

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 1291/94

DATE OF DECISION: 7th Jan., 2000

Shri R.Sivathanu

Applicant.

Shri S.P.Saxena

Advocate for

Applicant.

Versus

Union of India and others

Respondents.

Shri R.K.Shetty

Advocate for

Respondent(s)

CORAM

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

Hon'ble Shri S.L.Jain, Member (J)

(1) To be referred to the Reporter or not? No.

(2) Whether it needs to be circulated to no other Benches of the Tribunal?

(3) Library.

yes

Jain
(S.L.Jain)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:1291/94

the 7th day of JANUARY 2000

CORAM: Hon'ble Shri D.S.Baweja,Member (A)

Hon'ble Shri S.L.Jain, Member (J)

R.Sivathanu
Admn. Officer Grade I
Office of Chief Engineer,
Southern Command,
Pune,

...Applicant.

By Advocate Shri S.P.Saxena.

V/s.

1. Union of India through
The Secretary
Ministry of Defence
South Block, DHQ PO,
New Delhi.

2. The Engineer-in-Chief
Army Headquarters,
Kashmir House,
New Delhi.

3. The Chief Engineer
Southern Command,
Pune.

...Respondents.

By Advocate Shri R.K. Shetty.

O R D E R

(Per Shri S.L.Jain, Member (J))

This is an application under Section 19 of the
Administrative Tribunals Act 1985 for the direction to the
respondents to pay arrears of pay and allowances (1) for the
period from 31.8.1984 to 30.8.1987 in consequence to his promotion
to the post of Administrative Officer Grade II, (2) for the
period from 31.8.1987 to 20.3.1994 in consequence to his
promotion to the post of Administrative Officer Grade I

:2:

(3) interest @ 12% per annum in respect of the payments referred serial No. 1 , 2 and 4 and (4) and cost of the petition.

2. These is no dispute between the parties in respect of the following facts:

(1) The applicant while working as Office Superintendent Grade II filed an OA 726/88 before this Tribunal challenging his seniority inthe grade of O.S. grade II and his supersession by his junior Shri N. Nadhadevan in the matter of promotion to the higher post of OS Grade I, A.O. Grade II and A.O. grade I and for other consequential benefits.

2. The above OA 736/88 was allowed by the Tribunal vide its order dated 24.9.1991 and the operative part of of the order is as under:

" Accordingly this application is allowed to the extent that in case Shri Mahadevan is junior to the applicant and he was not within the zone of consideration in the year 1975 and was also not promoted in the year 1980, but was promoted thereafter the applicant shall also be promoted thereafter the applicant shall also be promoted like him and retain his seniority may be adjusting the seniority which has been fixed by the respondents. The application stands disposed of finally in these lines . In case the applicant's seniority is re fixed and the

applicant also gets promotion with retrospective effect, the applicant will be entitled to other consequential benefits. No order as to costs"

3. The respondents filed the Review application No. 72/92 which was dismissed on merits and ~~parties~~ as well on 1.6.1992.

4. The applicant filed the Contempt application NO. 215/92 on 19.11.1992 which was decided on 19.4.1993 and the following order was passed:

" If the respondents have obeyed the order passed by the Principal Bench, there could have been no wilfull default in implementing the directions given in this judgement and the respondents cannot therefore be held to be guilty of contempt if they have obeyed to follow the aforesaid order plassed by the Principal Bench."

5. The respondents No.2, vide its order dated 3.3.1993 refixed the seniority of the applicant in office Superintendent Grade II by placing him above Shri Mahadevan.

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6. The respondents No.2 vide its order dated 5.3.1993 included the name of the applicant in the panel of O.S. Grade I post and placed above Shri Mahadevan and promoted the applicant to O.S. Grade I post without arrears of pay for the periods for which he has not physically worked in such post.

7. The respondent No.2 thereast in December 1993 promoted the applicant to the post of A.O. Grade I retrospectively by holding D.P.C. (Review)

8. The applicant thereafter was further promoted to the post of A.O. I retrospectively by respondent No.2 with effect from 31.1.1987.

9. The applicant received the pay and allowances of A.O. I post with effect from 21.3.1994.

10. The applicant submitted representation dated 25.3.1994 and 25.7.1994 but no reply is received.

3. The grievance of the applicant is that the decision of respondent No.2 about non-payment of arrears of pay was contrary to the order dated 24.9.1991 according to which the applicant is entitled to all consequential benefits. The applicant is promoted with effect from different back dates, hence entitled to the relief claimed which is denied by the respondents. Hence this OA for the above said reliefs.

4. The learned counsel for the applicant relied 1993-1 CLR 820 Vasant Rao Roman V/s Union of India through the Central Rilway Bombay and others which lays down the proposition of law as under:

"Grant of from retrospective date -Wages applicable to promotion post denied to the appellant for the retrospective period - Whether proper - Held that for no fault of the appellant his juniors were promoted and his claim was ignored and as such there is no justification whatsoever for not allowing the emoluments to the appellant for the retrospective period."

5. The learned counsel for the applicant further relied on C.P.79/96 in OA 146/89 Smt. Pratibha A.Jalgaonkar V/s Shri V. Venkateshwaran and others decided by CAT Mumbai Bench on 19.11.1997 in which word consequential benefits has been interpreted to actual monetary benefits.

