

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 144 of 1992

DATE OF JUDGEMENT: 3/8 July 1992

Between

Sri Jayant Gopal Pandse

.. Applicant

a n d

1. Union of India rep by
Secretary,
Ministry of Finance,
Department of Revenue, North Block
New Delhi-110 001

2. Chairman
Central Board of Direct Taxes
North Block, New Delhi-110001

3. Director of Income Tax (Vig.)
Floor 8, Mayur Bhavan,
Cannaught Circus
New Delhi

.. Respondents

Counsel for the Applicant : Party-in-Person

Counsel for the Respondents : Sri N.R. Devaraj, Addl. CGSC

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN)

HON'BLE SHRI C.J. ROY, MEMBER (JUDL.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE SRI C.J.ROY,
MEMBER (JUDICIAL)

This application is filed by the applicant herein under section 19 of the Administrative Tribunals Act, 1985 for a direction to the respondents to pay an amount of Rs.67,526/- along with interest, the sum being the difference in eligible pay, dearness allowance and benefits of office and pass such other order or orders that may deem fit in the circumstances of the case with costs.

Concisely the facts of the case are:

1. That the applicant, an Indian Revenue Service employee, was promoted as Assistant Commissioner of Income Tax in the year 1979. During the period from 1978 to June, 1985, the applicant was on deputation to Oil & Natural Gas Commission (ONGC) as Joint Director (F&A)/Additional Director (F&A) and was posted to Bombay Off Shore Project in ONGC.
2. During his tenure in ONGC, in December 1981, the ONGC invited Global Tenders under two bid system (i.e. technical bid and price bid) for laying of pipelines under Dharam Tar Creek Sub-marine Pipeline Project. According to ONGC Rules, the technical bids are opened by a Tender Committee which consists of Officers of Directors/General Managers level to ascertain the suitability of the bid. Those who are in a position to perform the work in accordance with ONGC requirements are short listed and thereafter their price bids will be opened. After opening of price bids, a comparative statement is prepared by the technical section which is vetted by Finance Division. After scrutinising the comparative statements of the short-listed bids, the proposal will be submitted to the Purchasing Committee (which consists of 3 members of ONGC) along with the recommendation of the Tender Committee. After clearance from the Purchase Committee, the proposal is submitted to the Steering Committee which consists of representatives of

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Government of India and Member of ONGC for recommendations which will finally submit the same to the Chairman, ONGC for awarding the contract. Chairman, ONGC is the Supreme Authority to take a final decision in awarding contracts.

3. Accordingly, the technical bids that were received for laying of pipeline under Dharam Tar Creek Sub marine Pipeline Project were opened by the Tender Committee of ONGC on 18-12-1981 under the Chairmanship of one Sri H.S.Cheema, General Manager, ONGC and the following telex message was sent to the short-listed bidders for the said work to ascertain their competency.

- (a) whether completion by 31st June, 1982 is possible;
- (b) if not, what would be the revised schedule; and
- (c) ~~the~~ additional price, if any, on account of such revision of schedule.

4. One of the bidders, M/s. ESSAR responded to the above telex by two letters dt. 18.1.1982 and 29.1.1982. There was an increase of 20% in the prices of M/s. ESSAR than the price bid which they submitted in the sealed cover. However, the final contract was awarded to M/s. ESSAR for the above work. Later, the ONGC found some discrepancy in the awarding of contract to M/s. ESSAR, and a disciplinary proceedings were initiated against the applicant on 23-12-1984 by ONGC alleging that the applicant failed to render proper financial advice of successive stages leading to award of work which resulted in a loss of Rs.2.2 crores to the Commission. During the pendency of the disciplinary proceedings, the applicant was reverted back to his parent Department in June, 1985.

5. The Ministry of Finance, Government of India, vide their letter No.F.C.14011/24/85-Ad.VIA dt. 17.4.1986, initiated a fresh disciplinary proceedings against the applicant on the same charges under Rule 14 of CCS (CCA) Rules, 1965 with

36 documents. An Inquiry Officer was appointed and the Inquiry was completed in 1990. The applicant had filed a Defence Statement dt. 9.5.1986 against the proceedings initiated by the 1st respondent and requested permission for personal hearing. This was rejected by the respondents vide their letter No.C-14011/24/85-Ad.VI(A1) dt. 16.10.1986. The applicant again made a representation for personal hearing on 12.11.1986 which was also rejected by the Ministry of Finance vide their letter No. C-14011/24/85-Ad.VI(A) dt. 9.1.1987.

