

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.40/2005

Wednesday, this the 16th day of November, 2005.

CORAM:

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

Mariamma Jose,
Administrative Officer,
O/o the Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S.Press Road,
Cochin-18. Applicant

By Advocate Mr C.S.G.Nair

145

1. The Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S.Press Road,
Cochin-18.
2. The Commissioner of Central Excise & Customs,
Central Revenue Buildings,
Mananchira, Calicut-1.
3. The Additional Commissioner of Central Excise(P&V),
Central Revenue Buildings,
I.S.Press Road,
Cochin-18.
4. The Pay & Accounts Officer,
Central Revenue Buildings,
I.S.Press Road,
Cochin-18.
5. Union of India
represented by the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi-110001.

By Advocate Mr TPM Ibrahim Khan, SCGSC

68

O R D E R

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. The applicant in this O.A. seeks the relief of arrears of monetary benefits from the date of notional promotion.
2. The applicant joined the Central Excise Department as LDC in Bombay Central Excise Commissionerate on 9.3.66. She was transferred to Cochin Central Excise Commissionerate as LDC as per conditions of inter-Commissionerate. The question of conditions of transfer including seniority was agitated before the various forums ending with the Hon'ble Supreme Court. Finally, the respondents issued A-1 order covering cases of Group 'C' officers under Central Board of Excise and Customs, who were transferred before 20.5.80 and stipulating that while revising seniority of employees covered, it should be after due notice and considerations of their representations. The applicant was also covered by this order. The applicant went through promotions under the provisions of the above order as LDC to UDC to Deputy Office Superintendent DOS level II to Deputy Office Superintendent DOS level I and finally to Office Superintendent and Administrative Officer. The contentious point in this OA relates to her claim for monetary benefits during the period commencing from the date of notional promotion, i.e., 23.8.85 to that of actual promotion 31.7.89 from Deputy Office Superintendent Level II to Level I. She had filed O.A.444/2001 for further notional promotion as Office Superintendent and Administrative Officer and based on the orders in that O.A, she claims that she was given the notional promotion as Office Superintendent and Administrative Officer with all monetary benefits. Reverting to the question of monetary benefits consequent to her promotion as DOS L-I, for quite some time no action was taken to draw arrears and she filed representations before the authorities concerned. The Respondent 3 passed A-8 order, permitting her to draw arrears of pay as DOS L-I from 23.8.85, as the cadre of DOS L-II or DOS L-I did not make any work



differentiation. Further delay followed and the applicant made some more representations. It was pointed out by her in her A-11 representation dated 23.11.2004 that in the reply statement in O.A.444/2001 filed by the the Additional Commissioner it was stated,

“.. the promotions to the cadre of Deputy Office Superintendent L-II and Deputy Office Superintendent L-I have been subsequently reviewed and the applicant has been granted appropriate Notional promotion with all consequential benefits including monetary benefits of pay fixation etc.”

She had also added that there was no difference in the work of DOS L-II and DOS L-I as in the case of Inspector Central Excise (O.G) and Inspector Central Excise (S.G), that she was eligible for the full monetary benefit for the service rendered during the period 23.8.85 to 31.7.89, and that the then Additional Commissioner had committed it before the Tribunal in the reply statement in O.A.444/2001. In reply thereto, the impugned order was passed by the Respondent3 refusing the claims of monetary benefits between 23.8.85 to 31.7.89 consequent to her promotion as DOS L-I. Aggrieved by this, she has preferred this application.

3. The claimed reliefs are for a declaration of entitlement for full monetary benefits from the date of notional promotion as DOS L-I, a direction to the respondents to make payments from 23.8.85 to 31.7.89 as DOS L-I and grant of interest on the arrears at 10% from 16.10.2003. She rests her claims on the following grounds:

- i) Despite issuance of promotion orders in 2001, no arrears have been disbursed till now, causing a great deal of hardship.
- ii) There is no difference in the work or responsibility between the two levels DOS Level II and Level I
- iii) Respondent 4 has exceeded his jurisdiction in denying the due benefits.

4. The respondents counter the claims in their reply statements on the following grounds:



- i) Based on both FR 17(i) and DOPT's instructions in OM No.22011/1/91-Est.A dated 31.7.91(R-1), pay and allowances attached to a post are drawable only with effect from the date of assumption of duties of such posts.
- ii) In her earlier promotion as UDC and subsequent promotion as Office Superintendent, pay and allowances were paid only from the date of commencement of the actual work.
- iii) A specific residency period of three years is a must in DOS L-II for promotion as DOS L-I.

5. We heard the Shri CSG Nair, learned counsel for applicant and Shri TPM Ibrahimkhan for respondents and perused the documents.

