

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A. No. 511/2006

This, the 6th day of November, 2007

Hon'ble Mr. Justice Khem Karan, Vice Chairman

Shri Proran Chandra Jain son of late Sri Phool Chand Jain aged about 65-1/2 years Superintending Surveyor of Works (Retired) C-1115, Indira Nagar, Opp. Church, Lucknow-16.

Applicant

By Advocate: Kn. Gajendra Singh

Versus

1. Union of India, through the Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi-110011.
2. Engineer-in-Chief, Army Head Quarters, Ministry of Defence, Kashmir House, Rajaji Marg, New Delhi.
3. Chief Engineer, H.Q., Central Command, M.G. Road, Dilkusha, Lucknow-2.

Respondents


By Advocate: Sri S.P. Singh

ORDER

By Hon'ble Mr. Justice Khem Karan, Vice Chairman

Question involved in this O.A., is to whether applicant, who has been granted promotions to the post of ASW, SW and SSW w.e.f. 9.9.82, 15.10.87 and 27.12.95 respectively vide order dated 9.12.2003, in compliance of directions dated 18.4.2001 of this Tribunal in O.A. No. 173 and 221 of 2001, is entitled to the arrear of pay from the said dates to actual date of promotions, namely 8.3.90 (on the post of ASW), 23.6.94 (on the post of SW) and on 28.8.2000 (on the post of SSW).

2. There is no dispute that applicant was promoted to the post of Assistant Surveyor of Works (ASW) w.e.f. 8.3.90, to the post of Surveyor of Works (SW), w.e.f. 23.6.94 and to the post of SSW w.e.f. 28.8.2000. It appears that he filed one O.A. No. 173 of 2001, before this Tribunal claiming promotions from certain retrospective dates. The Tribunal disposed of that O.A. and connected O.A. 221 of 2001 vide its order dated 18.4.2001



(Annexure 1), directing the respondents to consider the claim of the applicants vis-à-vis private respondent No. 4 to 7 in the light of the decision in the case of Krishan Chandra Kumar Vs. UOI and in compliance of these directions, the respondents passed order dated 9.12.2003 (Annexure 2), giving him promotion from 9.9.82 (to the post of ASW), 15.10.87 (to the post of SW) and w.e.f. 27.12.95 (to the post of SSW), in places of 8.3.90, 23.6.94 and 28.8.2000 respectively. The applicant appears to have claimed for salary for the said period, and when the respondents refused to give him arrear of salary for the period between the notional and actual promotions, he filed this O.A. According to him, once he has been given those promotions from retrospective dates, in compliance of order of the Tribunal, he should be paid the salary for the period in question and the same cannot be denied, as he was not at fault.

3. Respondents have filed reply contesting the claim. They say as he did not actually work on the promoted posts during the period in question, so he is not entitled to the wages of those posts for that period. They say that wages are paid to the employee for work he does and if the applicant did not discharge the duties of the promoted post, in the relevant period, he cannot successfully claim wages of those promoted posts.

4. Applicant has filed Rejoinder saying that in view of the decision dated 20.4.88 of the Chandigarh Bench of this Tribunal in O.A. No. 471/87 (copy of which has been annexed to the R.A.), the applicant is entitled to the arrear of pay for the period referred to above.

5. The respondents have filed reply explaining Chandigarh decision by saying that there applicant Ajit Singh had already retired from service, before the orders of promotions were issued.

6. I have heard Sri Kn. Gajendra Singh appearing for the applicant and Sri S.P. Singh for the respondents and perused the material on record.

7. Sri S.P. Singh has tried to raise a preliminary objection to the effect that O.A. is time barred. He says, orders for promotion from retrospective

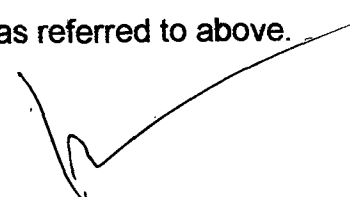


dates, namely 9.9.82, 15.10.87 and 27.12.95 were passed as back as on 9.12.2003 but this O.A. was filed in 2006, so deserves to be dismissed on the ground of limitation. In reply to it, Shri Gajendra Singh has said that this plea of limitation has not been taken in the reply and moreover, he has already averred in the O.A. that vide several representations, he requested the respondent No. 2 to pay him the difference of pay for the period in question and when the respondents refused to pay the arrears, he filed this O.A. In the circumstances, I am of the view that the O.A. cannot be dismissed on the ground of bar of limitation.

8. The decision dated 20.4.88 of Chandigarh bench in Ajit Singh Vs. UOI and others, clearly applies to the facts of the case in hand. After referring to Dalip Singh Vs. Punjab and Haryana High Court and others 1983 (1) SLP page 242, State of Mysore VS. C.R. Sehsadri and others AIR 1974 SC 460, Hon'ble Members of Chandigarh Bench ruled that "on promotion being given from retrospective date, employee becomes entitled for the arrears of pay."

9. Though, Sri S.P. Singh has tried to distinguish it by saying that ^{there} Ajit Singh had already retired, before the date of promotion, but I do not find myself ^{convinced} in ~~agreement~~ with him. The question is as to whether giving of promotion from the retrospective dates, in compliance of orders or directions of the Tribunal or Court, entitles the employee to back wages. Decision of Chandigarh Bench is clearly on the point that he will be entitled to such back wages. There is no room for distinguishing the case from the case in hand. The applicant was not at fault. These were the respondents who were at fault in not giving promotions from those dates. I have not been able to appreciate as to how the respondents have denied the arrears of pay to the applicant for the period in between actual and notional promotion.

10. Sri Kunwar Gajendra Singh has informed that applicant has since retired, I think the applicant is entitled to arrears of pay from the respective dates of retrospective promotions as referred to above.



11. So, this O.A. is finally disposed of and the respondent No. 2 is directed to pay him arrears of pay of the post of ASW from 9.9.82 to 7.3.90, of the post of SW from 15.10.87 to 22.6.94 and of the post of SSW from 27.12.95 to 27.8.2000, after refixing his pay from those dates together with interest @ 10% per annum within a period of 3 months from the date, certified copy of this order is received by him and, if required, pension and other retrial benefits may accordingly be revised, as per rules. No order as to costs.


06.11.07
Vice Chairman

HLS/-