

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 1052/92

Transfer Application No.

Date of decision 12.8.1993

Shri V.S.S.N. Sharma.

Petitioner

Advocate for the Petitioner

Versus

Union of India & Ors.

Respondent

Shri J.G.Sawant.

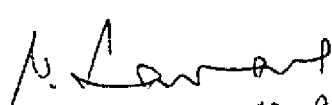
Advocate for the Respondent(s)

Coram :

The Hon'ble ~~Shri~~ Ms. Usha Savara, Member(A).

The Hon'ble Shri

1. ~~Whether the 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 ?


(USHA SAVARA)
MEMBER (A).

12.8.93

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY.

Original Application No.1052/92.

Shri V.S.S.N.Sharma.

..... Applicant.

V/s.

Union of India & Ors.

..... Respondents.

Coram: Hon'ble Ms.Usha Savara, Member(A).

Appearances:-

Applicant is present in person.
Respondents by Shri J.G.Sawant.

JUDGMENT:-

[Per Ms.Usha Savara, Member(A)] Dated: 12.8.1993.

The applicant has impugned letter dt. 15.11.1991 by which his representation for payment of arrears on notional promotion as Assistant Personnel Officer from 1.11.1978 has been rejected as the provisions contained in Para - (b) of DPT's O.M. No.22015/2/86-Estt. (D) D.4.1989 do not permit such payment of arrears.

2. The applicant had been removed from service after disciplinary proceedings. He challenged his removal by filing O.A. No.282 of 1987 and the O.A. was allowed. The operative part of the order read as follows:

"The applicant is directed to be reinstated into service. The applicant would be entitled to all consequential benefits consequent on such reinstatement".

3. Though the applicant was reinstated in service, and an order was passed on 5.9.1990 by which he was to officiate as A.P.O. but this officiation was ^{notional} ~~mentioned~~ w.e.f. 1.11.1978. He was only given the salary and allowances of the post of Stenographer from 1.11.1978 even though he was deemed to have been promoted as A.P.O. from 1.11.1978. This O.A. has been filed with the prayer that the respondents be directed to pay arrears due consequent on his retrospective promotion as A.P.O. from 1.11.1978. *JS*

.....2.

4. A reply has been filed on behalf of the respondents. The facts are admitted. Reliance is placed on the provisions contained in para 1(b) of the Department of Personnel and Training O.M. dated 10.4.1989 for denying the arrears to the applicant. It is also urged that arrears of pay and allowances were given subject to the provisions of F.R.54 and 54-A that is, whatever the applicant was entitled to in his grade as Stenographer.) Shri Sawant, learned counsel for the Respondents, fairly conceded that the applicant's case was covered by the Judgment of the Hon'ble Supreme Court in the case of Union of India V/s. K.V.Jankiraman (1991) 4 SCC 109. He urged that the authorities concerned should decide whether the official 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.

5. I have heard both the parties. The Hon'ble Supreme Court has directed that the authorities concerned should decide whether the official is entitled to any arrears of pay for the period of notional promotion and the extent thereof and if the authorities deny any arrears of salary or part of it, they would record their reasons for doing so. This judgment was delivered on 27.8.1991 whereas the orders of the applicant's reinstatement were passed on 30.4.1990 i.e. prior to the judgment of the Hon'ble Supreme Court. Though it is an accepted principle that where the government servant stays away from work for his own reasons, then he gets no pay (FR 17). However, this principle of 'No work, no pay' is not applicable to cases such as the present one where the employee, although he is willing to work, is kept away from work by the authorities for no fault of his. The request of the learned counsel for the respondents is also not acceptable as the

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respondents have stated clearly in their reply on page 5 that the competent authority had also taken into account all the facts and circumstances before deciding to reject his representation.

6. In the circumstances, I feel that any direction to the respondents to consider ^{his} ~~case~~ for payment of arrears would merely be delaying the final outcome of this case. As it is, the applicant has been suffering since 1978, and it would be a tremendous hardship if the decision is again left to the respondents.

7. The applicant had qualified in the departmental written test for the post of Assistant Personnel Officer in March, 1977. He had also been interviewed. Due to the Disciplinary Proceedings initiated against him, his case was kept in sealed cover. Though the cover was misplaced, the respondents have very fairly given him notional promotion from the date on which the last empanelled candidate was promoted as A.P.O. in the 1977-78. He could not join the higher post because of the disciplinary proceedings. It was not due to any fault on his part. He is, therefore, entitled to the promotional post from 1.11.1978, and the pay and allowances that are attached to it.

8. In the light of the foregoing discussion, I hold that the applicant is entitled to the relief claimed by him, and direct the respondents to pay to the applicant the arrears of the pay and allowances due to him on his promotion as A.P.O. i.e. from 1.11.1978. The respondents shall comply with the above direction as expeditiously as possible, but preferably within a period of four months from the date of receipt of a copy of this order. There will be no order as to costs.


12.8.93.
(USHA SAVARA)
MEMBER (A)

B.