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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD.

O.A.NO.1187 of 1995.

Between

Dated: 20.2.1996.

D.N.Gopala Krishnan

...

Applicant

And

General Manager, Govt. of India, Security Printing Press, Hyd.

...

Respondent

Counsel for the Applicant : Sri. K.Vinay kumar

Counsel for the Respondent : Sri. V.Bhimanna, Addl. CGSC.

CORAM:

Hon'ble Mr. R.Rangarajan, Administrative Member

Contd:....2/-

C.A. 1187/95.

Dt. of Decision : 20-03-96.

CHIEF

As per Hon'ble Chief R. Rangarajan, Member (Admin.)

The applicant while working as LDC under the respondent in Government of India Security Printing Press was over-looked for promotion to the post of UDC in the year 1989. But his junior Shri E. Doraiswamy was promoted as UDC over-looked the claim of the applicant herein on 25-03-1989.

2. Approved by the above promotion of his junior

Shri E. Doraiswamy as UDC, he filed OA No. 1093/91 praying for

declaration that he is entitled to be promoted to the post of

UDC atleast from the date his junior Shri E. Doraiswamy was

promoted and also praying for seniority for Shri E. Doraiswamy

in the promotion post of UDC. That OA was disposed of by an

order of this Tribunal dated 22-04-1994, wherein it was

held that the respondent is not entitled to that promotion.

3. Relevant portion of the judgment reproduced

below for appreciating this case:-

"As it is not urged for the respondents that the

acknowledgement by the Chief Control Officer on the copy

of the alleged representation dated 28-5-1987, or that the

memo dated 28-6-1987 whereby the Chief Control Officer

expounded remarks is ante dated, it is just and proper to

treat the copy of the representation dated 28-5-1989 as the

representation filed in time as against adverse remarks of

1986, and the same has to be placed before the Works Manager

alongwith the copy of the memo dated 28-6-1987 of the Chief

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-2-

O.A. 1187/95.

Dt. of Decision : 20-02-96.

ORDER

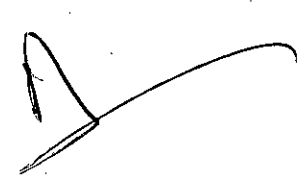
I As per Hon'ble Shri R. Rangarajan, Member (Admn.) I

The applicant while working as LDC under the respondent in Government of India Security Printing Press was over-looked for promotion to the post of UDC in the year 1989. But his junior Shri E. Doraiswamy was promoted as UDC over-looking the claim of the applicant herein on 25-03-1989.

2. Aggrieved by the above promotion of his junior Shri E. Doraiswamy as UDC, he filed OA No. 1093/91 praying for a declaration that he is entitled to be promoted to the post of UDC atleast from the date his junior Shri E. Doraiswamy was promoted and also praying for seniority over Shri E. Doraiswamy in the promotion post of UDC. That OA was disposed of by an order of this Tribunal dated 22-04-1994, wherein I <sup>was</sup> also a party to that judgement.

3. Relevant portion of the judgement is reproduced below for appreciating this case:-

"As it is not urged for the respondents that the acknowledgement by the Chief Control Officer on the copy of the alleged representation dated 28-5-1987, or that the memo dated 28-6-1987 whereby the Chief Control Officer expunged remarks is ante dated, it is just and proper to treat the copy of the representation dated 28-5-1989 as the representation filed in time as against adverse remarks of 1986, and the same has to be placed before the Works Manager alongwith the copy of the memo dated 28-6-1987 of the Chief



Control Officer, for his consideration as he is the accepting authority (the Initiating Officer of the CNA of the applicant is the Dy. Chief Control Officer, and the Chief Control Officer and Works Manager are the Reviewing and Accepting Officer respectively)."

"In the circumstances, the applicant has to file fair copy of the alleged representation dated 28-5-1987 addressed to the Chief Control Officer alongwith the xerox copy of the fair typed copy of the memo No. SP/CR/ENG/PT/87/424 dated 27-6-1987 (as the xerox copy will disclose acknowledgment of the same) before the Dy. Chief Control Officer under whom the applicant is now working and they have to be forwarded to the Works Manager. (The said memo was filed as an enclosure to the rejoinder). It is for the Works Manager either to accept the said expunction of remarks or to reject the same."

"After the necessary order is passed by the Works Manager in regard to the same, the case of the applicant for promotion to the post of UDC has to be considered by Review DPC by ignoring the adverse remarks for 1987 and 1988. Of course warning in regard to the incident dated 14-3-1987 can be considered if the same was incorporated in the CR for the year 1988. It is needless to say that the order of the Works Manager in regard to the question as to whether the adverse remarks for 1988 have to be expanded or not has to be considered by the Review DPC. The Dy. Control Officer has to despatch within the week from the date of filing and the Works Manager has to consider the same within one month from the date of receipt of the same in his office. If there is no regular Works Manager, the same has to be considered by the new incumbent within one month from the date of assuming the charge. The Review DPC has to be convened within one month after the Works Manager passes order."

