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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 340/91  
Transfer Application No.

Date of Decision : 9.8.1995

Shri S.V.Behere

Petitioner

Shri S.R.Atre

Advocate for the  
Petitioners

Versus

Collector of Central Excise, Bombay

Respondents

Sh.S.S.Karkera for Sh.P.M.Pradhan

Advocate for the  
respondents

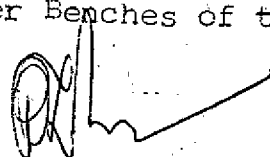
C O R A M :

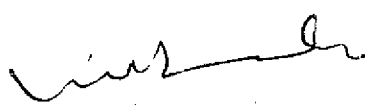
The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to  
other Benches of the Tribunal?

  
(P.P.SRIVASTAVA)  
MEMBER (A)

  
(M.S.DESHPANDE)  
VICE CHAIRMAN



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

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OA.NO. 340/91

Shri S.V.Behere  
V/S.

... Applicant

Collector of Central Excise,  
Bombay.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande  
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri S.R.Atre  
Advocate  
for the Applicant

Shri S.S.Karkera  
for Shri P.M.Pradhan  
Advocate  
for the Respondents

ORAL JUDGEMENT

Dated: 9.8.1995

(PER: M.S.Deshpande, Vice Chairman)

The applicant joined the Central Excise Department in 1961 and was promoted to the post of Sub Inspector in 1962. In 1972 the post of Sub Inspector was abolished and it was upgraded as Inspector. On 24.4.1974 the applicant was placed under suspension with a view to starting criminal proceedings against him. On 21.4.1989 the applicant was acquitted by the criminal court. On 4.7.1989 the order of suspension was revoked and the applicant joined the Central Excise Department on 11.7.1989. The applicant made representations as a result of which the period of suspension came to be treated by the order dated 15.6.1990, as duty for all purposes, but that was made subject to the appeal which had been preferred by the respondents against the order of acquittal passed by the lower court. On 14.7.1992 the High Court dismissed the respondents' appeal. As a sequel the applicant was promoted to the post of Inspector.



(94)

(O.G.) Notionally w.e.f. 11.12.1971 by the order dated 25.5.1993. On 15.3.1994 the respondents passed an order treating the suspension of the applicant from 24.4.1974 to 4.7.1989 as period spent on duty for all purposes.

2. The grievance of the applicant as it survives today is that the applicant should be promoted as Inspector in the year 1971 along with S.K.Gumaste, M.N.Madiwala and B.O.Honawar and pay fixation including arrears w.e.f. 11.12.1971 should be given to him from the date he was notionally promoted to the post of Inspector of Central Excise by virtue of the orders dated 25.5.1993 and that he should be considered for promotion to the post of Superintendent of Central Excise (Group B) w.e.f. the year 1989 along with the Inspectors, namely, Gumaste, Honawar and Advani and his pay should be fixed based on such promotion.

3. Since the applicant was promoted with effect from 11.12.1971 notionally to the post of Inspector (O.G.), the applicant's entitlement for the pay for the period beginning 11.12.1971 shall have to be considered. The applicant has produced the order passed on 15.3.1994 (Annexure-'L') by which the applicant was granted full pay and allowances to which he would have been entitled from 24.4.1974 to the date of his reinstatement in service, i.e. 4.7.1989 had he not been suspended subject to the adjustment in respect of subsistence allowance already paid to him and the period of suspension treated as period spent on duty for all purposes. The grievance of the applicant is that he should have been given the pay and allowances from 11.12.1971 when he was notionally promoted and the period from 11.12.1971 to 24.4.1974 had been <sup>excluded from</sup> included in the order which was not correct. With reference to this,



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the submission was that we should make a direction straightway for the period from 1971 to 1974 and reliance was placed on the observations in Union of India & Ors. vs. K.V.Jankiraman & Ors. (1993) 23 ATC 322. What is over-looked are the observations of Supreme Court in Para 26 of the report where the Supreme Court observed as follows :-

"While, therefore, we do not approved of the said last sentence in the first subparagraph after clause (iii) of paragraph 3 of the said Memorandum, viz, "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:


"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."

