

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1257/92

Transfer Application No:

DATE OF DECISION: 6.4.1995

R.N.Tajanpure Petitioner

Shri S.P.Kulkarni Advocata for the Petitioners

Versus

Union of India & Ors. Respondent

Shri S.S.Karkera. Advocate for the Respondent(s)

CORAM :

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 ?


(M.S.DESHPANDE)
VICE-CHAIRMAN.

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No.1257/92.

R.N.Tajanpure. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

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

Appearances:-

Applicant by Shri S.P.Kulkarni.
Respondents by Shri S.S.Karkera.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 6.4.1995.

By this application, the applicant seeks a declaration that he would be entitled to promotion and all the consequential benefits from the date when his immediate junior was promoted i.e. from 30.10.1985 and not from the date on which he took over the actual charge of the post.

2. The applicant was declared successful in departmental competitive examination for promotion as Inspector of Post Offices in the year 1973 and accordingly was promoted and posted as Inspector of Post Offices from 24.9.1974. The C.B.I. lodged a complaint against the applicant and others under Section 120-B read with Section 420 and also under Section 5(i)(d) read with 5(2) of the Prevention of Corruption Act. The charge sheet was submitted on 31.12.1985 before the Special Judge at Nashik, but the applicant was acquitted by the Special Court on 16.5.1989. The applicant's suspension was revoked on 22.1.1990 and it was directed that he would be treated as on duty during the period of suspension. By the order dt. 22.9.1990 (Ex. 'H') the applicant was given notional promotion in A.S.P. cadre as he

would have been promoted in that cadre under the Chief Post Master General's Memo dt. 30.10.1985. The only contention raised by the applicant is that he could not have been denied his pay and allowances and other benefits which were paid to his immediate junior who came to be promoted w.e.f. 30.10.1985 in view of the acquittal and the applicant would have been entitled to the pay and allowances of the promotional post from 30.10.1985, the date his junior drew the pay and other benefits in the promotional post.

2. On behalf of the Respondents reliance was placed on Government of India Instructions issued by the Department of Personnel and Training under O.M. No.22015/2/86-Est(D) dt. 10.4.1989 to the effect that the Officer who has been exonerated of the charges would on promotion get seniority and fixation of pay on notional basis with reference to due date on which he would have been promoted in the normal course, but no arrears of pay have to be paid in respect of the period prior to the date of actual promotion. This, however, ^{does} not help the Respondents in view of the observations in Union of India V/s. K.V.Janakiraman (A.I.R. 1991 S.C. 2010) to the effect that:

"when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he had to be given the benefit of salary of the higher post along with the other benefits from the date on which he would have normally be promoted but for the disciplinary/criminal proceedings."

With regard to arrears their Lordships observed that :

"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 proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

The applicant made representations to the Respondents on 26.7.1991, 28.10.1991 and 24.12.1991 asking for the arrears of pay for the period between notional promotion and actual promotion, but that request was rejected by the Respondents by the order dt. 6.3.1992 (Annexure 'B'). The authorities, thus had an opportunity to pass a reasoned order denying the relief sought by the applicant by those representations but they did not do so to pass such a reasoned order and we do not think that a further opportunity now should be given to the Respondents to reconsider the position. The Hyderabad Bench of this Tribunal in Jayant Gopal Pandse V/s. Union of India & Ors. (A.I.S.L.J. 1992(3) CAT 227) when the delay was not attributable to the applicant directed in the light of the observations in K.V.Janakiraman's case to pay the arrears of pay and other allowances as claimed by the applicant. We, therefore find that the applicant will be entitled to a similar relief having regard to the facts of the present case as the delay ^{in the} ~~was not~~ criminal ^{case} ~~and~~ was not attributable to the applicant and he met with a clean acquittal.

3. In the result, we direct the respondents to pay to the applicant pay and other allowances from the date of his notional promotion i.e. from 30.10.1985 up to the date of his actual assuming the charge of the promotional post within three months from the date of communication of this order. There will be no order as to costs.

(P.P. SRIWASTAVA)
MEMBER (A)

(M.S. DESHPANDE)
VICE-CHAIRMAN