

7

CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 719/88
~~XXXXXX~~

198

DATE OF DECISION 24-4-1991.

Mr. P.K. Narayanan Petitioner

Mr. R.R. Dalvi Advocate for the Petitioner(s)

Versus

Mr. Mahesh Kumar Bhada, Regional Respondent
Provident Fund Commissioner, Bombay
and anr.

Advocate for the Respondent(s)

Mr. G.K. Neelkanth

CORAM

The Hon'ble Mr. U.C. Srivastava, Vice Chairman

The Hon'ble Mr. M.Y. Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

af

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

OA.NO. 719/88

Mr.P.K.Narayanan

.... Applicant

V/S.

Mr.Mahesh Kumar Bhada,
Regional Provident Fund Commissioner,
Maharashtra & Goa, 341,Bhavishyanidhi,
Bhavan, Bandra (East),Bombay.
And Another.

... Respondents

CORAM: Hon'ble Vice Chairman Shri U.C.Srivastava
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Mr.R.R.Dalvi
Advocate
for the Applicant

Mr.G.K.Neelkanth
Advocate
for the Respondents

JUDGEMENT

Dated: 24-4-1991.

(PER: M.Y.Priolkar, Member (A))

The applicant in this case, while serving as Provident Fund Inspector Grade II at Nagpur from 1975 to 1977 was also given the additional charge of Accounts Officer. While the applicant was so discharging the functions of Accounts Officer, there was a case of fraudulent payment of Provident Fund amount approved by the applicant in February, 1977 which came to light in July, 1980. The C.B.I. have filed a case in 1982 after completion of their investigation in the Special Court in which the applicant is one of the accused. The grievance of the applicant is that this criminal prosecution ^{is} lingering on without any progress and meanwhile the applicant is withheld at the efficiency bar in his present time scale of pay and his further promotion as

9

Assistant Commissioner has been indefinitely postponed. Apart from removing the efficiency bar and retrospective promotion as Assistant Commissioner (Grade I) from 14.1.1986, the applicant has also prayed for a number of other reliefs, namely, direction to respondents to review the criminal case against him, additional pay during 1975 to 1977 for the additional charge, additional pay for doing the work of Assistant Commissioner (Accounts) though still an Accounts Officer and retention at Bombay till the decision in the criminal case.

2. According to the respondents, there was a prima facie case against the applicant and others for fraudulent payment and it is for the applicant to move the Special Court for expeditious disposal of this case and it is only that Court which can decide whether the applicant is guilty or not. We agree with this contention of the respondents. Regarding additional remuneration for the period 1975 to 1977, it is contended by the respondents that the Sub-Regional office at Nagpur was opened only in 1975 and according to the instructions at that time, the Provident Fund Inspectors (Grade II) were required to hold the charge of Accounts Officer as a stop gap arrangement. Since the applicant was not formally appointed by the appointing authority to this post but was merely asked by his superior officer to discharge these duties in the exigencies of work as a temporary arrangement and, in any case, he has approached the Tribunal only in 1988 for this grievance relating to the period 1975 to 1977, we have to reject this prayer for additional remuneration for such old period. It is also not possible for us to accept the applicant's prayer

for retention at Bombay as transfers are in the realm of executive discretion and are required to be made, if necessary, in public interest in the exigencies of work.

3. The applicant was promoted to the higher post of Provident Fund Inspector (Grade I) in July 1978 and to the post of Accounts Officer on 15.6.1981, when criminal investigations were in progress. But he was not considered for promotion to the next higher grade of Assistant Commissioner when others were promoted to that post in 1984, 1986 and 1988, and he has also been stopped at the stage of efficiency bar with effect from 1.7.1984 in his scale as Accounts Officer. Admittedly, there were no adverse remarks in the applicant's confidential reports during this period. The respondents have merely stated that the applicant was not eligible to be considered for promotion in 1984 since the services rendered by him in the two different cadres of Provident Fund Inspector (Grade I) and Accounts Officer could not be combined. Even if the service as Provident Fund Inspector (Grade I) is excluded, and even accepting that the service rendered by the applicant during his adhoc appointment as Accounts Officer from 15.6.1981 does not count for seniority, the applicant, in any case, was the senior most Accounts Officer after the promotions made in 1984 and, therefore, was clearly in the zone of consideration for the promotions ordered in 1986 and 1988. But there is no explanation from the respondents why his name was not considered during these selections in 1986 and 1988. Though promotion is not a matter of right, it is well established that a Government servant is entitled to be considered for promotion as per the

