

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 178/1993

Date of Decision: 18.11.96

Kisanrao Shankarrao Deshmukh

Petitioner/s

Applicant in person

Advocate for the
Petitioner/s

V/s.

The Union of India & Anr.

Respondent/s

None for the Respondents.

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S.Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, 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.R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A)

abp.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, FRESCOT RD, 4TH FLOOR.,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO : 178/93.

DATED THIS 15th DAY OF NOVEMBER, 96.

CORAM : Hon'ble Shri B.S.Hegde, Member (J).

Hon'ble Shri M.R.Kolhatkar, Member (A).

Kisanrao Shankarrao Deshmukh,
Office of the Collector of Central Excise,
Bombay - II.
Residing at Hanuman Mandir, Motinagar,
AMRAVATI - 444 606.

... Applicant.

Applicant in person.

v/s.

1. The Union of India through
Secretary, Government of India,
Ministry of Finance,
(Department of Revenue),
North Block,
New Delhi - 110 001.

2. The Collector of Central Excise
Bombay - II,
Piramal Chambers, 9th Floor,
Lalbaug, Parel,
Bombay- 400 012.

... Respondents.

None for respondents.

Y O R D E R Y

Y Per Shri M. R. Kolhatkar, Member(A) Y

The applicant while working as Excise Inspector was placed under suspension ~~w.e.f~~ from ~~xxxxx~~ 31/5/74 in connection with involvement in alleged criminal conspiracy to dispose of illegally ~~non-duty paid~~ Tobacco and depriving the Government of Central Excise duty thereon. The applicant remained under suspension till 28/6/82 and was dismissed in terms of order of conviction passed by Court of Special

Judge, Bombay dated 14/12/78. The applicant went in appeal to the High Court and was acquitted by the High Court in terms of their order dated 2/12/86. Following this order, ~~xx~~ dismissal order dated 29/6/82 was set aside by the Competent Authority and on 13/3/87, the applicant was reinstated. By the order dated 3/5/89, the period of suspension (31/5/74 to 28/6/82) and the period of dismissal (29/6/82 to 12/3/87) was treated as duty for all purposes.

2. The applicant states that pursuant to the order dated 3/5/89, he has been given following consequential benefits:-

- (a) By the order dated 4/10/1989 the confirmation in the grade of Inspector (CG) has been made with effect from 22/11/71 and his seniority has been fixed in the grade of Inspector (CG). The arrears of pay and allowances in the grade of Inspector (CG) has been paid with effect from 1/6/1974. Due increments has also been drawn.
- (b) By order dated 17/10/1989 the promotion of Inspector S.G. has been made with retrospective effect from 17/3/81, and seniority in the said grade has also been fixed. The difference of pay and allowances between Inspector O.G. and S.G. with effect from 17/3/81 has been paid.
- (c) By an order dated 19/2/90 the applicant was promoted as Superintendent Central Excise, Group 'E' with deemed date from 27/9/85 and his seniority in the said grade has also been fixed as also his pay fixation has been made accordingly.

3. The applicant stood retired with effect from 30/9/91. His grievance is that all consequential benefits have not been released to him. According to him, they are as below:

- (a) Consequential benefits including arrears of pay and allowances on the basis of applicant's notional promotion to the post of Superintendent with effect from 27/9/85 to the date of actual promotion dated 18/3/90.
 - (b) Consequential benefits of one month's pay as a bonus/reward which has been granted by the Central Government to Central Government employees in the year 1975.
 - (c) Consequential benefits of Uniform allowance for the years from 1974 to 1996 as the period of absent from duty has been treated as the period as spent on duty for all purposes.
 - (d) Consequential benefit of yearly bonus granted to the Central Government employee from the year 1982 to 1990 on the basis of applicant's pay fixation.
 - (e) Consequential benefit of credit of earn leave from June, 1974 to March, 1987 and encashment thereof plus 47 days earn leave at credit at the time of retirement of the applicant.
 - (f) Consequential benefits of leave travel concession from 1974 to 1987 for applicant himself.
 - (g) The interest on the amount of delayed payments @ 18% p.a. from Judgement and order dated 1/2/12/86.
 - (h) Payment of gratuity amount of Rs. 8,425/- which has been arbitrarily adjusted against recovery of non-established dues with appropriate interest thereon.
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4. Respondents have opposed the OA. According to them arrears of pay and allowances for the period of notional pay and promotion are not admissible in his case especially in view of clarifications under FR-17(1). Regarding bonus respondents have stated that bonus for the years 1982-83, 1983-84 and 1984-85 has been drawn but the applicant has not collected the amount even after issuing several reminders to him.

5. The respondents state that so far as the question of delay in finalisation of applicant's case is concerned, after the order of the High Court dt. 2/12/86, the respondents had contacted the CBI to ascertain whether Regular Departmental Action against the applicant is proposed to be initiated and the department after pursuing the matter with CBI received a reply only on 8/3/89 and thereafter orders were issued on 3/5/89 and there is no delay from the department.

