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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.650/96

Date of order: 03.11.1997

Palwant Singh Bhatia : Applicant

vs,

Union of India through Secretary to Govt. of India, Ministry of Finance, Deptt. of Revenue, Central Secretariat, North Block, New Delhi - 110 001.

...Respondent.

Applicant present in person

Mr.M.Rafiq, counsel for respondent.

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member

PEF HON'BLE MR.O.P.SHAFMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri B.S.Bhatia has prayed that notional promotion to senior scale Rs.1100-1600 of Assistant Collector may be granted to the applicant from the date it has been granted to the applicant's juniors and consequential pensionary benefits may also be granted to him alongwith interest at the rate of 18% till the date of payment. He has also prayed for grant of costs of the litigation.

2. The case of the applicant is that he was promoted as Assistant Collector of Customs & Central Excise scale Rs.700-1300 from the post of Superintendent vide order Anx.A8 dated 26.8.1981. Thereafter, vide order Anx.A12, several Assistant Collectors in the junior scale were promoted to the senior scale of Assistant Collector Rs.1100-1600. Although persons junior to the applicant were also promoted to the senior scale by this order, the name of the applicant was not included in this promotion order. The applicant has placed on record Anx.A11 dated 31.7.1982 being the policy laid down by the government regarding grant of promotions to senior scale. According to the applicant, he was eligible for promotion to the senior scale in accordance with the policy laid down therein but still he was ignored for promotion. Nothing adverse in the applicant's ACPs was ever communicated to him. He made repeated representations to the respondent on account of his being ignored for promotion to senior scale but none of these evoked any satisfactory response. He retired from service on superannuation on 31.10.1985. His grievance therefore is that the promotion to senior scale, granted to several of his juniors has been denied to him for no fault of his and no reasons have been communicated to him why it has been denied.

3. The respondent in its reply has stated that the applicant has been granted promotion to the senior scale vide order dated 1.2.1996

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w.e.f. 6.11.1984. A copy of the said order has been annexed as Exhibit:1 with the reply of the respondent. According to him, the applicant was not eligible for promotion to the senior scale because he had been promoted to the junior scale of Assistant Collector on ad hoc basis. The promotion to senior scale has been granted to the applicant in accordance with the judgment of the Hon'ble Supreme Court dated 13.8.1990, as stated in the order Exhibit-1. He added that since the grant of senior scale to the applicant arises out of the order of the Hon'ble Supreme Court there is no question of payment of interest or grant of any costs to the applicant.

4. During his oral arguments the applicant accepted that he has since been granted promotion to senior scale vide order Exhibit-1, referred to by the respondent in the reply. He added that the arrears due to him on account of such promotion have also been paid to him and his pensionary benefits have also been revised accordingly. However, according to him, he had to undertake this litigation to be able to get the benefits which were due to him and payment of arrears on account of pay and allowances and pensionary benefits has been delayed for which he deserves to be compensated by grant of interest as asked by him.

5. We have heard the applicant and the learned counsel for the respondent and have perused the material on record.

6. The promotion granted to the applicant to the post of Assistant Collector, junior scale, vide order Anxx.A8 dated 26.8.1981 was described as purely provisional. The policy as at Anxx.A11 dated 31.7.1982 provides that a person must have a minimum of 3 years regular service in the junior scale to be eligible for promotion to the senior scale. It has further been clarified in para 4(a) that service rendered on provisional or ad hoc basis will not count for the purpose of determining the length of service rendered for the purpose of eligibility for promotion to senior scale. In the applicant's case his promotion to junior scale of Assistant Collector vide Anxx.A8 was on provisional basis. Therefore, apparently by the time the applicant retired from service on 31.10.85. He had not completed the requisite qualifying service for promotion to senior scale of Assistant Collector. Thereafter, the Hon'ble Supreme Court rendered a judgment on 13.8.1990 in the case of A.I. Chatterjee & Ors Vs. Union of India in Writ Petition No.4532-33/1978. Portions of this judgment were read out by the applicant himself during the hearing of the case. According to this judgment persons who had rendered four years of service whether on regular basis or on ad hoc basis on the post of Assistant Collector junior scale were eligible for promotion to the senior scale with effect from the date from which they had completed the required

