

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 827/88

Transfer Application No:

DATE OF DECISION 9.11.1993

Shri D.G.Pradhan. Petitioner

Shri R.M.Chaudhari. Advocate for the Petitioners

Versus

The Jt.Director of Audit & Ors. Respondent

Shri R.P.Darda

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri N.K.Verma, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(M. S. DESHPANDE)
VICE-CHAIRMAN.

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(8)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, CAMP AT NAGPUR.

Original Application No. 827/88.

Shri D.G.Pradhan.

.... Applicant.

V/s.

The Joint Director of Audit,
P & T,
Nagpur, & Ors.

.... Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri N.K.Verma, Member(A).

Appearances:-

Applicant by Shri R.M.Chaudhari.
Respondents by Shri R.P.Darda.

Oral Judgment :-

¶Per Shri M.S.Deshpande, Vice-Chairman Dt. 9.11.1993

Heard Shri R.M.Chaudhary for the applicant,
and Shri R.P.Darda for the Respondents.

2. The applicant by this application prays for a retrospective promotion to the SAS from 10.9.1976 when his immediate junior Shri G.K.Kulkarni was promoted, arrears of pay and allowances i.e. difference between the salary which he would have received from time to time in S.A.S. cadre on promotion from the 10.9.1976 to 30.6.1983 when he actually retired from service and consequent revision of pensionary benefits based on the pay due and payable at the time of retirement on 30.6.1983.

3. The applicant was appointed on 12.4.1950 as an Auditor with the P & T department. He passed his S.A.S. examination in 1972. His immediate junior Shri G.K. Kulkarni was promoted to the S.A.S. cadre on 10.9.1976. The applicant could not be promoted because a criminal case was pending against him on the basis of a FIR lodged on 9.8.1972 which ultimately was withdrawn on 12.9.84. The applicant however, retired on superannuation

on 30.6.1993. S/Shri A.G.Agate and Shri S.K.Sarkar were also involved in the same criminal case, but they were granted the deemed date of promotion, arrears and other benefits because they are continued in government service, while the applicant had retired. Shri Agate whose case was parallel to the applicant was granted notional promotion on the basis of the order passed by this Tribunal in O.A. No.579/93 on 10.9.1993. The applicant made a representation claiming the reliefs which he has sought in this application, but that representation came to be rejected on 24.11.1987 in which it was mentioned that the Department of Pensions and Pensioner Welfare Govt. of India had not agreed for the relaxation of the provisions of the C.C.S. (Pension) Rules, 1972 in the case of the applicant for allowing pensionary benefit based on notional pay, as the reliefs sought by the applicant was not granted he has approached this Tribunal ~~and~~ for the aforesaid reliefs. The applicant's case is that his case was considered by the D.P.C. in the relevant years, but their findings were kept in Sealed Cover and he would have been entitled to all the reliefs which he is claiming if the DPC found him fit for the promotion to the S.A.S. cadre. The only ground on which the Respondents have opposed the applicant's claim is that those who were in service had been granted the reliefs, but since the applicant had retired on 30.6.1983 he could not be granted these reliefs. In fact this submission runs counter to the instructions contained in the Memorandum dt. 12.1.1988 in para 3 of which the action which ~~has~~ to be taken after the completion of the disciplinary case or criminal prosecution was enacted as follows:

"On the conclusion of the disciplinary case/

criminal prosecution, or an investigation which results in dropping of allegation or complaints against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior but he will not be allowed any arrears of pay for the period preceding the date of actual promotion."

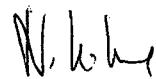
The last three lines of this Circular were substituted by the Supreme Court in its decision in its decision in Union of India V/s. K.V.Jankiraman (A.I.R. 1991 S.C. 2010) by the following portion:-

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/ criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

4. The position therefore has now been set at rest. The eligibility of the applicant for promotion would have to be considered with reference to the date on which the person who is immediate junior came to be promoted and his eligibility shall have to be determined by the DPC. In the present case the applicant's immediate junior Shri Kulkarni was promoted on 10.9.1976 and the entitlements of the applicant will arise on the basis of his eligibility determined by the DPC which shall have to be ascertained by opening the Sealed Cover/Covers, if any, and if the applicant is found fit the promotions will have to be granted in the manner stated above. The circumstances that the criminal case against the applicant withdrawn on 12.9.1984 i.e. after his retirement on 30.6.1983 will not be relevant for this purpose because the eligibility does not arise

as a result of withdrawal of the criminal case, but the applicant being found suitable for the promotion by the DPC. We are not, therefore, impressed by the contention of Shri R.P. Darda for the respondents that the benefits which the applicant would have been entitled to, were he to continue in service, will not be available to him because the criminal prosecution was withdrawn after his retirement.

5. In the result, we direct that the sealed cover/ covers which might have been maintained by the DPC shall be opened and the eligibility of the applicant for the promotion to the S.A.S. cadre shall be determined. If the applicant is found suitable he shall be given all the benefits which were given to his immediate junior Shri G.K. Kulkarni from 10.9.1976. His pensionary benefits shall be worked out on the basis of the pay which he would have notionally drawn in the event of his promotion on the date of his superannuation and the arrears of pensionary benefits shall be paid to him within three months from the date of communication of this order. With regard to the applicant's entitlement for the period of notional promotion preceding the date of actual promotion and its extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceedings/ criminal prosecution. If the authority denies arrears of salary or part of it to the applicant it shall record its reasons for doing so. There will be no order as to costs.


(N.K.VERMA)
MEMBER (A)


(M.S.DESHPANDE)
VICE-CHAIRMAN