

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.249/93

Dt. of order: 20.4.94

Chandra Dutt Sharma

: Applicant

(S)

Vs.

Union of India & Ors.

: Respondents

Mr.R.N.Mathur

: Counsel for applicant

Mr.N.K.Jain

: 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.).

Applicant Chandra Dutt Sharma, has filed this application under Sec.19 of the Administrative Tribunals Act, 1985, wherein he has sought a declaration that he is entitled to get actual salary w.e.f. 8.6.90 for the post of Head Clerk. He has also sought a further declaration that Clause (iii) of the order Annex. A-1 dated 27.9.91, in which it was ordered that he will be entitled to the pay of the post only from the date of assumption of actual charge in view of the provisions of F.R.17(1) and thus no arrears will be allowed, may be quashed. He has also prayed that the respondents may be directed to compute pay and gratuity payable to the applicant according to the salary so computed.

2. The applicant's case is that he was entitled to get promotion on the post of Head Clerk in the Income Tax Department in the month of June 90 on which some persons junior to the applicant were granted promotions. However, an investigation was started by the Department against the applicant in September 1989 regarding the alleged possession of disproportionate asset by the applicant. No formal disciplinary proceedings were at all initiated against the applicant but a letter of warning was issued to him on 29.9.91 asking him to be more careful in future regarding obtaining prior approval before purchasing any property. Subsequently vide order dated 27.9.91, promotion was granted to the applicant as Head Clerk w.e.f. 8.6.90 the date on which his juniors were promoted. However, clause (iii) was inserted in the said order wherein it was stated that in view of the Ministry of Personnel P.G & Pension's

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O.M. dated 31.7.91, the pay of the higher post to which the applicant had been promoted would be admissible only on assumption of actual charge in view of the provisions of F.R.17(1) and thus no arrears will be allowed to him. The applicant is aggrieved by the order by which arrears of pay w.e.f. 8.6.90 to the date of actual assumption of charge in Sept. 1991 had been denied to him. According to the applicant the vigilance enquiry being conducted against him never culminated into charge sheet and no department proceedings were ever initiated against him. In such circumstances no sealed cover procedure could have been adopted against him at the time when he was due for promotion on 8.6.90.

3. The respondents in their reply have stated that the promotion of the applicant was due in Jan.90 but due to the pendency of the "departmental enquiry" against the applicant relating to serious allegations/charges, he was not granted promotion at that time. Enquiries were made regarding the sources of investment made by the applicant in various assets. The complaint against the applicant on the basis of which such enquiries were made was not frivolous but since no charges have been framed and in view of the fact that the applicant was to retire on superannuation on 30.9.91, the matter was not pursued further and the applicant was granted promotion vide order dated 27.9.91. At the time of the holding of the DPC in pursuance of which promotions were granted vide order dated 8.6.90, the case of the applicant was kept in sealed cover in view of the provisions of the O.M. dated 12.1.88. The delay in finalising the enquiry against the applicant was on ^{to} ~~attributable~~ him and not to the respondents. Therefore, the applicant was not entitled to back wages from the date from which notional promotions was granted to him. They have added that the provisions of FR 17(1) are fully applicable to the facts of the case and the applicant is entitled to only notional promotion with retrospective effect but is not entitled to get actual pay from the date from which notional promotion is granted. They have denied that the judgment of the Hon'ble Supreme Court in the case of Jankiraman is applicable to the facts of the present case.

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4. We have heard the learned counsel for the parties and have gone through the records.

5. The learned counsel for the respondents has produced before us an order dated 3.11.93 passed by the Central Board of Direct Taxes regarding the claim of the applicant for actual pay from the date of his promotion namely 8.6.90. The Central Board of Direct Taxes, have in this order held that in view of the provisions of F.R 17(1) the pay of the higher post was admissible only on assumption of actual charge. They have added that the instructions contained in DOP&T's O.M. dated 14.9.92 are not applicable in the case of the applicant, in whose case the sealed cover procedure was adopted in accordance with the provisions of DOP&T O.M. dated 31.7.91. In effect, the arrears of pay from 8.6.90 to the date of actual promotion ~~on~~ 27.9.91 have been denied to the applicant. Annexures to the said letter dated 3.11.93 are the O.Ms dated 31.7.91 and 14.9.92, issued by the Deptt. of Personnel & Training.

6. It is undisputed in this case that no formal charge sheet was at any stage issued to the applicant. His case was kept in the sealed cover in view of clause (IV) of para 2 of the DOP&T's memorandum dated 12.1.88, which provides that even in cases in which serious allegations involving charges of corruption and other similar charges are under investigation by the CBI or the Department, the sealed cover procedure may be adopted. Now the question whether sealed cover procedure could be adopted in a case in which no formal disciplinary proceedings have been initiated, is to be considered in the light of the judgment of ~~not considered by~~ the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. K.V. Jankiraman & Ors. 1993 SCC (L&S) 387. The Hon'ble Supreme Court held that sealed cover procedure can be resorted to where a charge sheet has actually been issued to the employee and the date of issue of the charge sheet is the date from which the proceedings is said to have been initiated. In other words, sealed cover procedure cannot be adopted where no formal charge sheet is ever issued to the applicant. This clause (iv) was deleted by the Government itself in their subsequent memorandum dated 31.7.91 placed on record by the respondents as Annex.R-4. Thus the adoption of the sealed cover procedure in this case was not justified.

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7. Now the question is regarding the payment of pay and allowances from the date of notional promotion namely 8.6.90 to the date of actual promotion namely 27.9.91. The respondents have relied upon F.R 17(1) for denying the payment of arrears of pay and allowances for the aforesaid period. The Hon'ble Supreme Court had considered the applicability of this provision in their judgment in Jankiraman's case, but they were dealing with those cases in which formal charge sheets had been issued. In cases in which formal charge sheets had been issued, and enquiry etc. had been held, the Hon'ble Supreme Court had held that the normal rule of 'no work no pay' is not applicable to cases where the employee although willing to work is kept away from work by the authorities for no fault of his. In such cases, the provisions of FR 17(1) are not applicable. However, the Hon'ble Supreme Court further directed, by ordering an amendment in the earlier memorandum dated 30.1.82, ~~xxxthexxx~~ that 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 of the facts and circumstances of the disciplinary proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, he should record the reasons for doing so. So ordinarily it would be up to the competent authority to decide whether arrears of pay and allowances shall be payable for the period of notional promotion preceding the date of actual promotion. However, in the instant case no disciplinary proceedings were at all initiated, and the departmental enquiry/investigation/enquiry on a complaint being ~~held~~ by the respondents was only an internal informal enquiry being conducted with a view to finding out whether in fact there was any ^{prima facie} ~~since~~ case against the applicant or not. Therefore, no formal proceedings were at all initiated against the applicant, keeping of his case in a sealed cover was ab initio unjustified. The provisions of FR 17(1) will have no applicability to this case and the applicant will be entitled to pay and allowances for the period from the date of notional promotion to the date of actual promotion. Clause (iii) of the order Annex A-1 dated 27.9.91 is quashed. The respon-

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respondents shall pay arrears of pay and allowances for the aforesaid period to the applicant within a period of 4 months from the date of the receipt of a copy of this order.

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

(O.P.Sharma)

Member(A).

Gopāl Krishna

(Gopal Krishna)

Member(J).