(11)

rules which govern his service and non-consideration for promotion on the sole ground of pendency of criminal proceeding has been held uniformly by Courts to offend Art. 14 and 16 of the Constitution. Government has also repeatedly issued instructions recognising the right of an employee to be considered for promotion as per rules along with others, if he is qualified for the higher post. Even in respect of officials whose conduct is under investigation or against whom criminal case is pending, instructions exist that their suitability for promotion should be assessed at the relevant time by the D.P.C. and a finding reached whether but for such investigation or prosecution, the officer would have been recommended/selected for promotion or not, and his name put in a sealed cover with the finding. The respondents have clearly erred in not considering the applicant for promotion/crossing the E.B. from the dates he was eligible for such consideration, after observing the "sealed cover procedure" if necessary.

3. There is also considerable substance in the applicant's plea that he should be paid in the pay scale attached to the post of Assistant Commissioner (Accounts) after this post was created and he had performed the duties of that post though he was in the lower scale of Accounts Officer. Though the respondents had contended in their written reply that an Assistant Provident Fund Commissioner was required to look after 1 lakh accounts and an Accounts Officer after 65000 accounts only and, therefore, the two were not performing equal work, the applicant in his rejoinder has stated that the norm of

65,000 accounts for an Accounts Officer was prior to the recommendations of the Fakir Chand Committee, on the basis of which posts of Assistant Commissioner (Accounts) were created. A new amendment specifying the duties of the Assistant Commissioner (Accounts) was consequently inserted in the Accounting Manual. With this amendment, there is no other clause in the Manual for separate duties and responsibilities for Accounts Officer as the post of Accounts Officer itself was to be abolished. The amended provision in para 51-B of the Manual clearly states that till the post of Assistant Commissioner (Accounts) was created, the existing Accounts Officer would perform the duties of Assistant Commissioner (Accounts). Even otherwise, the applicant alleges that from August 1984, he was dealing with 5 lakh subscribers in respect of exempted establishments and one lakh accounts in respect of unexempted establishments whereas the workload fixed for an Assistant Commissioner (Accounts) is one lakh accounts. The respondents have not disputed these statements of the applicant. We have, therefore, to hold that the applicant is entitled on the principle of equal pay for equal work to be paid the salary of the Assistant Commissioner (Accounts) for the duties carried out by him of that post though working in the lower post of Accounts Officer. However, since the applicant has approached the Tribunal only in September 1988 though this grievance is stated to have arisen from August 1984, the monetary benefits will be payable only from September 1987, i.e. with effect from one year prior to filing of the application.

(3)

: 6 :

4. On the basis of the foregoing discussions and since the criminal proceedings have been abnormally delayed, we direct that a review DPC may be constituted to assess the applicant's suitability for promotion with effect from January 1986 and also crossing the E.B. from the due date and, in case he is found fit by DPC, the applicant may be allowed to cross the E.B. and also promoted as Assistant Commissioner (Accounts) on ad hoc basis as required in the Department of Personnel and Training O.M. dated 30.1.1982 (p.39 of the paper book) after following the procedure prescribed therein. In case he is not found fit for promotion or found fit only from a later date, he shall be entitled to be paid in the scale of Assistant Commissioner (Accounts) with benefit of arrears of the difference in pay and allowances already paid and those payable, with effect from 1st September 1987. This order may be implemented within a period of four months, as far as possible. There shall be no order as to costs.

M.Y. Priolkar
(M.Y. PRIOLKAR)
MEMBER (A)

U.C. Srivastava
(U.C. SRIVASTAVA)
VICE CHAIRMAN