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-3-

Control Officer, for his consideration as he is the accepting authority (the Initiating Officer of the CRs of the applicant is the Dy. Chief Control Officer, and the Chief Control Officer and Works Manager are the Reviewing and Accepting Officer Respectively)".

"In the circumstances, the applicant has to file fair copy of the alleged representation dated 28-5-1987 addressed to the Chief Control Officer alongwith the xerox copy of the fair typed copy of the memo No. SPR/CR/DNG/PF/87/424 dated

27-6-1987 (as the xerox copy of it will disclose acknowledgement of the same) before the Dy. Chief Control Officer under whom the applicant is now working and they have to be forwarded to the Works Manager. (The said memo was filed as an enclosure to the rejoinder). It is for the Works Manager either to accept the said expunction of remarks or to reject the same."

"After the necessary order is passed by the Works Manager in regard to the same, the case of the applicant for promotion to the post of UDC has to be considered by Review DPC by ignoring the adverse remarks for 1987 and 1988. Ofcourse warning in regard to the incident dated 14-3-1987 can be considered if the same was incorporated in the CR for the year 1988. It is needless to say that the order of the Works Manager in regard to the question as to whether the adverse remarks for 1986 have to be expunged or not has to be considered by the Review DPC. The Dy. Control Officer has to despatch within one week from the date of filing and the Works Manager has to consider the same within one month from the date of receipt of the same in his office. If there is no regular Works Manager, the same has to be considered by the new incumbent within one month from the date of assuming the charge. The Review DPC has to be convened within one month after the Works Manager passes order."

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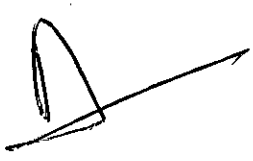
4. From the above judgment it is clear that the applicant was not promoted in the year 1989 and his junior Sri E.Doraiswamy was promoted as his Confidential Reports for the year 1986, 1987 and 1988 were adverse to him. This Tribunal by the judgment in OA referred to above had directed the concerned authorities to reconsider the adverse remark entered in CR of the applicant for the year 1986 treating the copy of his representation dt. 28.5.1989 as if it is submitted in time. It was also held in that judgment that the adverse remarks for the year 1987 and 1988 had to be ignored.

5. The competent authority after reconsideration of the adverse remarks entered in his CRs for the year 1986 and ignoring the adverse remarks in CRs 1987 & 1988 notionally promoted the applicant as UDC with effect from 25.3.1989 to the post of UDC by Diary Order No.34 dated 12.11.1994. It is stated that the said junior Sri E.Doraiswamy was also reverted as LDC though he was subsequently promoted as UDC.

6. The applicant requested for payment of backwages from 25.3.1989 as he was notionally promoted from the date by the order dt. 12.11.94. But the representation was rejected by the impugned order No.SPP/A1/PF/DNG/95/2896 dt. 15.9.95.

7. Aggrieved by the above he filed this OA for setting aside the impugned memo issued by the respondents vide procdgs. dt. 15.9.95 holding it as illegal, arbitrary and violative

...5/-



(4)

of principles of natural justice and for a consequential <sup>benefits</sup> direction to the respondents to release all consequential/~~including~~ monetary benefits by fixing his pay as UDC in appropriate stage from 25-3-1989 and also grant him the notional seniority with effect from 25-3-89.

8. As can be seen from the diary order No.34 dated 12-11-1994, he has been given the seniority above that of Smt. D.Renuka in the grade of UDC. The said Shri D.Doraiswamy is also reverted. There is no averment in the OA that fixing his seniority above Smt. D. Renuka is erroneous.. Hence, there is no need to consider in regard to the seniority dispute in this OA as it is to be held that he has been given the due seniority on his promotion as UDC with effect from 25-3-1989.

9. The next prayer in this OA is to fix his pay in the cadre of UDC from 25-3-1989 and grant him the monetary benefits from that date. The very fact that he has been given promotion with notional effect from 25-3-1989 it ~~means~~ means that he is entitled for fixation of pay from 25-3-89 in the cadre of UDC. Hence the fixation of his pay in the cadre of UDC is also not a point for consideration in this OA. The main point to be considered is whether he is entitled for backwages as UDC from 25-3-89 till he took over as UDC in pursuance of the diary order No. 34 dated 12-11-1994.

/

10. The learned standing counsel submitted that he is entitled for the payment in the grade of UDC only from the date he took over as UDC ~~as he is not entitled for the same~~ as per rule FR-17(1) and in the absence of any direction from this Tribunal in regard to payment of backwages in OA.No.#093/91 he cannot be paid any backwages.

11. The contention of the respondents is that he was not promoted in the year 1989 as the entries in his CRs are found to be inadequate for his promotion to the UDC in that year and when it was expunged in pursuance of this direction of this Tribunal by order dated 22-4-94, his case was reconsidered and hence he was promoted as UDC notionally with effect from 25-3-89. There was no error on the part of the respondents in not promoting him to the post of UDC when his junior Shri E.Doraiswamy was promoted in the year 1989 on the basis of CR entries at that time and hence he is not entitled for the backwages from 25-3-1989.

