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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1040/92
Transfer Application No.

Date of Decision : 23.3.95

M. S. Puranik

Petitioner

Mr. S. Natarajan

Advocate for the
Petitioners

Versus

U.O.I. & Ors.

Respondents

Mr. M.I. Sethna

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?

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V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

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O.A.NO.1040/92

M.S. Puranik

..Applicant

v/s

Union of India & Ors.

Respondents

Coram: Hon.Shri Justice M.S.Deshpande, V.C.
Hon.Shri P.P.Srivastava, Member(A)

Appearance:

Mr. S. Natarajan

Counsel for the applicant

Mr. M.I.Sethna

Counsel for the respondents

ORAL JUDGMENT:

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

DATED: 23.3.95

By the present application the applicant prays for the arrears of difference in pay and allowances for the period from the notional date of his promotion i.e., from 1.8.82 to 14.6.91. The applicant was chargesheeted on 7.6.82, while he was working as Assistant Collector (Junior Scale) in the Customs Department for which he had submitted his reply on 4.8.82. But the enquiry could not be held and the applicant came to be exonerated by the order of President passed on 29.4.91, Annexure I, where it was observed inter-alia as follows:

AND WHEREAS Shri M.S.Puranik has sent a reply to the charge-sheet in his defence vide his representation dated 4.8.82.

AND WHEREAS the original records relied upon in the case could not be procured till date as the same were furnished to court in connection with another case.

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"AND WHEREAS, it has been considered that the disciplinary case against Shri M.S.Puranik should not be held up for any longer.

"AND WHEREAS, after examination of facts and circumstances of the case it has been decided by the President to drop the case against the said Shri Puranik.

"NOW THEREFORE, the President hereby orders that the disciplinary case against Shri M.S.Puranik, Assistant Collector of Customs and Central Excise be dropped and he may be fully exonerated against the charges framed against him."

The applicant took over the charge as Deputy Collector on 14.6.91. The President passed an order dated 16.8.91, Annexure A.3, promoting the applicant on an officiating basis to the Senior Scale (Rs.1100-1600)(Pre-revised) notionally w.e.f. 1.8.82 i.e., the date on which his immediate junior Km. A. Girija was promoted from Junior Scale to Senior Scale and stating therein that the applicant would be entitled to draw the arrears of pay and allowances w.e. from the date of issue of the notification. The applicant made a representation on 11.11.91 requesting that he should be paid the arrears of difference in pay and allowances from 1.8.82. To that representation a reply was sent on 7.5.92, Annexure A.5, to the effect that his request could not be acceded to but no reasons were given.

2. The Id. Counsel for the applicant Shri Natarajan relied on the observations of the Supreme Court in UNION OF INDIA V. K.V. JANKIRAMAN, AIR 1991, 2010. In para 7 it is observed as under:

"There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged



on behalf of the appellant authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same."

3. On behalf of the respondents reference was however made to the later part of para 7 which reads as under:

"To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests."

The Supreme Court directed that after clause (iii) of para 3 of the memorandum the following sentence be read:

"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. In the present case we are inclined to think that though the respondents are entitled to invoke the observations of the Supreme Court, ~~but~~ they had an opportunity when the applicant made a representation on 11.11.91 to consider all the facts and pass a reasoned order instead of sending a cryptic reply on 7.5.92. Shri Sethna, counsel for the respondents, however, relied on the position that the applicant came to be exonerated because certain records were not available and this

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should not be said to be a case where there was material with the respondents and on that material the case could have been considered and a reply given.

5. Having regard to the peculiar facts of this case we would direct the respondents to calculate the amount which would have become due to the applicant on account of his notional promotion as Deputy Collector w.e.f. 1.8.82 up to 14.6.91 and pay half of the amount of the difference in wages within two months from the date of communication of this order. We further direct in line with the direction given by the Supreme Court in para 19 of JANKIRAMAN (supra) judgment that the appropriate authority will examine the question whether the applicant was entitled to salary, and if so to what extent, and after recording its reasons decide whether the remaining half of the amount should or should not be paid to the applicant by passing a reasoned order. The decision in this respect shall be taken within four months from the date of communication of this order. With these directions the O.A. is disposed of. No order as to costs.

(P.P.Srivastava)
Member(A)

(M.S.Deshpande)
Vice Chairman