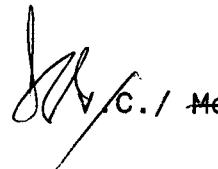


CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

PRE DELIVERY JUDGEMENT IN OA.NO. 515/2001.

Hon'ble Vice Chairman / Member (J) /
Member (A) may kindly see the above judgement for
approval / signature.


C. / Member (J) / Member (A)

Hon'ble Vice Chairman

Hon'ble Member (J) 

Hon'ble Member (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 515/2001

Date of Decision : 19-12-2003

Smt.S.M.Chari _____ **Applicant**
Shri G.K.Masand _____ **Advocate for the
Applicant.**

VERSUS

Union of India & Ors. _____ **Respondents**
Shri Vilas Thali _____ **Advocate for the
Respondents**

CORAM :

The Hon'ble Shri A.K.Agarwal, Vice Chairman

The Hon'ble Shri S.G.Deshmukh, Member (J)

- (i) To be referred to the reporter or not ? ✓
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? ✓
- (iii) Library ✓


(A.K.AGARWAL)
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.515/2001

Dated this the 19th day of December 2003.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman

Hon'ble Shri S.G.Deshmukh, Member (A)

Smt.Surekha M.Chari,
Working in the Statistical
Section, Head Office,
Customs & Central Excise,
Panaji, Goa.

...Applicant

By Advocate Shri G.K.Masand

vs.

1. Commissioner of Customs
& Central Excise,
Customs House,
Panaji, Goa.

2. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

...Respondents

By Advocate Shri Vilas Thali

ORDER

{Per : Shri A.K.Agarwal, Vice Chairman}

This O.A. has been filed by Smt.Surekha M.Chari for issuing necessary directives to the concerned authorities for considering her case for promoting her as Inspector of Central Excise from the date her juniors were promoted.

..2/-



2. The contention of the applicant is that her case is not considered favourably by the DPC for promotion to the level of Inspector of Central Excise while as per guidelines issued by DOPT, all persons having "Good" record are to be placed in the fit list of promotion according to their seniority. The applicant has further stated that she made a detailed representation dated 7.2.2001 in this regard to the Commissioner of Customs and Central Excise, Panaji, Goa but in reply dated 29.3.2001 she was informed that her request regarding promotion to the grade of Inspector on a regular basis w.e.f. August, 2000 is not acceptable to the Department. Hence, this O.A.

3. The Respondents in the reply filed has indicated that the applicant has been given regular promotion to the grade of Inspector, Central Excise vide order dated 24.10.2002 giving the effect of promotion from 30.8.2000. In view of this, it is contended that the present application may be quashed.

4. The learned counsel for the applicant, during the arguments, mentioned that the applicant has been given the promotion from the date her juniors were promoted and along with notional benefit in the fixation of pay. However, the payment of backwages has been denied on the plea of "No work No Pay". The learned counsel for the applicant has further mentioned that the delay in promotion was not at all due to any fault on the part of the applicant. It is the Department which delayed the matter and issued promotion orders only after this OA. was filed. In



support of this argument, he has cited the judgement of the Punjab and Haryana High Court K.K.Jaggia, SE, Haryana PWD vs. State of Haryana (1972 S.L.R.578), wherein it has been held that a Government servant is entitled to salary of higher post from the deemed date of promotion though he did not actually work on higher post. In such cases, the Government servant should be deemed to have worked against these posts from the date he was due for his promotion.

5. The learned counsel for the respondents has mentioned that the relief sought in the OA. was only for promotion to the post of Inspector, Central Excise from the date her juniors were promoted. Since, this has been done, the applicant is not entitled for any further relief. However, on the principle of "No work No Pay" he has cited two judgements of the Supreme Court holding the refusal of back wages justified. These are Telecommunication Engineering Service Association (India) & Anr. vs. Union of India & Anr. (1994 Supp (2) SCC 222), the other case is Paluru Ramkrishnaiah & Ors. vs. Union of India & Anr. (AIR 1990 SC 166).

6. The learned counsel for the applicant has argued that the two cases mentioned above are not relevant in the present case. In the first one, the back wages were declined keeping in view the number of beneficiaries and length of relevant period. In the second case as well, the matter was many years old. As per the facts of the present case where the delay of nearly two years was unnecessarily made by the Department, the applicant is entitled for back wages.

7. There are rulings both in favour and against the payment of back wages. The decision essentially depends upon the facts and circumstances of each case. The Supreme Court of India in P.G.I. of Medical Education and Research, Chandigarh vs. Raj Kumar (JT 2001 (1) SC 336) has observed as follows :-

"Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety."

8. In this case, the applicant was unnecessarily denied promotion for two years and even her representation highlighting guidelines of promotion was rejected and she was promoted only after the OA. was filed. We think this is a fit case for sanctioning back wages. We, therefore, direct the respondents to pay the arrears of back wages to the applicant from the date she has been promoted to the post of Inspector, Central Excise.

Mr. J. M. Deshmukh
(S.G. DESHMUKH)

MEMBER (J)


(A.K. AGARWAL)

VICE CHAIRMAN

mrj.