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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 593/92

Transfer Application No:

DATE OF DECISION 6.1.1993

J.B.BADRE Petitioner

M.A.MAHALLE Advocate for the Petitioners

Versus

UNION OF INDIA AND ORS. Respondent

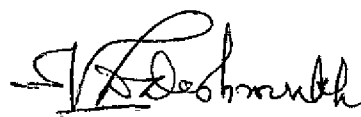
SHRI P.M.PRADHAN Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri V.D.DESHMUKH, MEMBER (J)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes -*
 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 ?
- } *no*


(V.D.DESHMUKH)
MJ

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION NO.593/92

Shri J.B.Badre,

.. Applicant

V/s

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

and ors.

.. Respondents

CORAM :

HON'BLE SHRI V.D.DESHMUKH, MEMBER (J)

Appearance :

MR.M.A.MAHALLE, Adv.
for the applicant

Shri P.M.Pradhan,
counsel for the Respondents

ORAL JUDGEMENT

DATED : 6.1.1993

(PER : V.D.DESHMUKH, MJ)

The applicant who was served ^{ing} in the Income Tax department before his retirement/^{by} superannuation ^{the} had ^{been} filed ~~this~~ Original Application No.557/89, contending that he was wrongly denied the promotion to the cadre of Chief Commissioner of Income Tax. This application was decided by this Tribunal by the judgement dated 2.5.1991 and the respondents were directed to summon a review Departmental Promotion Committee which will consider the applicant's record excluding the entry of 1987-88. It was further directed that the comparative merit of the applicant ~~shall~~ be judged by the Review D.P.C. alongwith that of those who were empanelled and promoted on the higher level. It ^{was it?} ~~is~~ also directed that the promotions so made will be deemed to have been set aside and will be substituted by the promotions

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which will be made on the basis of Review Departmental Promotion Committee.

2. After receipt of this judgement, the Review Departmental Promotion Committee was constituted and the applicant was promoted on 23.9.1991 to the cadre of Director General (investigation), Bombay, which post^{is} equivalent to that of the Chief Commissioner of Income Tax. The applicant officiated in the said post till 31st October 1991 on which ^{date} he superannuated.

3. After superannuation of the applicant, the respondents have passed an order dated 24.1.1992 under which the applicant was promoted to the Grade of Chief Commissioner of Income-tax notionally with effect from 31.5.1990, however, it was made clear that the applicant ^{was} ~~is~~ not entitled for any arrears of pay for the period from 31.5.1990 to 31.10.1991. It is an admitted position that this promotion has been taken into consideration for granting notional increments and other admissible benefits, ^{was} ~~is~~ therefore, the applicant filed this application claiming that the respondents be directed to pay arrears to the applicant for the period from 31st May 1990 to 31st October 1991 and all consequential benefits. The applicant also claims an interest on arrears of pay.

4. The respondents were granted time after the application was admitted to file reply but the reply was not filed till this date. This Tribunal on 13th November 1992 granted time to the respondents to file reply as ^{the} ~~a~~ last chance with further direction as regards an advance copy etc. However, written reply was not filed in the time prescribed. It must be pointed out that although written reply has not been filed by the respondents, ^{the} ~~this~~ submission^s made on behalf

of the respondents would show that the respondents do not dispute the facts which are essential for the decision in the application, and the question on which the fate of the applicant ^{then} rests is more or less a legal question.

