

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 38/93.

Date of Decision: 24.6.1999

Shri Mohaniraj Jyotipant Kulkarni

Applicant.

Shri P.A. Prabhakaran,

Advocate for
Applicant.

Versus

Union of India and others.

Respondent(s)

Shri V.D. Vadhavkar for
Shri M.I. Sethna.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S. Bewja, Member (A)

- (1) To be referred to the Reporter or not? *W*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *W*

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PREScot ROAD, MUMBAI:1

Original Application No. 38/93.

Thursday the 24th day of June 1999.

CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman
Hon'ble Shri D.S. Baweja, Member (A).

Mohaniraj Jyotipant Kulkarni
Block No. C-125
New Santoshnagar,
Bijapur Road,
Solapur.

... Applicant.

By Advocate Shri P.A. Prabhakaran.

V/s.

1. Union of India
Ministry of Finance
Department of Revenue
New Delhi.
2. Collector of Central Excise,
Bombay -I, Collectorate
Bombay.
3. Collector of Central Excise,
Aurangabad. ... Respondents.

By Advocate Shri V.D. Vadhavkar for Shri M.T. Sethna.

O R D E R (ORAL)

¶ Per Shri Justice R.G. Vaidyanatha, Vice Chairman ¶

This is an application filed by the applicant under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply. We have heard the learned counsel for both sides. The respondents have filed M.P. 498/98 for taking reply on record. M.P. is allowed. Reply is taken on record.

2. The point involved is based on admitted and un-disputed facts. Hence we are mentioning few facts which are relevant for the purpose of disposal of the OA.

The applicant was working as Inspector Central Excise and he was due for next promotion as Inspector Grade I on 2.2.1978 when applicant's junior Shri K.A. Shahapuri was promoted. The applicant's further promotion was due on 25.8.1981 to the grade of Superintendent in Group 'B' cadre when his immediate junior Shri S.N. Kanjala is promoted. On these occasions the applicant was not given promotion, since he was involved in criminal prosecution which was initiated against him sometime in 1977. Presumably the case of the applicant was recommended by the D.P.C. was kept in sealed cover. On those two occasions since criminal prosecution was against him, he was kept under suspension. Subsequently he was given adhoc promotion in the grade of Superintendent on 22.5.1989. It is stated that the criminal case ended in acquittal by the judgement of the Court dated 29.1.1982. The applicant's suspension was revoked and entire period of suspension was treated as duty as per the order of the Competent Authority dated 17.10.1986. The applicant was re-instated. Subsequently the applicant was given adhoc promotion as Superintendent and he retired from service on attaining superannuation in 1990. The applicant had made number of representations seeking promotion, but the respondents took a stand that since the order of acquittal has been challenged in the High Court, his case for promotion cannot be considered.

In the meanwhile the department initiated Departmental enquiry in 1987 and charge sheet was issued on 8.12.1987. It is also brought on record and admitted that the charge sheet was dropped by the Competent Authority by order dated 31.3.1991/24.4.1991.

In the reply the respondents have taken the position that in view of the pendency of appeal in the High Court against the order of acquittal, no relief can be granted to the applicant.

Now it is brought to our notice that the Division Bench of High Court by lengthy and considered order re-appreciated the evidence and confirmed the order of acquittal and dismissed the criminal appeal by judgement dated 15/10.10.1993 in criminal appeal No.289 - 268/82.

3. In view of the admitted facts the question is whether the applicant is entitled to the benefit of retrospective promotion with or without monetary benefits and other benefits?

4. As already stated the applicant's case for promotion was considered in 1978 and 1981. He was not granted promotion presumably on the ground that the criminal prosecution was pending against him. The findings of the DPC was kept in the sealed cover. Now the criminal prosecution ended in favour of the applicant in getting the order of acquittal and the appeal filed by the State came to be dismissed

by the High Court. There is no other alternative but to open the sealed cover and give effect to it. If the D.P.C. cleared his case for promotion then he must be given first promotion in Inspector selection grade and subsequently to the post of Superintendent. Then the respondents must give retrospective promotion to the applicant from the date his junior was promoted.

5. As far as consequential reliefs are concerned, the learned counsel for the respondents submitted that the principle of "No wor no pay" should be applied he cannot be given any monetary benefits like arrears of pay etc. and placed reliance on the decision of the Supreme Court in the case of Virender Kumar, General Manager, Northern Railways , New Delhi V/s. Avinash Chandra Chadha and others AIR 1991 SC 958. In that case the dispute was about seniority and the Supreme Court observed that in such cases the arrears cannot be granted retrospective benefit. The question of opening of sealed cover for the purpose of promotion and consequential benefit was neither raised nor decided in that case.

6. On the other hand there is a direct decision of the Supreme Court on a matter like this in the case of Union of India V/s. K.V. Jankiraman, AIR 1991 SC 2010 where the Supreme Court had occasion to consider this question. Even in that case the Government contended before the Supreme Court that

even after the termination of criminal proceeding or departmental charge sheet, arrears of salary and allowances cannot be paid as per FR 17(1) and also on the basis of "No work, No pay". The Supreme Court rejected this argument in para 7 of the recorded judgement by holding that when a delinquent official has been fully exonerated and is not visited with the penalty even of censure or acquitted in criminal proceedings, he has to be given salary of higher post alongwith other benefits which are due to him. In view of the law declared by the Apex Court, we hold that the applicant is entitled to arrears of salary and other consequential benefits which flow to him as a result of getting retrospective promotion after opening the sealed cover.'

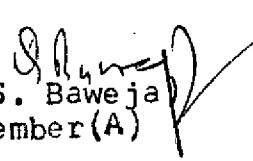
7. The learned counsel for the respondents also pointed out that the charge-sheet came to be dropped by giving benefit of doubt by the Competent Authority. The learned counsel for applicant has produced the order of the Disciplinary Authority which is at page 74 of the paper book. On perusal of the papers we find that the enquiry officer held charges not proved and that the Disciplinary Authority did not find any reason to take a different view and hence dropped the charges. No doubt in the last sentence he has mentioned that he is inclined to give benefit of doubt but the discussion and the enquiry report shows that there was no evidence against the applicant and his involvement. However we have seen that the applicant has been acquitted in the criminal

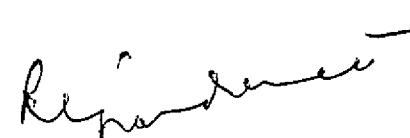
case by the Judicial Forum including High Court.

8. In these circumstances, the applicant cannot be denied consequential monetary benefits.

9. In the result the O.A. is allowed as follows:

The respondents are directed to open the sealed cover and give effect to the findings of the DPC. In case the applicant was found fit and suitable for promotion then he should be given promotion retrospectively as Inspector selection grade and subsequently as Superintendent from the date his juniors came to be promoted and should be given fixation of pay and arrears and other monetary benefits to which the applicant is entitled to as a result of retrospective promotion. In case the DPC findings show that in a particular year the applicant was not found fit for promotion then review DPC may be held for subsequent years. This exercise of review DPC may be done for every year till the applicant retired from service. In case in the subsequent years he is found fit for promotion then he should be given retrospective promotion from that date with all consequential monetary benefits as stated earlier. No order as to costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman