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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR.

O.A.No.1112/92

Dt. of order: 10.1.94

Dr.G.Harpalani

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.Rajendra Soni

: Counsel for applicant

Mr.U.D.Sharma

: Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.).

Hon'ble Mr.O.P.Sharma, Member(Adm.).

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Dr.G.Harpalani, has filed this application under Sec.19 of the A.Ts Act, 1985, praying that the order dated 14.1.92 (Annx.A-1) by which the applicant was appointed to the super-time scale of Rs.5900-200-6700 w.e.f. 1.3.1990 but was not granted the actual pay of the post with effect from that date may be quashed and he may be treated as actually promoted to the super-time scale w.e.f. 1.3.90, the date from which his juniors have been promoted to the said scale, with all consequential benefits. Further, interest may be granted to the applicant at the rate of 18% per annum from the date the actual benefit of the super-time scale became admissible to him.

2. The facts of the case as stated by the applicant are that he was entitled to promotion in the super-time scale of General Duty Sub-cadre of Central Health Services (Rs.5900-6700) w.e.f. 1.3.90. While he was not granted promotion to the said scale with effect from that date, several of his juniors were placed in the said scale vide order dated 7.3.91. According to the applicant, there was no enquiry pending against him at the relevant time. Eventually on his making representations, he was promoted to the scale of Rs.5900-6700 w.e.f. 1.3.90, but the actual monetary benefit in that

scale was given to him from a later date namely 14.1.92, the date on which he actually assumed charge as Senior Regional Director, Ministry of Health & Family Welfare. The applicant has stated that he is entitled to the actual benefit of his being placed in the super-time scale w.e.f. 1.3.1990.

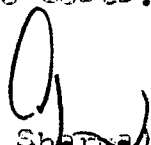
3. The respondents have in their reply stated that Vigilance Inquiry was pending against the applicant and his case was placed in a sealed cover. They have cited the instructions issued by the Department of Personnel & Training vide O.M. dated 12.1.88, according to which the applicant's name was kept in a sealed cover. Subsequently however, he was granted promotion to the scale of Rs.5900-6700 notional w.e.f. 1.3.90 and actually from 14.1.92. In the rejoinder filed by the applicant, he has stated that he was unaware of any enquiries pending against him.

4. We have heard the learned counsel for the parties and have gone through the records. There is nothing in the reply of the respondents to show that any charge sheet was issued to the applicant initiating any departmental or other proceedings against him. They have made a mention only about a non-recordable warnings having been issued to the applicant. There is no annexure to the reply to show which non-recordable warning is issued to the applicant. The non-recordable warning does not form a part of the ACPs, is not in the nature of a penalty, and it does not stand in the way of promotion of a Govt. servant. As regards, adoption of sealed cover procedure, this also appears to have been wrongly done by the respondents. In terms of the Deptt. of Personnel & Training's O.M. dated 12.1.88, one of the grounds on which the sealed cover procedure could be adopted^{is} where departmental or other proceedings are contemplated against a government servant. The respondents have not stated in

the reply that any such proceedings were contemplated at any stage. All they have stated that a vigilant enquiry was being made against the applicant. Once it is held that the adoption of the sealed cover procedure ~~is~~ itself was irregular in this case, the applicant, if otherwise fit, was entitled to promotion with effect from the date on which his juniors were promoted. Eventually the respondents themselves conceded that the applicant was entitled to promotion w.e.f. 1.3.1990. The denial of the actual benefits of promotion appears to be on the ground that he started working on the post to which he was promoted only from a later date namely ~~on~~ 14.1.92.

5. It was not on his own volition that the applicant did not work on the post on which he appointed. He was rather prevented from working on that post on account of the wrong procedure adopted by the respondents. In Union of India & Ors. Vs. K.V.Jankhireman & Ors. 1993 SCC (LBS) 387, the Hon'ble Supreme Court held that the normal rule 'no pay no work' is not applicable to cases in which the employee is willing to work but is kept away from work by the authorities for no fault of his. This is clearly a case in which the official concerned was kept away from work for no fault of his. Therefore, in the circumstances the applicant will be entitled to actual pay and allowances for the period from 1.3.1990 the date from which he was granted promotion to the super time scale Rs.5900-6700 with all consequential benefits. Necessary action to implement this order shall be taken by the respondents within a period of 4 months from the date of receipt of a copy of this order.

6. The O.A. is allowed accordingly with no order as to costs.


(O.P.Sharma)
Member(A)

(Gopal Krishna)
Member(J).