Though the respondents have quoted in their reply to the application for amendment for this paragraph, it did not appear that the respondents have considered the position of the applicant. All that has been said in respect of this is that the matter of payment of arrears to the applicant is under consideration on the basis of above O.M. and a decision will be taken as early as possible. Shri Atre for the applicant states that even the amount which was to be paid under the order dated 15.3.1994, i.e. from 24.4.1974 to 4.7.1989 has not been paid to the applicant. There shall have to be a direction to the respondents to pay to the applicant his entitlement from 24.4.1974 to 4.7.1989 and to consider the question of payment from 11.12.1971 to 24.4.1974 together with the pay and allowances for the period thereafter to-date.



This shall be done within a period of two months from the date of communication of this order to the respondents.

4. The next grievance which survives is about non-consideration of the applicant for promotion to the post of Superintendent Group 'B' which was granted to his juniors Gumaste, Madiwala and Honawar. The respondents have stated in the reply to M.P.No. 814/94 that a review DPC is being held and those proceedings are in progress. We direct that the DPC shall be held and its <sup>proceedings</sup> ~~proceedings~~ completed and <sup>taken</sup> ~~taken~~ a decision <sup>taken and</sup> ~~pursuant~~ ~~to the decision also~~ within a period of two months from today. Any benefits flowing from the orders passed based on the recommendations of the review DPC shall be paid to the applicant within a period of 2 months from the date of recommendation of the review DPC. With these directions the OA<sup>ed</sup> is disposed of.

  
(P.P.SRIVASTAVA)  
MEMBER (A)

  
(M.S.DESHPANDE)  
VICE CHAIRMAN

mrj.



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Per Tribunal

Date: 23/2/96

As there will be no Division Bench, the matter fixed on before the Tribunal is adjourned for Admission hearing / directions / orders / final hearing on 4/3/96 CP. Inform the advocates / Parties accordingly.

per my  
Dy. Registrar

Dt. 4-3-96 (29)

Heard Shri B. Renganathan for Shri V.G. Kumar for the applicant and Shri S.S. Karkera for Shri P.M. Pradhan for the Respondents. During the course of hearing, the counsel for the Respondents has submitted a letter dated 15-12-1995 stating that the Respondents have complied with the orders of the Tribunal and they have received the applicant's acknowledgement in that behalf. In the circumstances, the C.P. filed by the applicant does not survive and the same is therefore discharged.

12/0

4/3/96  
order/Judgement despatched  
Applicant/Respondent (s)  
28/3  
28/3

M.R. Kolhatkar  
(M.R. Kolhatkar)  
Member (A)

ssp.

B.S. Hegde  
(B.S. Hegde)  
Member (J)



Order/Judgement despatched  
to applicant, respondent (s)

on 31/8/95

(17)

2/10/95

Dated = 27-11-95

C.P. No. 159/95  
filed for order  
on 27-11-95

Shri B. Ranganathan for  
Shri S.R. Atre for the applicant.

Issue notice to the  
respondents to file a reply to

C.P. No. 159/95

his + the case on 19.1.96.

(P.P. Srivastava)

M(A)

(B.S. Hegde)

M(J)

31) 19.1.1996.

Shri B. Ranganathan  
appears on behalf of Shri S.R. Atre, counsel for the  
applicant.

Shri S.S. Kulkarni  
for Shri P.M. Pradhan,  
counsel for the respondents.

Applicant has filed  
C.P. No. 159/95. Respondents  
desires to file reply ~~replies~~  
to the C.P. though they  
have complied with the  
directions of the Tribunal  
vide dated 9.8.1995.

List the case on  
23/2/1996.

Mekolhatkar  
(M.R. Kolhatkar)  
M(A)

(B.S. Hegde)  
M(J)

Affidavit of  
Respondent to C.P.  
filed on 29.1.96

1/8  
30/1/96

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