6. The parties to the OA had not cared to prosecute diligently. The OA was dismissed in default of appearance of parties on 13/7/95 and later on/at the request of the applicant it was resotred. On 14/9/95, the applicant was present in person and the respondents were represented by departmental officer and/stated that the records are at Bombay as the matter pertains to Bombay Collectorate and the respondents were directed to keep the records ready on the next date of hearing. On the next date of hearing namely, 14/3/96, the OA was dismissed in default of appearance of parties. On 7/8/96, the applicant appeared in person and/his MP for restoration of OA was allowed and the case was fixed for October.96 and the case was taken up on 8/10/96. The applicant was present but neither the Departmental Officer nor the Counsel for

Respondents was present. The Tribunal has therefore proceeded on the basis of pleadings of the parties.

7. The Tribunal is not in a position to go into the question of any particular consequential benefits which are due to the applicant, to be paid to him or not because the OA would then suffer from the vice of multiplicity of reliefs.

8. We, therefore propose to confine ourselves to the main point in respect of payment of interest for the delay in the payments from the date of the order of High Court till the date of the order of respondents dated 3/5/89., and also some ancillary matters.

9. On this point, the main contention of the respondents is that since the matter was handled by CBI, they were required to get clarifications from CBI before deciding the matter. In our view, mere fact of prolonged inter-departmental correspondence does not absolve respondents from any culpable delay. The High Court order was passed on 2/12/86 and the departmental order was passed on 3/5/89. There is therefore a delay of two years and 5 months in the passing of the order. Normally, any order of the Judicial Tribunal is expected to be given effect in terms of time limit stipulated by the Tribunal itself and in the absence thereof, within 6 months from the date of passing of the order. The applicant can therefore reasonably expect the respondents to pass an order regularising his suspension period and dismissal period at the latest by 2/6/1987. Therefore, the applicant is entitled to the relief of payment of interest on the the backwages for the period of delay which we compute as 23 months. Similarly, the applicant is also entitled to payment of interest on any arrears paid to him by way of consequential benefits for a period of 23 months. The same

should be paid @ 12 % p.a.

10. The next related question is regarding the position in rules as to the arrears of notional promotion. The applicant relies on the judgement of the Supreme Court in Union of India v/s. K.V.Janakiraman, AIR 1991 SC 2010 for the proposition that the department is bound to make payment of arrears for notional promotions. This is however not so. At page-2017 of the judgement, the Supreme Court has dealt with this issue and in particular FR-17(1) and has specifically directed the following amendment to the Memorandum of the Government:-

"However, 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 reasons for doing so."

11. The respondents have denied arrears of notional promotion to the applicant on the ground that they have paid him backwages for the suspension period and dismissal period although the applicant had not actually worked. In the facts and circumstances of the case, the applicant was held not entitled to the payment of arrears for notional promotion. This stand of the department is well founded and the claim of the applicant is rejected.

12. The next question is regarding recovery of amount of Rs.8,425/- from the Gratuity amount of the applicant. It is well settled that Gratuity is a personal property of the retiring Government employee and that it is required to be paid in full., unless there are rules to the contrary. No such rules have been shown to us. The recovery of some overdue

amount to the tune of Rs.8,425/- from the Gratuity was therefore patently unjustified and respondents are directed to refund the same to the applicant. It is open to the respondents to recovery any payment made to the applicant by any other means under law. (In the facts and circumstances, we are not inclined to grant any interest).

13. OA is therefore disposed of in these terms with no orders as to costs.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

B. S. Hegde

(B. S. HEGDE)
MEMBER (J)

abp.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P.NO: 16/97 IN O.A.178/93

CORAM: HON'BLE SHRI B.S.HEGDE, MEMBER(J))
HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Kisanrao Shankarrao Deshmukh,
R/o. Near Hanuman Mandir,
Motinagar,
Amravati - 444 606.

.. Review Petitioner

-versus-

1. Union of India
through
The Secretary,
Ministry of Finance
(Department of Revenue)
North Block,
New Delhi.

2. The Collector of Central Excise
Bombay -2,
Piramal Chamber, 9th Floor,
Lalbaug,
Mumbai - 400 012.

.. Respondents

Tribunal's Order on Review
Petition by circulation

Date: 04/04/97

(Per M.R.Kolhatkar, Member(A))

In this Review Petition the review petitioner/original applicant has prayed for review of our order dt. 18-11-1996 in the O.A. by which we had allowed certain reliefs to the applicant but denied reliefs in respect of others. It is contended by the review petitioner that the judgment contains errors on question of facts and law. He has challenged our interpretation of the Supreme Court judgment in K.V.Jankiraman AIR 1991 SC 2012 and also relied on certain other judgments. He has also reargued his case for reliefs which were denied to him viz. in respect of TA bills, Bonus, non recasting of leave accounts etc. Our judgment gives the reason for our conclusions and the points urged by the review petitioner are in the nature of appeal against the judgment. Review petition is not within the

parameter of review jurisdiction as prescribed in the rules under Order 47 of the CPC.

2. In our view the review petition has no merit and therefore the same is liable to be rejected and is hereby rejected by circulation as permissible under the rules.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

B.S. Hegde

(B.S. HEGDE)
Member(J)

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