

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

R.P.No.71/92 in  
O.A.No.674/91.

Date of Judgement 21-1-93

Smt. B.Susheela Devi .. Applicant/Applicant

Vs.

1. The Collector of  
Central Excise &  
Customs Dept.,  
Lal Bahadur Stadium Road,  
Basheerbagh,  
Hyderabad.
2. The Addl. Collector(P&V),  
Central Excise Collectorate,  
Hyderabad-29.
3. Mr. M.Srinivasan
4. Mr. A.Satyanarayana
5. Mr. Ch.Sivaramamurthy
6. Mr. A.Subba Rao
7. Mr. G.Jayendra Rao
8. Mr. G.Appala Raju
9. Mrs. K.Indira
10. Mr. T.Ramesh .. Respondents/Respondents

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Counsel for the Applicant/  
Applicant : Shri Vilas V.Afzalpurkar

Counsel for the Respondents/  
Respondents : Shri N.V.Ramana, Addl. CGSC

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CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri C.J.Roy : Member(J)

X Judgement as per Hon'ble Shri R.Balasubramanian, Member(A)

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This review application is filed by Smt. B.Susheela Devi seeking a modification of the order dt. 18.2.92 in O.A.No.691.

2. In the above said order in para 4, towards the end this Bench has ordered that "such promotion if any may however be treated as notional and the applicant will not be entitled to arrears till the date she actually assumes her charge". It is her case that the Bench which chose to rely entirely on the decision of the Hon'ble Supreme Court in AIR 1991 (SC) 2010 has committed an error when it came

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to the question of arrears which should not straightaway be denied to her. It is, therefore, prayed that the last sentence be suitably modified.

3. This review petition is opposed by the respondents who have filed a counter. Their grounds are:

(a) That by way of a review, modification of the relief cannot be sought.

(b) That even if this is considered, it has to be in line with what is said by the Hon'ble Supreme Court in the case of Union of India Vs. K.V.Janakiraman (AIR 1991 (SC) 2010).

4. We heard Shri Vilas V. Afzalpurkar, learned counsel for the applicant and Shri N.V. Ramana, learned counsel for the respondents. The O.A. was allowed on the sole ground that the respondents adopted the sealed cover procedure when they ought not to have. Subsequent to the DPC, however, a charge-sheet was issued on 25.4.91. In this context it is relevant to extract the concerned portion of the judgement of the Hon'ble Supreme Court. In para 7, their Lordships ordered modification of the Govt. of India memorandum as follows:

"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 proceeding/criminal prosecution. Whether the authority denies arrears of salary or part of it, it will record its reasons for doing so".

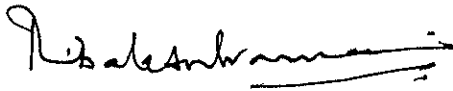
Earlier, in the same para, their Lordships had observed that such consideration will be meritted only when an employee is completely exonerated meaning thereby that he/she is not found blameworthy in the least and is not visited with the penalty even of censure, ..... However, there may be cases where the proceedings whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable

to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it.

5. Since the Bench relied entirely on the decision of the Hon'ble Supreme Court, it is but fit that when it comes to the question of arrears also we should follow the observations of the Hon'ble Supreme Court. We, therefore, delete the last sentence of para 4 of the judgement dt. 18.2.92 in the O.A. and substitute the same with the following direction.

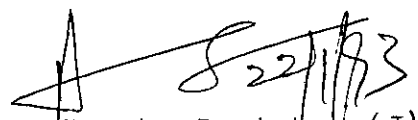
"We, therefore, direct the respondents to decide the question of arrears for the period of notional promotion keeping in mind the observations and the modification to the Govt. of India memorandum ordered by the Hon'ble Supreme Court in AIR 1991(SC) 2010"

6. The review petition is disposed of thus with no order as to costs.

  
( R. Balasubramanian )  
Member(A).

  
( C. J. Roy )  
Member(J).

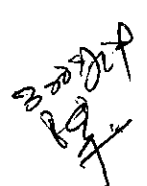
Dated: 21<sup>st</sup> January, 1993.

  
Deputy Registrar(J)

To

1. The Collector of Central Excise & Customs Dept., Lal Bahadur Stadium Road, Basheerbagh, Hyderabad.
2. The Additional Collector (P&V) Central Excise Collectorate, Hyderabad-29.
3. One copy to Mr. Vilas V. Afzalpurkar, Advocate, CAT. Hyd.
4. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT. Hyd.
5. One spare copy.

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HYDERABAD BENCH

HYDERABAD

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: AT HYDERABAD

THE HON'BLE MR.

V.C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY: M(J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

Dated: 21-1-1993

ORDER/JUDGMENT:

R.A./ C.A./M.A. No.

71/92

in

O.A. No.

674/91

T.A. No.

(W.P. No. )

Admitted and Interim Directions issued

Allowed

Disposed of with directions

Dismissed

Dismissed as with drawn

Dismissed for default

M.A. Ordered/Rejected

No order as to costs.

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