12. The adverse remarks entered in his CR for the year 1986 has been expunged by memo No.SPP/CR/DNG/PF/87/424 dated 27-06-87. It appears that this memo was not produced at the time of hearing in this case in OA.No. 1093/91 and in view of this a direction was given to consider his representation for expunging the adverse remarks entered in the CR of 1986. In any case the reconsideration has been done by the competent authority and he was promoted presumingly because of the fact that the adverse remarks for the year 1986 had to be expunged. This Tribunal had also directed that the adverse remarks for the year 1987 and 88 should be ignored. In view

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of the above the respondents themselves should reconsider the  
benefits which are lost to the applicant due to the <sup>untenable</sup> adverse  
remarks ~~for~~ the year 1986, 87 and 1988 and if any benefits by  
way of promotion etc., has been lost by him <sup>due to the untenable adverse remarks</sup> the same should  
have been compensated by promoting him <sup>retrospectively</sup> when his junior was  
promoted. But that was not done, which is contrary to the  
settled law in this connection. The contention of the respon-  
dents that as the adverse remarks were expunged only in 1994,  
~~the non~~ promotion of the applicant on the basis of the adverse  
remarks which was entered in the CRs of 1986, 87 and 1988 which  
were considered for promotion in the year 1989 is not ~~an~~ to be  
construed as an error, is not sustainable. Whenever an error is  
committed and that error is rectified later the applicant is (X)  
to be given all the ~~benefits~~ as if that adverse remarks were  
not in existence when he was considered for promotion in the  
first instance. Hence I hold that ~~on~~ reconsideration when the  
adverse remarks were expunged he should be deemed to have been  
promoted to the post of UDC from 25-3-89 when his junior was  
promoted and on that basis his pay fixation has to be done. If he ~~is~~  
not promoted ~~to him~~ in the year 1989 <sup>it</sup> ~~is~~ to be held <sup>as</sup> ~~an~~ error  
on the part of the respondents. For an error committed by the  
respondents the applicant should not <sup>be</sup> ~~allowed~~ <sup>to</sup> ~~suffer~~. He should  
get all the benefits due to him including the monetary benefits  
from the date his junior was promoted. ~~due to the respondents' consideration~~

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Hence on the score that he was not found fit in 1989 the respondents cannot deny the monetary benefits for the applicant from 25.3.89 when his immediate junior Shri E. Doraiswamy was promoted ignoring the claim of the applicant for promotion for the post of UDC at that time which was subsequently found to be an error. || The respondents also contend that he cannot get the backwages as he has not held the higher responsibility from 25.3.89. Who is responsible for not allowing him to hold the higher responsibility as UDC from 25.3.1989? Obviously the answer is that the respondents are to be held for not promoting him to the post of UDC from 25.3.89 due to an error committed by them. ~~As~~ I already held that an error committed by the respondents should not come in the way of the applicant in getting the monetary benefits. Hence even if he <sup>had</sup> ~~is~~ not discharged the higher responsibility from 25.3.89 he is entitled for backwages as UDC from 25.3.89 for the reasons mentioned above.

13. The respondents contend that the applicant is not entitled for backwages in view of FR 17(1). In my opinion this is not the relevant FR that should be quoted for denying him the benefit. This FR relates to the promotion made in the normal course and has got no application when an employee has been overlooked for promotion due to erroneous consideration of the respondents. Hence this contention is also rejected.

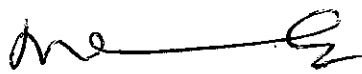
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14. There is no other contention raised by the respondents in this connection. In view of the above, the following direction is given:-

The applicant is entitled for fixation of pay as UDC in the grade of UDC from 25.3.1989 and he is also entitled for arrears/ of pay in that grade from 25.3.1989. It is needless to say that he will be granted increments also from 25.3.89 in accordance with rules. The time for compliance is four months from the date of receipt of a copy of this order.

15. The OA is ordered accordingly. No costs.

  
( R.Rangarajan )  
Member(Admn.)

Dated 20th February, 1996.  
Dictated in open court.

spr/grh.

  
Deputy Registrar(Judl.)

Copy to:-

1. General Manager, Govt. of India, Security Printing Press, Hyd.
2. One copy to Sri. K.Vinay kumar, advocate, CAT, Hyd.
3. One copy to Sri. V.Bhimanna, Addl. CGSC, CAT, Hyd.
4. One copy to Library, CAT, Hyd.
5. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

~~THE HON'BLE MR. JUSTICE V. NEELADRI RAO~~  
~~VICE CHAIRMAN~~

AND

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

Dated: 26/2/-1996

ORDER/JUDGMENT

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

in

O.A.No. : 1187/95

T.A.No. (w.p.No.)

Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

No spare copy