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length of service as prescribed. It was in accordance with this judgment that promotion was granted to the applicant. This order of the Hon'ble Supreme Court which has also been reported in AIR 1991 SC 996, has been passed on certain interim applications made in the writ petitions referred to in the order Exhibits:1 dated 1.2.1996, passed by the respondents. While the interim directions were issued by the Hon'ble Supreme Court on 13.8.1990, as referred to above, the order in compliance with these directions have been passed on 1.2.1996. The learned counsel for the respondent stated that since the directions of the Hon'ble Supreme Court were of an interim nature and the final judgment of the Hon'ble Supreme Court on these writ petitions is probably yet to be delivered, the applicant does not get any right to claim any interest on arrears payable on account of delayed promotion. According to him, if the applicant is aggrieved by any delay in passing order consequential to the judgment of the Hon'ble Supreme Court delivered on 13.8.1990 or non-grant of interest on account of delayed payment of arrears, he should have approached the Hon'ble Supreme Court and not come to this Tribunal. Further, according to him the interim directions are subject to the final order that may be passed in the writ petitions pending before the Hon'ble Supreme Court. Therefore, the applicant has no right to claim any interest on the ground of delayed passing of the order of promotion to senior scale or delayed payment of arrears consequential thereto.

7. In so far as the passing of the order of promotion and grant of arrears consequential there to is concerned, the applicant no longer has any grievance. The question now is whether he is entitled to any costs or interest on account of delayed passing of order of promotion or delayed payment of arrears as consequence of the order. The directions issued by the Hon'ble Supreme Court as a consequence of which the applicant got promotion vide Exhibit:1 are dated 13.8.1990. Even though the directions of the Hon'ble Supreme Court are of an interim nature, these had to be complied with by the respondent. These should have been complied with within a reasonable time of the passing of the order of the Hon'ble Supreme Court. By the Hon'ble Supreme Court's order dated 13.8.1990, the applicant acquired a right to promotion to senior scale of Assistant Collector. Now that the respondent has passed order as late as 1.2.1996, the applicant can have a legitimate grievance that the promotion order has been considerably delayed and therefore, he is entitled to payment of interest on the delayed payment of arrears. Once the respondent has passed order Exhibit:1, which is badly delayed ^{and when} no reasons have been assigned for delay, the applicant can in our view approach this Tribunal to claim interest on account of delayed payment of arrears.

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The order passed by the Hon'ble Supreme Court on 13.8.1990 is not in respect of any single individual but for various categories of persons including Assistant Collectors in junior scale. Although the order passed is ^{of} an interim nature, no riders appear to have been attached in so far as promotions to senior scale of Assistant Collectors are concerned as seen from para 7 of the order dated 13.8.1990 of the Hon'ble Supreme Court, reproduced below:

"7. There has been some grievance that the promotions from the Junior Time Scale in the Cadre of Assistant Collectors to the Senior Time Scale have not been done. It is also necessary to direct - we do so accordingly - that if any promotee-officer in the cadre of Assistant Collector has completed 4 years of service, whether regular, temporary or ad hoc, he be given the Senior Time Scale with effect from the date on which he or she, as the case may be, has completed the required service of four years as prescribed."

8. In these circumstances, it appears to us that the promotion which should have been granted to the applicant soon after passing of the order dated 13.8.1990 by the Hon'ble Supreme Court has been granted to him as late as 1st Feb. 1996. The applicant made his first representation on 19.4.1993 regarding his grievance. Thereafter there was further correspondence with the respondent, the outcome of which was unsatisfactory according to the applicant and he filed this O.A on 10th April 1995. In the circumstances we direct that simple interest at 12% per annum shall be granted to the applicant from 1st May 1993 to the date of payment of arrears to him as a consequence of Exhibit:1 dated 1.2.1996. The amount of interest due to the applicant shall be granted within four months from the date of the receipt of a copy of this order. We however do not deem it necessary to grant any costs to the applicant.

9. The O.A is disposed of accordingly with no order as to costs.


(Ratan Prakash)

Judicial Member.


(O.P. Sharma)

Administrative Member.