The learned counsel for the applicant relied on (1993) 25 ATC 439 Ajit S Bhatia V/s Union of India and another decided by CAT Bombay Bench which deals with a case of readjustment of seniority pursuant to Court's order leading to consideration for ~~an~~ grant of deemed promotion with retrospective effect. It is held that in such circumstances, entitled to arrears of pay in the promotional post even for the period between the dates of deemed promotion and actual promotion. FR 17 (1) is inapplicable. The finding is as under:

"The normal rule of 'no work no pay' is not applicable to the 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 remain 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."

The learned counsel for the applicant relied on (1993) 24 ATC 759 Ramesh Chander and another V/s R.S. Bahlawat and others decided by CAT Jabalpur Bench which defines the work consequential benefits in a case of promotion which is as under:

"In the circumstances, the denial of promotion to the applicants could not be attributed to any fault on the part of the applicants and, therefore, the entitlement for arrears of salary from the date of retrospective promotion has not only the sanction of law but is covered by the direction in the judgement of the Tribunal for giving consequential benefits. 'Consequential benefits' means all benefits which would directly flow or accrue consequent upon happening of a certain event or doing of a certain act. Its scope cannot be abridged, curtailed or limited by exercise of executive direction in a manner not warranted by law."

The learned counsel for the applicant relied on 1992 1 CLR 286 Soman V/s State of Kerala which deals with a case of delayed promotion and entitlement of back arrears of salary. It has been held as under:

"Government servant denied due promotion for no fault of his - National promotion given to him later with retrospective effect but without benefit of back arrears of salary - He is entitled to benefit of back arrears of salary."

6. The learned counsel for the respondents argued on the basis of principle contained in FR 17 that 'No work - No pay'. FR 17 is as under:

Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties.

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.

The date from which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed.

7. The answer to the said argument is contained in (1993) 25 ATC 439 Ajit S.Bhatia V/s Union of India and others and it is held that in such cases FR 17 is not applicable for the reason that the applicant was prevented to work. In fact the said question does not arise in this OA for the reason that in the earlier OA 736/88 it has been held that the applicant will be entitled to other consequential benefits and now the only point for consideration is the meaning of consequential benefits. we are in agreement with the view held by the Jabalpur Bench in the case of Ramesh Chander and this Bench in the case of Smt.Prabha A.Jalgaonkar referred to in para 5 with regard to meaning and scope of consequential benefits.

8. As the representations of the applicant is still pending. OA is filed on 21st October 1994, orders regarding promotion (impugned orders) on 5.3.1993 and in December 1993, OA is not barred by limitation. Hence 1992(2) (CAT) All India Service Law Journal 517 Shri Dhayan Singh Rawat V/s Union of India and others does apply as payment of salary is a continuous cause of action.

9. In the result OA deserves to be allowed and is allowed. The Respondents are ordered to pay arrears of pay and allowances to the applicant.

1. for the period from 31.1.1984 to 30.8.1987 on his promotion to the post of Administrative Officer Grade II.

2. for the period from 31.8.1987 to 20.3.1994,
on his promotion to the post of Administrative
Officer Grade I.

No order as to costs.

P.L.JAIN
(S.L.JAIN)
Member (J)

D.S.BAWEJA
(D.S.BAWEJA)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Contempt Petition No.123/2001
in
Original Application No.1291/94.

Dated this Tuesday the 30th Day of April, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman.
Hon'ble Smt. Shanta Shastry, Member (Administrative).

R.Shivathanu,
Adm. Officer, Gr.I(Rtd.),
R/at - S.No.55/4 "Suraasi",
Bhairav Nagar, Pune-411 015. Applicant.

(By Advocate Shri S.P. Saxena)

Versus

1. Mr.Yogendra Narayan,
Secretary, Ministry
of Defence, South
Block, DHQ, Post Off.
New Delhi - 110 011.
2. Maj.Gen.N.P. Aual,
Chief Engineer,
Southern Command,
Pune - 411 001. Contemner-
Respondents

(By Advocate Shri R.R. Shetty holding
brief of Shri R.K. Shetty).

Order on Contempt Petition (Oral)
{ Per : Smt. Shanta Shastry, Member (A) }

By Judgment and Order dated 7.1.2000, the
respondents were directed to pay arrears of pay and
allowances to the applicant. As the arrears were not
paid, the Contempt Petition No.123/2001 was filed by the
applicant on 25.11.2001.

2. The respondents had earlier sought extension of
....2..

time to comply with the judgment and also the respondents have filed petition in the High Court. Extension of time was granted upto 31.5.2001. Thereafter again the respondents had filed two MPs seeking further extension of time, those MPs were rejected. In the meantime the High Court also dismissed the petition on 14.1.2002. Thereafter the respondents have made the payments to the applicant on 17.4.2002 by way of Demand Draft for an amount of Rs.53,823/-.. The respondents have filed an affidavit to that effect. The applicant agrees that the payment has been made.

3. The learned counsel for the applicant submits that the payment was delayed by the respondents and, therefore, cost may be awarded. We find that the delay is of 11 months after granting the extension of time. Even thereafter the respondents had sought the extension of time though it was not granted, also the matter was pending in the High Court. We do not consider it necessary to award any cost in this case as the respondents action is not deliberate or intentional in delaying the payment.

4. In the facts and circumstances of the case, the arrears of pay having been paid and the orders of the

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Tribunal having been complied with the contempt proceedings are dropped, notice is discharged. The contempt petition is dismissed.

Shanta I-

(Smt. Shanta Shastry)
Member (A)

B. Dikshit

(Birendra Dikshit)
Vice Chairman.

H.

dd. 30.4.2002
order/Judgement despatched
to Applicant/Respondent (s)
on 31.5.2002

*Re
5/6.*