6. The first question to be decided is whether the applicant has a case for equating DOS L-II to DOS L-I for the purpose of claiming pay and allowances during the notional period. She has invited our attention to the A-8 document in which the R-3 has permitted her to draw arrears of pay with effect from 23.8.85 on the ground that the cadre of DOS L-II or DOS L-I does not make any work differentiation. It is fortified by earlier commitments made by respondents in their reply statement in O.A.444/2001 as referred to above, in A-11 statement.

7. On the question whether such sanction is frowned upon by FR and against the DOPT's instructions, it is worthwhile perusing the same. FR 17(1) envisages as below:

"Subject to any exceptions specifically made in these rules and to the provision of sub rule(2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

It is not possible to treat this clause against the claim of the applicant, if only because of the contents of the A-8 document in which R-3 has conceded no



work differentiation between the two levels.

8. The DOPT's instructions R-1 relates to review of instructions on promotion of Government servants whose conduct is under investigation and in whose case sealed cover procedure is adopted. Quite obviously, this does not apply to the applicant who does not come under the purview of such cases. In view of the permission given by the R-3 vide A-8, the applicant should be deemed to have commenced her work as DOS L-I with effect from the date of effect of the notional promotion.

9. Despite all these, a doubt may arise whether she can be paid the benefits of pay and allowances from the date of commencement of the notional promotion as she has not worked as such.

10. Our attention was invited to the order passed by the Hon. High Court of Kerala in State of Kerala v. Bhaskaran Pillai [2003(1)KLT 60]. This judgment has itself referred to many other judgments of the Hon'ble Supreme Court on the very same issue and made the following observations

"It will in this context be only apposite to refer to the decision reported in Union of India v. KV Jankiraman (AIR 1991 SC 2010), where the Supreme Court had occasion to consider this specific aspect. That was also a case where the Supreme Court was dealing with the claims of a person in the service of the State for benefits consequent to promotion denied to him for no fault of his. In paragraph 7 the Supreme Court expresses its mind in the following words:

"..The normal rule of "no work no pay" is not applicable to such cases 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".

(emphasis supplied)

11. Later a Division Bench of this Court considered the same decision in Rajappan Nair v. State of Kerala (1984 KLT 141) and approved the conclusion of the learned Single Judge. The Division Bench made the following observations in paragraph 1:

"It quite often happens that a Government Servant does not get his due promotion on the date he ought to have got it, but later it is given to him with retrospective effect from an earlier date. If for no fault of his, promotion to a Government servant is delayed and it is given to him later with retrospective effect from the date on which it was due, the Government servant is naturally entitled to restoration of the benefits which he has lost not on account of his conduct or



laches. It is only proper that the Government should restore to him all that is lost by way of salary or other emoluments".(emphasis supplied)

"In normal circumstances when the retrospective promotions are effected all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier.."

20. The observations in the two decisions of the Supreme Court referred above do convey that it may not be possible any longer to assume that the normal rule when respective notional promotions are granted is that the claimant is not entitled to monetary benefits. Such a rigid statement of the law does not appear to be possible now. Of course the principle of no work no pay must be borne in mind. But if the officer concerned was willing to work and he was denied opportunity to work in such promoted post for no fault of his, that principle should definitely not operate to his prejudice.

22. In short the normal rule must be that where there is no fault on the part of the officer concerned, he must be paid the monetary benefits due to him consequent to the retrospective promotion. In appropriate cases it could be denied to him for valid reasons. In the three categories of cases enumerated in Philomina such benefits cannot be denied to him. The dictum in Philomina cannot be held to be valid any more in view of the decisions of the Supreme Court referred above to the extent that it stipulates a rule of general application that no Government servant is entitled to be paid for work which he has not done. This conclusion appears to be inevitable in view of the subsequent declaration of law by the Supreme Court in the decisions referred above.

emphasis supplied

The judgments given by decided cases referred to above lead us to the categorical answer in the affirmative validating the claim of the applicant. This is because in this case, one of the respondents has already committed the department to the treatment of the two levels of DOS as identical work-wise and taken a stand on identical lines in the O.A. filed by the applicant on an earlier occasion for a different relief. If going by the above judgment, retrospective pay should be given to an employee if denied to him earlier for no fault of his, the present O.A. rests on a stronger footing when the department itself had committed to give her the monetary benefits retrospectively but resiled from such commitments subsequently.

11. As a result we allow the Original Application and declare that applicant is entitled for full monetary benefits from the date she was notionally promoted as DOS L-I. We direct respondents to make the payments of all monetary benefits

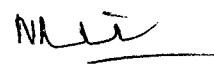
8

from 23.8.1985 onwards when she was notionally promoted as DOS till 31.7.1989 and such payments should be made on or before three months from the date of receipt of copy of this order, failing which, the applicant will be entitled payment of interest @ 9% from that date till the date of settlement of dues.

12. The O.A is allowed as aforesaid. In the circumstances, there will be no order as to costs.

Dated, the 16th November, 2005.


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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