

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. No.866/94

FRIDAY THIS THE THIRTY FIRST DAY OF MARCH 1995

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

A. Anantachar,
S/o H. Srinivasachar,
Age:58 years, Occ:Service,
R/o 157/1, 12th Cross,
II Main, Jayanagar,
Mysore-14.

... Applicant

[By Advocate Shri G.S. Kannur]

v.

1. The Director General &
Scientific Advisor,
Ministry of Defence,
R&D Organisation 'B' Wing,
Sena Bhavan,
New Delhi-110011.
2. The Director, G.T.R.E.,
C.V.Ramanagar,
Bangalore-93.
3. The Director,
D.F.R.L.,
Siddarthanagar,
Mysore.

.... Respondent

[By Advocate Shri M.S. Padmarajaiah ...
Senior Central Government Standing Counsel]

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:

1. The applicant is aggrieved because of non-payment of arrears of salary and other financial benefits for the period from 17.4.1989 to 14.4.1992 when he was retrospectively promoted.
2. Briefly stated the case of the applicant is as



below:

The applicant was promoted as Office Superintendent ['OS' for short] with retrospective effect from 17.4.1989 and actually from 15.4.1992 as per Annexure A-1 of even date. Retrospective promotion was given to the applicant because he was wrongfully overlooked and his juniors were promoted. The rule that existed earlier was that a person would be considered for promotion on the basis of grading of a person with 'outstanding' grade in ACR can supersede a person with 'very good' grading. This . This was revised on 10.3.1989 and the revised rule states that all persons with bench mark 'good' would be eligible to be included in the panel for consideration for promotion on the basis of seniority. DPC II was held subsequently and after issue of the revised rules but in spite of the same the applicant was overlooked and was not given promotion. Subsequently when promoted the applicant was denied financial and other benefits of salary from 17.4.1989 to 15.4.1992. The representation of the applicant as in Annexure A-5 was rejected by the respondents as can be seen from Annexure A-3 dated 17.11.1993. The applicant had appealed against the said rejection on 5.1.1994 in respect of which the respondents have not taken any action. Hence the application for a direction to the respondents to pay arrears of salary and other financial benefits



for the period from 17.4.1989 to 15.4.1992 together with interest and costs.

3. The revised procedure for selection and promotion brought about by Government Order dated 10.3.1989 prospectively from 1.4.1989 as in Annexure R-1 could not be brought to the notice of the DPC held on 17.4.1989 as the order was received only on 24.4.1989 in the DPC Sectt. and thus bona fide and unintentional mistake in the selection of junior than the applicant has resulted in the case of the respondents. They further state that review DPC was held to rectify the anomalies that had arisen due to revised instructions after prolonged correspondence as per the order issued to conduct review DPC by letter dated 13.4.1992. Accordingly the review DPC was held on 15.4.1992 and issued revised orders of even date promoting the applicant to the post of OS with effect from 17.4.1989 and actually from the date of issue viz. 15.4.1992. The applicant having not discharged the duties and higher responsibilities applying the no work no pay rule, the applicant is not entitled to the reliefs sought in this application. The application is also barred by delay.

4. We have heard Shri G.S. Kannur, learned counsel for the applicant and Shri M.S. Padmarajaiah, learned Senior Standing Counsel for the respondents.

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5. Shri Kannur contended that for no fault of the applicant, he was not considered for promotion and the non-consideration is entirely due to administrative lapse on the part of the respondents for which the applicant cannot be penalised. Relying strongly on the decision in UNION OF INDIA V. K.V. JANAKIRAMAN learned counsel further contended that the normal rule of no work no pay is not applicable to this case inasmuch as the applicant even though he was willing to work in the promoted post, was not given the same and was not considered, which was due to administrative lapse and, therefore, he is entitled to all the benefits retrospectively from the date he was considered fit for promotion.

6. The contention of Shri Padmarajaiah on the other hand is that applicant has been given retrospective promotion but as he had not discharged the duties of OS from the retrospective date, he is not entitled to benefits sought in this application in view of the rule applicable to such cases i.e., no work no pay and, therefore, the department is justified in disallowing the claim.

