nair, learned counsel for the applicant, Shri A.Renjith, learned Government Pleader and Shri C.Rajendran, learned SCGSC for respondent-2.

5. It was contended by the learned counsel for the applicant that he was entitled to promotion to the grade of DG & IGP with effect from 1.5.93. Promotion was not given earlier not because of any fault on the part of the applicant. After prolonged litigations and a number of representations, respondents took corrective steps and promoted the applicant. An excadre post of DG & IGP was revived on 12.8.93 in terms of Rule 9 of the IPS (Pay) Rules. Since 3 IPS officers in the rank of DG & IGP had previously held the post of CMD of KSIE, the Government had no difficulty in declaring the post of CMD of KSIE as equivalent to DG & IGP when the applicant was given notional promotion. Even on the applicant's promotion with effect from 26.4.94 the said post was declared as equivalent to that of DG and IGP. In view of the fact that the applicant's promotion was antedated with effect from 1.5.93, and since the applicant had been holding the same post of CMD of KSIE with effect from 1.5.93, the Government in all fairness ought to have allowed the applicant's pay and arrears in the grade of DG & IGP for the said period without taking

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the technical stand that the applicant did not discharge the higher responsibilities of DG & IGP during the period of notional promotion. Before and after the applicant's regular promotion as DG & IGP, he had been carrying out the same functions and responsibilities of CMD of KSIE. Therefore, the functions were the same. It was only a question of justice and fair play. The principle of 'no work no pay' was, therefore, totally inapplicable to the applicant's case. Had the due promotion been given to the applicant at the right time, the applicant would have been in a position to carry out the functions of CMD of KSIE in his regular capacity as DG & IGP. In other words, the delay on the part of the respondents to formalise his promotion could not justify denial of pay and arrears. Learned counsel also would bring out the contradiction in the respondents' stand in so far as the reason for denial of arrears of pay and allowances was concerned: In their earlier order, the respondents had taken the stand that it was on compassionate grounds that the applicant was granted promotion as DG & IGP with effect from 1.5.93 and that the applicant himself had accepted that such promotion would have no financial implications. However, in the impugned order, the respondents have realised the hollowness of such a stand and have taken a new stand that the applicant did not carry out the responsibilities of higher post and that, in any case, the Government had taken a policy decision not to pay arrears of pay for notional promotion. Counsel would invite our attention to the decision of the Hon'ble High Court of Kerala in Sivarajan Vs State of Kerala, 1993(2) KLT 287, Narayana Menon Vs State of Kerala, 1978 KLT

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29 and Rajappan Nair Vs State of Kerala and another, 1984 KLT 141, in support of the contention that the applicant, having been kept out of the responsibilities of DG & IGP and at the same time he having carried out the work of the CMD of KSIE which had been declared as an excadre post equivalent to DG & IGP on several earlier occasions, was entitled to full arrears of pay and allowances right from the pay of his notional promotion.

6. Shri A.Renjith, G.P. would contend that between 1.5.93 and 26.4.94 the applicant had been in the rank of Additional DGP when he was discharging the functions of CMD of KSIE. There were only one cadre post and one excadre post of DG & IGP during the period August 1993 to August 1994, the Government did not consider the applicant suitable for promotion as CBI investigation was going on against him. Therefore the period during which he was not holding the post of DG & IGP on a regular basis could not be considered for purpose of grant of arrears. The monetary benefit could be granted only when the post held by him was declared an excadre post equivalent to the post of DG & IGP on the strength of his having substantively got the promotion to that grade. On the previous 3 occasions as admitted by the applicant himself, the incumbents were substantively in the grade of DG & IGP and therefore there was no difficulty in declaring the excadre post held by him as equivalent to as that of DG & IGP. The respondents were therefore right in denying the applicant arrears in respect of the period of notional promotion, learned G.P. would contend.

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7. We have gone through the facts of the case and have considered the argument put forward by the rival counsel. We find that the scope of the impugned A-9 order dated 1.8.2001 is to be determined with reference to the findings and directions contained in this Tribunal's order A-8. The respondents have decided to give the applicant promotion as DG & IGP on notional basis with effect from 1.5.93. As on 1.5.93 there, in fact, was an excadre post of DG & IGP vacant on account of the retirement of Shri Rajagopalan Nair. Though filling up of that excadre post was not opted at the time, with the retrospective promotion of the applicant with effect from 1.5.93 the respondents were in a position to revive the excadre post with effect from that date i.e. 1.5.93. As on 1.5.93, the applicant was functioning as CMD of KSIE. In our considered opinion, there is no material to lend support to the argument that no arrears of pay can be given to the applicant in respect of the antedated promotion. There in fact was a vacant excadre post of DG & IGP on 1.5.93. Option to revive an excadre post of DG & IGP was exercised with effect from 12.8.93. Thus, the applicant's promotion to the post of DGP with effect from 1.5.93 need not have been made notional and, in any case, since an excadre post was revived with effect from 12.8.93, the applicant could have been considered for such excadre post of DG & IGP as on 12.8.93. The respondents' earlier reaction to the allegation of unfairness and illegality involved in the denial of monetary benefit by way of arrears of pay and allowances to the applicant was that the notional promotion as DG & IGP granted to him with effect from 1.5.93 was a humanitarian gesture.

