

(36)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

O.A.No.63/93

Date of Order: 4.2.93

BETWEEN:

R.V.Rao

.. Applicant.

A N D

1. The Chief Commissioner of  
Income Tax, Andhra Pradesh,  
Ayakar Bhavan, Basheerbagh,  
Hyderabad.

2. Commissioner of Income Tax,  
Lakshmiapuram, Guntur,  
Guntur District.

.. Respondents.

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Counsel for the Applicant

.. Mr.G.V.R.S.VaraPrasa

Counsel for the Respondents

.. Mr.N.V.Ramana

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CORAM:

HON'BLE SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUDL.)

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Order of the Single Member Bench delivered by  
Hon'ble Shri T.Chandrasekhara Reddy, Member(Judl.).

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This is an application filed under Section 19 of the Administrative Tribunals Act to declare the Memo CR.No.PF No. R-60/Estt/91 dated 20.5.1992 issued by the 1st respondent is illegal and to direct the respondents to ~~pay~~ arrears of pay in the cadre of Inspector of Income Tax for the period from 4.3.1984 to 2.1.1992 and pass such other order or orders as may deem fit and proper in the circumstances of the case.

The facts giving rise to this O.A. in brief are as follows:-

The applicant was working as Head Clerk in the Income-Tax department. In the year 1983 certain disciplinary proceedings were initiated against the applicant on the ground that during the period from 9.8.1979 to 17.8.1981 that the applicant had submitted false L.T.C. claim and so exhibited lack of integrity and also exhibited conduct of ~~unbecoming~~ of a Government servant. Ultimately the applicant was exonerated all the said charges framed against him by the disciplinary authority as per its order dated 10.7.1991. The applicant was due for promotion to the post of Inspector of Income Tax ~~but~~ but the applicant could not be promoted to the said post as the above said disciplinary proceedings were pending as against him. So, after the disciplinary proceedings were terminated, the respondents as per their orders dt. 15.12.1991 promoted the applicant to the post of Inspector of Income Tax w.e.f. 4.3.1984. The said promotion w.e.f. 4.3.1984 was given notional and with actual monetary benefits only w.e.f. the date of joining the promotional post which already mentioned as the Inspector of Income Tax. So, the applicant was denied all arrears of

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pay and allowances in the post of Inspector of Income Tax w.e.f. the due for his promotion as Inspector of Income Tax. The applicant submitted a representation on 27.12.1991 followed by another representation dated 17.2.1992, the respondents by their order dated 20.5.1992 informed the applicant, that the applicant is not entitled to payment of arrears for the period of his notional promotion in the cadre of Income Tax Inspector as indicated in the promotion order. It is the said order that is questioned in this O.A. and hence the O.A. is filed by the applicant for the relief as already indicated above.

3. Today we have heard Mr. G.V.R.S. Vara Prasad, Advocate for the applicant and Mr. M.V. Ramana, Standing Counsel for the respondents.

4. The facts in this O.A. are not at all dispute. Straightaway we may refer to the case of Union of India Vs. K.V. Janakiranam reported in A.I.R. 1991 SC 2010 and to the para at page 2017.

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 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 any salary for the intervening period and if he does, the extent to which he deserves it. 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

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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.

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. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

So it is clear from the above said judgement pending disciplinary proceedings if a Government servant is not promoted to the higher post and the said disciplinary proceedings had terminated in favour of the Government servant and has been subsequently promoted from the date the promotion due to him, the arrears of salary can be denied only for the reasons to be recorded in the order. In the impugned order dated 5.2.1992 absolutely no reasons are assigned for not paying actual monetary benefits to the applicant from 4.3.84 in the promotional post of Inspector of Income Tax. We have also gone through the other order dated 7.1.1992 which had passed <sup>Learn</sup> for the representation of the applicant dated 30.12.1991. In the said order it is mentioned that he is not entitled to any arrears of pay as per the instructions contained in the O.M.No. 22011/2/86-Estt (A) dt. 12.1.1988 of the Ministry of Personnel, Public Grievances & Pension, Government of India, New Delhi. Whatever might be the instructions of the Government of India in this regard we are bound by the Law laid down by the Supreme Court in

To

1. The Chief Commissioner of Income Tax,  
A.P., Ayakar Bhavan, Basheerbagh, Hyderabad.
2. The Commissioner of Income Tax, Lakshmpuram Guntur,  
Guntur Dist.
3. One copy to Mr.G.V.R.S.Varaprasad, Advocate, 113/3RT  
vijayanagar colony, Hyderabad.
4. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
5. One spare copy.

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Post Box  
Guntur  
313103

Janakiramans Case. The case on hand is clearly governed by the Janakiraman's case. Hence, the impugned order is liable to be quashed and O.A. is liable to be allowed. Mr.N.V.Ramana, Standing Counsel for the respondents contended that the department had passed this impugned order dt. 20.5.1992 without knowledge of the said Janakiraman's case. We have gone through the representation of the application (Annexure-5) dated 17.2.1992. The said representation dated 17.2.1992 had been addressed by the applicant to the Chief Commissioner of Income Tax, Hyderabad who is the competent authority. In the said representation not only the applicant had asked to grant the arrears of pay in the promotional post from the date of notional promotion till he actually took charge of the promotional post but he had brought notice of the said authority judgement in the Janakiraman's case after appending a copy of the same to the said representation. But inspite of the judgement of the ~~same~~ Supreme Court being available to the Competent authority, the reply is given by the respondents without assigning any reasons. Hence the applicant is entitled for arrears as prayed for by him in the O.A.

4. In the result the impugned order dated 20.5.1992 is quashed and the respondents are directed to pay arrears of salary, allowances and other consequential benefits to the applicant in the promotional post of Inspector of Income Tax w.e.f. 4.3.1984 onwards in accordance with Law. This order shall be implemented within four months from the date of receipt of this order. O.A. is allowed accordingly leaving the parties to bear their own costs.

T. Chandrasekhar Reddy

(T.CHANDRASEKHARA REDDY)  
Member (Judl.)

Dated: 4th February, 1993

(Dictated in Open Court)

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Deputy Registrar (J)

TEMPED BY

COMPARED BY

CHECKED BY

APPROVED BY

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V. NEELADRI RAO : V.C.

AND

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

AND

THE HON'BLE MR. CHANDRA SEKHAR REDDY  
: MEMBER (J)

AND

THE HON'BLE MR.

DATED: 4 - 2 - 1993

ORDER/JUDGMENT:

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

in

C.A. No: 63/93

T.A. No.

(W.P. No. )

Admitted and Interim directions  
issued.

Allowed

Disposed of with directions

Dismissed as withdrawn

Dismissed

Dismissed for default

Rejected/Ordered

No order as to costs.

313/03

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