5. It was contended on behalf of the respondents that the applicant was not entitled to arrears of pay for the period from 31.5.1990 to 31st October 1991 as he was promoted notionally ^{and} ~~but~~ he had not actually worked ^{for} on the higher post, and in view of the F.R.17 the applicant was not entitled to any arrears of pay ^{and as} in such circumstances, the principle of no work no pay had to be followed, ~~in the present case.~~

6. The learned counsel for the applicant relied upon the various decisions, which have been urged in the application. He also relied upon the decision of the Hon'ble Supreme Court in the case of Union of India V/s K.V.Jankiram (AIR 1991 SC 2010). In this case the question of applicability of Rule 17 of the F.R. was before the Hon'ble ~~SC~~ ^{the} Court and Supreme Court held that the normal rule of 'No Work No Pay' was not applicable in all cases and it will not apply in cases where the employee although willing to work was kept away from work by the authority for no fault of his. In the case before ^{the} Hon'ble Supreme Court, the respondent was not considered for promotional post on the ground that the disciplinary inquiry was pending against him. He was finally ~~exonerated~~ ^{exonerated} and not even a censure was ~~not~~ ^{not} passed against him and the Hon'ble Supreme Court held that in such cases the rule-no work no pay would not apply. At the same time the Hon'ble Supreme Court also found that the denial of salary and other benefits for the period during which no work was done by the employee was not ipso facto illegal and ultimately directed the appellants to consider whether the respondent,

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Jankiram was entitled to arrears of pay for the period of notional promotion preceeding the date of actual promotion. In the present case also ~~as the~~ order passed in O.A. No.557/89 shows the applicant could not get promotion in time because of adverse remarks in the year 1987-88. This Tribunal directed that the applicant shall be considered by the ~~Review~~ Departmental Promotion Committee ignoring these remarks and the applicant was granted notional promotion.

7. The learned counsel for the applicant also relied upon the decision of the Hon'ble Supreme Court in the case of P.S. Mahal V/s Union of India (AIR 1989 SC 1291), in which case the Hon'ble Supreme Court held that the notional promotion will carry with it the salary and allowances with retrospective effect. My attention has been drawn to the decision of the Hon'ble Supreme Court in the case of Paluru Ramkrishnaiah V/s Union of India and ors which was decided alongwith other appeals and which judgement is reported in ~~the~~ AIR 1990 SC 166. In this case the Hon'ble Supreme Court upheld the judgement of M.P. High Court as regards back wages holding that it was the settled service rule that there was no pay for no work and the appellants will not be entitled to pay and allowances during the period he had not been performing the duties of higher post, although after due consideration he was given appropriate place in the gradation list. After going through the judgement carefully, I find that the facts in the present case are distinguishable. Apart from that the present case will be governed by the subsequent decision of the Hon'ble Supreme Court in the case of Union of India V/s Jankiram (supra).

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8. The learned counsel for the respondents ^{The Principal Bench of} relied upon the judgement of this Tribunal in the case of D.M. Basu V/s Additional Secretary to Government of India (Delhi) (DA 2333/88) decided on 23.4.1990 (SLJ 88) (3). The facts in the case before the Principal Bench were however, entirely different. There the question was whether the applicant who was given notional promotion was entitled to the benefit of the decision of the Calcutta Bench, which was passed in the year 1987 i.e. after the date of retirement of the applicant. The Principal Bench found that the judgement of the Calcutta Bench stipulated that those who were no longer in service and whose pay was fixed notionally shall get the pensionary benefits in terms of the rules in force at the relevant time, and therefore, the judgement was not applicable to the case of ^{The} applicant. After having considered all these decisions I find that the present case shall be governed by the judgement of the Hon'ble Supreme Court in the case of K.V. Jankiram and ors. At the same time it must be pointed out that even according to this judgment even though it is found that the rule of 'no Work No pay' was not attracted the employees shall not be ipso facto entitled to arrears of wages for the period ^{of} ~~to~~ notional promotion, and the authorities have to consider whether he is entitled to the arrears of pay or not. Such directions were given to the appellants by the Hon'ble Supreme Court. In the present case also similar directions are warranted and, hence I pass

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the following orders. The application is allowed and the respondents are directed to consider whether the applicant is entitled to ^{any} arrears of pay for the period from 31.5.1990 to 31.10.1991 and the consequential benefits. The applicant shall make a representation to the respondents who shall consider and decide the same within a period of four months from the date of the representation. There will be no order as to costs



(V.D. DESHMUKH)
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