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The respondents were also apparently persuaded by the applicant's submission to the effect that the promotion would have no monetary effect. The validity of the respondents stand in that regard has already been dealt with and the respondents' argument rejected by this Tribunal in A-8 order. The only action, therefore, expected of the respondents, was to reconsider the issue of arrears of pay and allowances relatable to the period of notional promotion afresh and to pass appropriate orders in accordance with law. The respondents ought to have adduced good and tenable reasons for refusing "back arrears". In this respect, the respondents cannot take shelter behind the alleged policy decision not to grant arrears in respect of notional promotion. Respondents were obliged to show how such a policy decision could be applied in the applicant's case. The argument that the applicant did not carry out the functions of DG & IGP with effect from 1.5.93 is without merit. The applicant was carrying out the functions of the CMD of KSIE from 1.5.93 till he retired on 31.8.94. When he was posted in that capacity, he was only Additional DGP. While continuing in the post of CMD of KSIE, the applicant was given promotion as DG & IGP with effect from 27.4.1994. Thus, he continued to discharge the same functions of CMD of KSIE even on promotion as DG & IGP. The prolonged litigation and several representations ending with the representation dated 22.7.1996 to the Chief Minister saw him eventually promoted as DG & IGP with effect from 26.4.94 while he still continued to function as CMD of KSIE. In other words, whether as Additional DGP or as DG & IGP, the applicant was carrying out the same functions

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attributable to CMD of KSIE. So during the period of his promotion on notional basis even if the applicant wanted, he could not have literally carried out any functions other than those of CMD of KSIE. It would therefore be unjust, unfair and irrational to say that during the notional promotion he did not do the work of DG & IGP. The policy decision not to pay 'back arrears' in respect of the period of notional promotion is untenable inasmuch as it is not shown as to what is the rational nexus between such policy decision and the denial of the arrears in the applicant's case. We hold that the pay and allowances relating to the applicant's notional promotion as DG & IGP cannot be denied to him by applying the principle of 'no work no pay'. Once the notional promotion was granted to him retrospectively from 1.5.93, the functions carried out by the applicant in his capacity as CMD of KSIE ought to be construed as functions carried out by him as DG & IGP. The contention that it is optional for the Government to operate excadre post also should not preclude the applicant from enjoying the benefit of promotion since the excadre post of DG & IGP was admittedly revived with effect from 12.8.93 and the respondents cannot take resort to the ground that the post of CMD of KSIE had not been declared equivalent to that of DG & IGP in terms of Rule 9 of the IPS (Pay) Rules. When some officers of the rank of DG & IGP were holding the post previously to the applicant, it had been declared to be equivalent to the post of DG & IGP. It is not as though the post of CMD of KSIE carried with it any higher or more onerous responsibility depending on the incumbent's substantive cadre status. The declaration of equivalence was only to ensure

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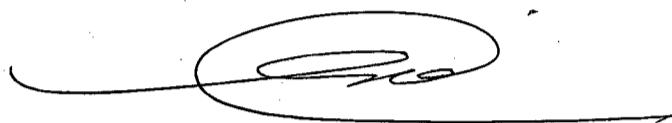
that the incumbent received his remuneration commensurate with his substantive grade. To deny the applicant such benefit on the ground that during the period of his notional promotion, the post of CMD of KSIE had not been declared equivalent to the post of DG & IGP would be too technical and hence too tenuous to be applied in the factual context of the applicant's case. In view of the peculiar factual background of the case, we do not consider it ^{necessary} to discuss the case law cited by counsel in great detail. Suffice it to say that it is well settled that when promotion due to an employee is delayed not for his fault ^{and} it is given to him later with retrospective effect from the date on which it was **due**, the employee is entitled to restoration of the benefits which he has lost (vide Narayana Menon Vs State of Kerala, 1978 KLT 29; Rajappan Nair Vs State of Kerala and others, 1984 KLT 141 and Sivarajan Vs State of Kerala, 1993(2) KLT 287). We therefore hold that the applicant should be eligible to monetary benefits on account of his promotion to the post of DG & IGP at least with effect from 12.8.93 on which date indisputably the excadre post of DG & IGP was revived.

8. In the result, allowing the O.A. and setting aside the impugned order A-9 dated 1.8.2001, we direct the respondents to pass appropriate orders granting the applicant all consequential benefits including monetary benefits attributable to his promotion as DG & IGP covering the period

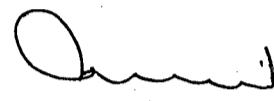
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of 12.8.93 to 26.4.94, within a period of three months from the date of receipt of copy of this order. There is no order as to costs.

Dated, the 7th May, 2004.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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