

Original Application No. 94/2005

This the 10th day of September 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)

Hon'ble Dr. A.K. Mishra, Member (A)

Vinod Chandra aged about 66 years son of late Sri J.P.Srivastava, resident of C-198, Nirala Nagar, Lucknow, retired Deputy Director, Directorate of Defence Estates, Central Command, Lucknow cantonment

Applicant

By Advocate: Applicant present in person

Versus

1. The Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The Directorate General, Defence Estates Ministry of Defence, West Block No. IV, Sector I, R.K. Puram, New Delhi.

Respondents

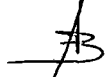
By Advocate: Sri S.K.Awasthi.

ORDER

By Hon'ble Ms.Sadhna Srivastava, Member (J)

The applicant is aggrieved by the action of respondents in denying the financial benefits to him after having held a review DPC and promoting him to the post of Junior Administrative Grade (JAG in short) of Indian Defence Estates Service w.e.f. 20.10.1993, from the date his junior Sri S.K. Nagpal was promoted.

2. The facts are that the applicant earlier filed an Original Application No.560/1997 claiming promotion in the Junior Time Scale w.e.f. 1980, Senior Time Scale w.e.f. 1985 and Junior Administrative Grade (JAG) w.e.f. 1993. During the pendency of this O.A., the applicant was granted Junior Time Scale in 1980 vide order dated 30.6.2000 and Senior Time Scale w.e.f. 12.6.1988. The applicant's case was that he had been given the post of Senior Time Scale w.e.f. 12.6.1988 whereas Sri S.K. Nagpal, who was junior to the applicant was given Senior Time Scale w.e.f. 1985. Admittedly, when the case of Sri S.K.Nagpal was considered for promotion to the post of Senior Time



Scale, the name of applicant was not considered by the Review DPC and therefore, the applicant who was senior to Sri S.K.Nagpal was over-looked for grant of Senior Time Scale. The aforesaid O.A. filed by the applicant, was disposed of by this Tribunal with a direction to the respondents to hold a review DPC and to consider the claim of the applicant for grant of Senior Time Scale w.e.f. the date his junior was granted the said scale, in case, the name of applicant was earlier not considered by the DPC/ Review DPC along with his juniors and if selected, consequential benefits be also granted.

3. In pursuance of direction given by this Tribunal in O.A.No. 560/97, the applicant's case was reviewed by the DPC and the applicant was granted Senior Time Scale w.e.f. 1985. He was also granted JAG w.e.f. 20th October, 1993 vide order dated 30th April, 2003 (1). The applicant retired on 31.7.96. However, the financial benefits has been denied and his pay has been fixed notionally in the JAG w.e.f. 20.10.93. It is submitted on behalf of the applicant that in view of the judgment in the case of M.P.Singh and others Vs. UOI as well as S.K.Nagpal Vs. UOI, the applicant is entitled monetary benefits. It will be seen that the Ministry of Defence, Govt. of India vide letter dated 6.9.2003 (Ann. 4) has already directed for payment of monetary benefits to the then applicants. In the case of S.K.Nagpal, all consequential benefits i.e. monetary benefits were granted vide judgment dated 19.2.96 in O.A. No. 309/94. In the case of applicant also, Division Bench in O.A. No. 560/97 decided on 13th August, 2001 has directed promotion with all consequential benefits. Therefore, there is no reason to hold that the applicant was promoted notionally w.e.f. 20.10.2003.


4. The question for our determination is very simple one. The point in issue is whether the Tribunal while deciding the OA. No.560/97 had passed an order for notional promotion? On perusal of the judgment, it is crystal clear that the applicant was to be granted promotion to JAG w.e.f. the date, his junior was promoted with all consequential benefits. However, the promotion has been granted notionally. The Department had no occasion to




depart from the findings recorded by the Tribunal. The judgment of the Tribunal was not assailed in the High Court. Thus, the judgment of the Tribunal had attained finality. Therefore, the department was not justified in making amends as regards the back-wages. If an employee is promoted in law, he would be entitled for consequential monetary benefits from the date of his promotion. Where the promotion is denied initially and given subsequently with retrospective effect, the denial of monetary benefits accruing from the promotion is not valid, particularly where the denial of promotion was not due to the fault of employee but due to a mistake on the part of the Department.

5. In the instant case, it is clear that the denial of promotion to the applicant at par with his junior was a mistake on the part of the Department. Therefore, this Tribunal, possibly consciously passed an order for consequential benefits and not for notional promotion. In the circumstances, the judgment which had attained finality cannot be overlooked by the Department. Consequently order dated 30.4.2003 (Ann.1) is liable to be quashed in so far as the financial benefits of pay and allowances are concerned with retrospective date of promotion i.e. 20.10.2003.

6. Resultantly, it is hereby declared that the promotion to the applicant as Junior Administrative Grade will enure with consequential benefits i.e. with payment of back wages. The respondents will accordingly pay salary and allowances to the applicant w.e.f. the date of retrospective promotion. The direction in order dated 30.4.2003 (Ann.1) otherwise is hereby quashed. No order as to costs.


(Dr. A.K. Mishra)
Member (A)


(Sadhna Srivastava)
Member (J)

HLS/-