6. Besides, as the applicant had returned to the parent department, ONGC decided not to continue with the concerned departmental inquiry as against the applicant as could be seen from the statement made by Miss HB Jain, Counsel for ONGC in Application No.CAT/Bom/St.226 of 1986 filed before the Central Administrative Tribunal, Bombay Bench by the applicant.

7. In the Departmental Inquiry conducted by the Ministry of Finance, the Inquiry Officer exonerated the applicant from all the charges. It is also averred that -

- (a) the applicant was not a Member in the Committees that processed the proposal of the disputed work,
- (b) the respondents had neither the originals nor copies of documents listed to support the charges;
- (c) the respondents expressed their inability to produce ONGC rules and regulations for tenders and awarding of contracts;
- (d) the Minutes of the Tender Committee were found to have been tampered with by removing all annexures which were integral part of minutes;
- (e) the respondents did not produce the Steering Committee Meeting minutes and draft contract with M/s. ESSAR even though those were listed to support the charge sheet.

8. The findings of the Inquiry Officer in the disciplinary proceedings were accepted by the Central Vigilance Commission vide their Confidential letter No.4P POL 11 dt. 5.5.1990. Hence, the proceedings started by the Ministry of Finance as against the applicant were also closed as per O.M.No.C-14011/24/85 V&L dt. 13.8.1990.

9. As the disciplinary proceedings as against the applicant which was initiated by Ministry of Finance was going on, the confirmation of the applicant in the post of Assistant Commissioner of Income Tax and subsequent promotion as Commissioner of Income Tax were with-held till 1990, as the proceedings were kept in a sealed cover. However, after the completion of the disciplinary proceedings, the applicant was promoted as Commissioner of Income Tax vide orders dt. 19.3.1991 with effect from 30.12.1988.

10. It is the case of the applicant that because of a delay of nearly 50 months in completion of the inquiry initiated against him by Ministry of Finance and consequent to his exoneration in the said inquiry, he is entitled for arrears and emoluments etc. amounting to Rs.67,526/- (with interest) from the date of his retrospective promotion as Commissioner of Income Tax i.e. 30.12.88, towards his pay, dearness allowance and benefits of office. The applicant preferred an appeal through proper channel to the President of India, regarding non-payment of arrears which has been rejected by Ministry of Finance, Government of India, Department of Revenue vide their letter F.No.32011/1/89-Ad.VI(Pt) dt. 19.7.1991. Hence, the present OA is filed for the relief as indicated above.

11. The respondents have filed a counter opposing this O.A. and the applicant has also filed a rejoinder to the counter of the respondents.

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12. We have heard Sri J.G.Pandse, Party-in-person and Sri N.R.Devaraj, learned counsel for the respondents.

13. The short point to be decided in this case is whether the applicant is entitled for the past arrears and other benefits as claimed by him from the date of his notional promotion i.e. with effect from 30.12.1988 with retrospective effect vide orders dt. 19.3.1991 (Annex.A-1 pg.14) issued by the Under Secretary to the Government of India, Department of Revenue, Ministry of Finance.

14. The points raised by the applicant in the departmental enquiry as extracted in para-7 supra of this Judgment were not controverted in the counter. Besides, the claim made by the applicant for a sum of Rs.67,526/- is also not opposed in the counter. They have also not specifically stated as to how the applicant is not entitled for the costs, interests and other reliefs. The counter merely states that we should go through the entire proceedings of the records filed by the applicant, which home-work we have already done. No annexures are filed with the counter. A rejoinder is also filed by the applicant more or less asserting same points.

