

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH  
LUCKNOW**

**O.A. No. 458/2010**

**This, the 20<sup>th</sup> day of September, 2013**

**HON'BLE SRI NAVNEET KUMAR, MEMBER (J)**

Sushil Chandra Son of Shri Girish Chandra, Resident of House No. J-358, Sector-I, Ashiyana Colony, Lucknow, presently posted as Assistant Account Officer at Account office, Field Gun Factory, Kanpur.

**Applicant**

**By Advocate: None.**

**Versus**

1. Union of India, through it's Secretary, Ministry of Defence, New Delhi.
2. The Principal Controller of Defence Accounts (Central Command), Lucknow Cantt.
3. The Principal Controller of Accounts (Central Command), 10, S. K. Bose Road, Kolkata.

**Respondents**

**By Advocate Shri S. P. Singh.**

**(Order Reserved on 13.9.13)  
ORDER**

**By Hon'ble Shri Navneet Kumar, Member (J)**

The present O.A. is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs :-

“(1) Set aside the impugned order dated 19.3.2010 passed by the respondent No. 2 as contained in Annexure No. 1 of the original application.

(2) Direct the respondents to release the arrears of pay and allowances, with interest, w.e.f. 6.8.2001 as SO (A) grade and 1.4.2005 as AAO grade forthwith.

(3) Pass any other order or direction which this Hon'ble Tribunal may deem just, proper in the circumstances of the case.

(4) Award the cost of the original application in favour of the applicant.”



2. Since no one is present on behalf of the applicant, despite notice, as such learned counsel for the respondent is heard and after invoking Rule 15(1) of CAT (Procedure) Rules, 1987, the judgment is reserved.

3. The brief facts of the case are that the applicant was initially appointed and working under the respondents organization on the post of Senior Auditor a complaint was lodged under Section 120-B, 201 I.P.C. and Section 7 and 13 (2) r/w 13 (1) (d) of P.C. Act. The applicant was released on bail and subsequently, the charge sheet was filed by the CBI in the Court of Special Judge Anti Corruption (Central) Lucknow. During the pendency of the criminal trial, the applicant was found eligible and qualified for the promotion to the next higher post of Section Officer (A) and thereafter, he was also to be considered for the promotion to the next higher post of AAO, and the decision of the DPC in regard to the promotion was kept in sealed cover and only after his acquittal in aforesaid criminal case, the sealed cover was opened and as such, and being found fit in all respect, he was promoted accordingly. The applicant was given notional promotion to the post of SO (A) w.e.f. 6.8.2001 and further he was promoted notionally to the post of AAO w.e.f. 1.4.2005. By means of the present O.A., the applicant has now claiming that since, he was promoted to the post of SO(A) and AAO as such, he shall be given arrears of pay and allowances along with interest w.e.f. 6.8.2001 and 1.4.2005 respectively.

4. The learned counsel for the respondents filed their reply and through reply, it was pointed out by the respondents counsel that the applicant while posted in the office of AAO BSO Lucknow was trapped in the year 1996. Subsequently, the

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applicant was charge sheeted by the CBI under Sections 120-B, 201 of IPC and Section 7 and 13 (2) read with 13(1)(d) of Prevention of Corruption Act, 1988. Subsequently, the applicant was acquitted of the charges leveled against him by the competent court vide judgment and order dated 8.8.2008. Learned counsel for the respondents stated that during the said period, the applicant passed departmental SAS examination held in November, 2000, but due to pendency of CBI case against him, his case for promotion to the Grade of SO(A) was kept under sealed cover. The learned counsel for the respondents also pointed out that the applicant was also promoted notionally to the Grade of SO (A) w.e.f. 6.8.2001 and AAO w.e.f. 1.4.2005. It is also pointed out that the applicant filed an O.A. 12 of 2010 and as per the direction of the Tribunal, the respondents have passed the orders on the applicant's representation on 19.3.2010 where in the respondents pointed out that since the applicant was given the notional promotion, as such, in terms of the decision of the Hon'ble Apex Court in the case of Union of India Vs B. M. Jha reported in (2007) 11SCC 632, the applicant is not entitled for any back wages on the basis of the principle of no work no pay.

5. The learned counsel appearing on behalf of the applicant has filed rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated.

6. Not only this, the learned counsel for the respondents also filed the supplementary counter reply and through supplementary counter reply, the Rule 17 (1) of Fundamental Rules were relied upon and pointed out that the applicant is not entitled to the arrears of salary as per the aforesaid rules.

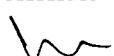
7. Heard the learned counsel for the respondents and perused the record carefully.

8. Admittedly, the applicant was working in the respondents organization was trapped in CBI case and accordingly, a charge sheet was filed and subsequently, the applicant acquitted from the charges and after the acquittal, the applicant assumed the charge on 25.12.2008. During the pendency of the said trial, the applicant passed the SAS examination held in November, 2000 and was given promotion to the grade of SO(A) and subsequently to the post of AAO w.e.f 6.8.2001 and 1.4.2005 respectively. But the criminal case was pending against him, as such the case of the applicant was kept in the sealed cover and the same was given to the applicant notionally after the acquittal from the criminal case. Now the case is only required determination that whether the applicant is entitled for the arrears of pay w.e.f. the date when he was given the notional promotion i.e. 6.8.2001 and 1.4.2005 respectively or when he assumed the charged i.e. on 26.12.2008. Fundamental Rules 17(1) reads as under:-

“FR-17(1): 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 w.e.f. 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.”

9. A part from this, the Hon'ble Apex Court in the case of Union of India Vs. B. M. Jha reported in (2007) 11 SCC 632 has clearly observed as under:-

“We have heard learned counsel for the parties. It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing there from. However, this Court in State of Haryana Vs. O.P. Gupta and followed in A. K. Soumini Vs. State Bank of Travancore has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of “no work no pay”. The learned Division Bench in the impugned judgment has placed reliance on State of A.P. Vs. K.V. L. Narasimha Rao. In our



view, the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court of grant of salary was set aside by this court. Therefore, we are of the view that in the light of the consistent view taken by this Court in the abovementioned cases, arrears of salary cannot be granted to the respondent in view of the principle of "no work no pay" in case of retrospective promotion."

10. Not only this, the Hon'ble Apex Court while considering the principle of no work no pay has passed an order in SLP (Civil) No. 26556/2004 in the case of Abhijit Ghosh Dastidar Vs. Union of India and Ors. and has been pleased to observe that "we make it clear that he is not entitled to any pay or allowances for the period for which he had not worked in the Higher administrative Grade Group-A, but his retrospective promotion from 28.8.2000 shall be considered for the benefit of re-fixation of his pension and other retiral benefits as per rules."

11. Considering the averments made by the learned counsel for the respondents, as well as on the basis of facts of the case and the observations made by the Hon'ble Apex Court, I am not inclined to interfere in the present O.A. and the O.A. is dismissed. No order as to costs.

Mr. Arora  
(**Navneet Kumar**)  
**Member (J)**

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