7. The applicant became entitled for consideration for promotion along with his juniors during the year 1989 itself. But his name was not included in the panel of persons to be considered for promotion at the relevant point of time because of a mistake on the part of the department.. This an administrative



retrospective promotion. Relying on the decision of the Madras Bench of this Tribunal in O.A. No.553/93, learned standing counsel contended that the claim similar to the one in this application was for consideration therein and the same was dismissed. He, therefore, urged that this application also is liable to be dismissed. We are unable to agree with this contention of the learned Standing Counsel inasmuch as the application before the Madras Bench of this Tribunal was dismissed on the ground that it was barred by the principles of res judicata which is not the case herein. Therefore, the respondents cannot get much support from the said decision. The observation of the Supreme Court in Janakiraman's case and the Jodhpur Bench referred to above are fully applicable to the facts of the present case. The applicant herein having retrospectively promoted, has not been paid the pay and allowances retrospectively from the date of such promotion and the denial of such benefits is unjust and arbitrary. Therefore, the applicant is entitled to the benefit sought for by him.

8. Coming to the contention of the respondents that the application is barred by delay, we have to only point out that the applicant had been agitating for his promotion and the retrospective promotion was notionally given effect to by order dated 13.5.1992 as in Annexure A-4 and regularly from 15.4.1992 only.



Theeafter he had made representation on 10.9.1992 as in Annexure A-5 and on refusal to revise the order as communicated to him by letter dated 17.11.1993 as in Annexure A-6, he preferred an appeal on 5.1.1994 [Annexure A-7] the reply thereto was only by communication dated 18.1.1994 as in Annexure A-8. It is thus clear that the present application filed on 22.4.1994 is will within time. For these reasons, the contention of delay taken by the respondents is without any substance.

9. In the result we allow the application and direct the respondents to pay arrears of salary and other financial benefits to the applicant for the period from 17.4.1989 to 14.4.1992 within a period of 3 months from the date of receipt of a copy of this order. If this direction is not complied within the stipulated period, the respondents will be liable to pay interest on the amount payable to the applicant at the rate of 12% from that date till the date of payment. No order as to costs.

A. N. Vignamaddy
31/3/95
MEMBER [J]

V. Ramesh Babu
31/3/95
MEMBER [A]

bsv

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 033.

Dated: **6 APR 1995**

APPLICATION NO. 866 of 1994.

APPLICANTS: **Sri. A. Anantachar, Mysore.**

V/S.

RESPONDENTS: **The Director General & Scientific Advisor,
Ministry of Defence, New Delhi two other.**

To

1. **Sri. G. S. Kannur, Advocate,
No. 10/7/1, Kumarakrupa Road,
High Grounds, Bangalore-560001.**
2. **Sri. M. S. Padmarajiah, Senior
Central Govt. Stng. Counsel,
High Court Bldg, Bangalore-1.**

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

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Please find enclosed herewith a copy of the Order/
Stay Order/Interim Order, passed by this Tribunal in the above
mentioned application(s) on 31-03-1995.

Issued on
6/4/95

[Signature]

[Signature]

[Signature]

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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.... Respondent

[By Advocate Shri M.S. Padmarajaiah ...
Senior Central Government Standing Counsel]

ORDER

Shri A.N. Vujjanaradhya, Member [J]:


1. The applicant is aggrieved because of non-payment of arrears of salary and other financial benefits for the period from 17.4.1989 to 14.4.1992 when he was retrospectively promoted.

Briefly stated the case of the applicant is as



below:

The applicant was promoted as Office Superintendent ['OS' for short] with retrospective effect from 17.4.1989 and actually from 15.4.1992 as per Annexure A-1 of even date. Retrospective promotion was given to the applicant because he was wrongfully overlooked and his juniors were promoted. The rule that existed earlier was that a person would be considered for promotion on the basis of grading of a person with 'outstanding' grade in ACR can supersede a person with 'very good' grading. This . This was revised on 10.3.1989 and the revised rule states that all persons with bench mark 'good' would be eligible to be included in the panel for consideration for promotion on the basis of seniority. DPC II was held subsequently and after issue of the revised rules but in spite of the same the applicant was overlooked and was not given promotion. Subsequently when promoted the applicant was denied financial and other benefits of salary from 17.4.1989 to 15.4.1992. The representation of the applicant as in Annexure A-5 was rejected by the respondents as can be seen from Annexure A-3 dated 17.11.1993. The applicant had appealed against the said rejection on 5.1.1994 in respect of which the respondents have not taken any action. Hence the application for a direction to the respondents to pay arrears of salary and other financial benefits