15. After repatriation of the applicant to his parent department, the proceedings by ONGC have also been dropped. In the departmental proceedings, the applicant was exonerated on merits, as we find from the records. The respondents opened the sealed cover after his exoneration and promoted him with retrospective effect as Commissioner of Income-Tax with effect from 30.12.1988 which order is given to him on 19.3.1991. The respondents have not placed before us any material in the counter but stated that in case of notional promotion, although the seniority is restored and the intervening period is counted for granting the time scale increments, no arrears of pay and

allowances are admissible in accordance with the terms contained in F.R.17(1). The proceedings initiated by the ONGC were also dropped as stated in Annex. C-10 of the application by an order of the Central Administrative Tribunal, Bombay Bench dt. 1.9.1986 in Application No.CAT/BOB/St.226 since the applicant was repatriated to his parent department. So much so there is no inquiry pending in the ONGC and since in the disciplinary proceedings conducted in his parent department, the applicant was completely exonerated without any censure, stigma or any blame, we feel that the exoneration is purely based on merits.

16. The respondents also stated that no appeal or review was possible of this decision, the representation dt. 12.11.1986 by the applicant was not entertained and this was communicated to him on 9-1-1987. We will demonstrate in future paras the objections taken by the respondents under F.R.17(1) of No Work No pay and consequently no arrears and other allowances could not be granted since no appeal or review was possible on this ground.

17. Now, we have to see the respondents' case by point-wise -

- (a) Whether no work no pay of F.R.17(1) is applicable in this case?
- (b) Who caused the delay?

18. In AIR 1991 SC 2010 (Union of India etc. etc. Vs. K.V. Janakiraman, etc. etc.) the Hon'ble Supreme Court has examined the sealed cover procedure in a manner leaving no doubt. In case of notional promotion given with retrospective effect after opening the sealed cover when sealed cover procedure is adopted, when the employee was completely exonerated on merits.

The facts in this case fit in with the decision of their Lordships of the Hon'ble Supreme Court in the said case. Same points were raised in this case on 'No work no pay'. Their Lordships held in para-7 of their Judgment that -

"There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R.17(1) of the Fundamental Rules and Supplementary Rules which read as follows:-

F.R.17(1). 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."

Their Lordships further observed that -

"It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both

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mental agony and privation ~~which~~ are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

We are not impressed much by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employees 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 remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R.17(1) will also be inapplicable to such cases."

The applicant herein is willing to work but because of the sealed cover procedure adopted, he could not work. That means, he was prevented ~~from~~^{by} the department and he was kept away from the work by the authorities and his exoneration indicates that it is not the fault of his that he did not work. So, the first contention raised by the respondents is not accepted.

19. With reference to the delay, the applicant has drawn our attention to the Ground No.V at page 19 of the application wherein it is stated by way of a table that -

- (a) appointment of enquiry authority has to be done in July, 1986 whereas after a lapse of 12 months it was done in July, 1987;
- (b) Supplying copies of documents listed to support the charge sheet should have been done in April, 1986 but it was done after a long lapse of 28 months in August, 1988;

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- (c) inspection of documents listed to support the charge sheet should have been done in March, 1988 but it was done in July, 1988 after four months; and
- (d) inspection of additional documents should have been done in August, 1988 whereas it was done after six months in February, 1989.

The applicant demonstrated that there is a delay of 50 months i.e. four years and two months on the part of the respondents which stands uncountered. There is no point in baldly stating while substantiating their contention that the delay is due to the procedural application caused upon in the department in conducting the inquiry. When an applicant is kept away from the duty of his due promotion for four years and two months on the ground of pendency of the disciplinary proceedings which later on proved to be ^adamp squibb, we are not impressed with the arguments of the respondents that delay is procedural.

20. The main point in this case is whether the applicant is entitled for the arrears as claimed by him with effect from the date of his notional promotion given with retrospective effect from 30.12.1988 till 19.3.1991. We are also fortified by the observations of Their Lordships in the citation supra (AIR 1991 SC 2010) at para-7 of the Judgment wherein Their Lordships observed that -

"We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee

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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."

Their Lordships further observed that -

"Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum viz. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum."

Here, Their Lordships have directed in place of the above words, insertion of these words in the said Memorandum -

"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 its reasons for doing so."

Their Lordships have disposed-of by a common Judgment all the Civil Appeals. In Civil Appeal No.3083/90 at para-12, of the same Judgment, Their Lordships observed -

"In this case, the respondent/employee's case was considered for promotion by the DPC in August, 1982. However, the result was kept in a sealed cover in view of the pending disciplinary proceedings against him. According to the employee, on October 11, 1985 the disciplinary proceedings ended in complete exoneration. Thereafter, a DPC was again constituted in March 1986 which, after consideration of the employee's case, recommended him for promotion with effect from July 26, 1986. This was obviously contrary even to the instructions contained in the Memorandum. He was entitled to promotion from the date his immediate junior was promoted in or after August, 1982 if he was in August, 1982 found fit for promotion by the DPC. The Tribunal, has, therefore, rightly directed the appellant to open the sealed cover and if the DPC in 1982 had found him fit for promotion, to give him the promotion from the date on which his immediate junior was promoted."

Their Lordships disagreed with the directions of the Tribunal by observing that -

"However, while doing so, the Tribunal has also directed arrears of salary to be paid for intervening period along with all consequential benefits. Since we have held disagreeing with the decision of the Full Bench of the Tribunal that the benefit of the arrears of salary will not flow automatically but will depend upon the circumstances in each case, we modify the said order to the extent it directs the payment of

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arrears of salary, and direct the appellate authority to consider whether the employee in the circumstances of the case was entitled to any arrears of salary and to what extent. The authority will, of course, give reasons for denial of the whole or part of the arrears of salary."

21. It is, therefore, clear that Their Lordships had seen the cases of complete exoneration and cases where exoneration on technical grounds on a benefit of doubt thereby indirectly indicated that there could be an acquittal on merits or acquittal on technicalities. So, automatic direction by the Tribunal to the respondents to pay arrears in the event of notional promotion with retrospective effect from the date of promotion cannot be given in this case.


22. However, it appears to us that the applicant is exonerated on merits. He is not responsible for the delay of four years and two months in completion of disciplinary proceedings. Since, he was honourably acquitted on merits, in our opinion, he is entitled to the benefits and other pay and allowances with effect from 30.12.1988 till the date of his actual promotion i.e. 19.3.1991 based on the rulings of the apex court.

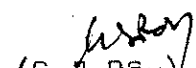
23. The applicant made a representation for arrears on 3.5.1991 through proper channel but the Government of India, Ministry of Finance, Department of Revenue vide F.No.32011/1/89-Ad.VI (Pt.) dt. 19.7.1991 rejected the request of the applicant for payment of arrears from the date of his notional promotion i.e. from 30.12.1988. This rejection is a nine line letter.

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24. Therefore, we direct the respondents to consider the payment of arrears of pay and other allowances as claimed by the applicant in the relief portion of this application in accordance with the guidelines issued by the Hon'ble Supreme Court of India in the case of "Union of India Vs. K.V.Janakiraman (AIR 1991 SC 2010)" cited supra. ^{within 3 months of receipt of this order} The applicant is given liberty to approach this Tribunal in the event of his being aggrieved.

25. With these directions we allow the O.A. with no order as to costs.


(R. Balasubramanian)
Member (A)


(C. J. Roy)
Member (J)

Dated: 31/8 July, 1992.

grh/vsn/avl


Deputy Registrar (J)

To

1. The Secretary, Ministry of Finance,
Union of India, Department of Revenue,
North Block, New Delhi-1.
2. The Chairman, Central Board of Direct Taxes,
North Block, New Delhi-1.
3. The Director of Income Tax (Vig)
Floor 8, Mayur Bhavan, Cannaught Circus, New Delhi.
4. One copy to Mr. Jayant Gopal Pandse, Party-in-person,
1-2-4=2/20(1) Domalguda, Hyderabad.
5. One copy to Mr. N. R. Devraj, Addl. CGSC. CAT. Hyd.
6. One copy to Deputy Registrar (J) CAT. Hyd.
7. One copy to Hon'ble Mr. C. J. Roy, Member (J) CAT. Hyd.
8. & Copy to All Reporters as per standard list of CAT. Hyd.
9. One spare copy.

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Handwritten note:
W. R. Laksh
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TYPED BY

COMPARED

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH.

THE HON'BLE MR.

AND

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

AND

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

AND

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

Dated: 31-7-1992

ORDER / JUDGMENT

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

in

O.A.No. 144/92

T.A.No.

(W.P.No.)

Admitted and interim directions
issued

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

pvm.