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3. The revised procedure for selection and promotion brought about by Government Order dated 10.3.1989 prospectively from 1.4.1989 as in Annexure R-1 could not be brought to the notice of the DPC held on 17.4.1989 as the order was received only on 24.4.1989 in the DPC Sectt. and thus bona fide and unintentional mistake in the selection of junior than the applicant has resulted in the case of the respondents. They further state that review DPC was held to rectify the anomalies that had arisen due to revised instructions after prolonged correspondence as per the order issued to conduct review DPC by letter dated 13.4.1992. Accordingly the review DPC was held on 15.4.1992 and issued revised orders of even date promoting the applicant to the post of OS with effect from 17.4.1989 and actually from the date of issue viz. 15.4.1992. The applicant having not discharged the duties and higher responsibilities applying the no work no pay rule, the applicant is not entitled to the reliefs sought in this application. The application is also barred by delay.


4. We have heard Shri G.S. Kannur, learned counsel for the applicant and Shri M.S. Padmarajaiah, learned Senior Standing Counsel for the respondents.



5. Shri Kannur contended that for no fault of the applicant, he was not considered for promotion and the non-consideration is entirely due to administrative lapse on the part of the respondents for which the applicant cannot be penalised. Relying strongly on the decision in UNION OF INDIA V. K.V. JANAKIRAMAN learned counsel further contended that the normal rule of no work no pay is not applicable to this case inasmuch as the applicant even though he was willing to work in the promoted post, was not given the same and was not considered, which was due to administrative lapse and, therefore, he is entitled to all the benefits retrospectively from the date he was considered fit for promotion.

6. The contention of Shri Padmarajaiah on the other hand is that applicant has been given retrospective promotion but as he had not discharged the duties of OS from the retrospective date, he is not entitled to benefits sought in this application in view of the rule applicable to such cases i.e., no work no pay and, therefore, the department is justified in disallowing the claim.

7. The applicant became entitled for consideration for promotion along with his juniors during the year 1989 itself. But his name was not included in the panel of persons to be considered for promotion at the relevant point of time because of a mistake on the part of the department. This an administrative



lapse on the part of the respondents and not because of any fault on the part of the applicant. When there was no fault on the part of the applicant and the non-consideration was entirely due to the lapse of the respondents, the applicant cannot be penalised. Such a question came up for consideration incidentally before the Supreme Court in the case of UNION OF INDIA V. K.V. JANAKIRAMAN reported in AIR 1991 SC 2010 wherein it was observed thus:

"We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule 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. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that FR 17[1] will also be inapplicable to such cases."

Learned counsel for the applicant also brought to our notice the decision in RAMESH CHANDER V. R.S. GAHIEWAT reported in 1992[1] SIJ [CAT] 484 wherein the Jodhpur Bench of this tribunal relying on the decision of the Supreme Court stated supra had observed that denial of promotion in the case of the applicant therein from the date of their junior was promoted was wrong and illegal, had further observed that denial of promotion to the applicant could not be attributed for any fault on their part and, therefore, directed that they are entitled to salary from the date of



retrospective promotion. Relying on the decision of the Madras Bench of this Tribunal in O.A. No.553/93, learned standing counsel contended that the claim similar to the one in this application was for consideration therein and the same was dismissed. He, therefore, urged that this application also is liable to be dismissed. We are unable to agree with this contention of the learned Standing Counsel inasmuch as the application before the Madras Bench of this Tribunal was dismissed on the ground that it was barred by the principles of res judicata which is not the case herein. Therefore, the respondents cannot get much support from the said decision. The observation of the Supreme Court in Janakiraman's case and the Jodhpur Bench referred to above are fully applicable to the facts of the present case. The applicant herein having retrospectively promoted, has not been paid the pay and allowances retrospectively from the date of such promotion and the denial of such benefits is unjust and arbitrary. Therefore, the applicant is entitled to the benefit sought for by him.

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If this direction is not complied within the stipulated period, the respondents will be liable to pay interest on the amount payable to the applicant at the rate of 12% from that date till the date of payment. No

order as to costs.

TRUE COPY



Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

Sd/-

31/3/95

MEMBER [J]

Sd/-

31/3/95

MEMBER [A]