

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

184

1. Original Application No. _____
2. Misc Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____
5. Execution Petition 6/08 in O.A No. 310/05

Applicant(S) N. C. Malakar -VS- Union Of India & Ors

Advocate for the Applicant(S) Mr. U. Datta

Advocate for the Respondent(S) CBSC

| Notes of the Registry | Date | Orders of the Tribunal |
|-----------------------|-----------------------|--|
| | 30.09.2008. (adme) | E.P.No.06/2008 has been filed for execution of the order dated 25.04.2007 of this Tribunal rendered in O.A.No.310/2005. A copy of this E.P.No.06/2008 has already been served on Mr M.U. Ahmed, learned Addl. Standing Counsel for the Union of India, who was appearing for the Respondents in O.A.No.310/2005. |
| | | Issue notice to the Respondents (in E.P.No.06/2008) requiring them to file their reply by 25.11.2008. |
| | | <u>Notwithstanding pendency of this E.P. No.06/2008, the Respondents shall remain free to implement the order dated 25.04.2007 of this Tribunal rendered in O.A.No.310/2005.</u> |

3/8/09

Notice received back as unserved with a remarks "Address left" for Respelt. No.6.

3/8/09

2

Send copies of this order, alongwith notices, to the Respondents and free copies of this order be also supplied to the learned Counsel for the Parties.

R.D

Sd/-
M.R. MOHANTY
VICE CHAIRMAN

Sd/-
S.N. SHUKLA
MEMBER (A)

-3-10

E.P. 6/08

E.P. 6 of 08 (O.A. 122/07)

31.9.11/09

Pl. send copies of this order to the Respondents. She should comply with this order of this Tribunal rendered in O.A. 122/07.

13/11/09

09.01.2009 Mrs. U. Dutta, Advocate, representing the Applicant is present. Mr. M. U. Ahmed, learned Addl. Standing Counsel representing the Respondents is also present. He prays for more time to file reply to this E.P.

Call this matter on 17th March, 2009 awaiting reply from the Respondents.

Send copies of this order to the Respondents, who should comply with this order of this Tribunal rendered in O.A.No. 122 of 2007.

(M.R. Mohanty)
Vice-Chairman

lm

Copy of order dt. 09.01.09

Sent to the Section for issuing to the Respondent by post.

BT NO 175 to 181

dt. 21-1-2009

19.1.09

17.03.2009 Mr. M. Chanda, learned counsel appearing for the Applicant is present. Mr. M. U. Ahmed, learned Addl. Standing counsel appearing for the Respondents prays for an adjournment to submit written report in this case. He may do so, by 24th April, 2009.

Call this matter on 24th April, 2009 awaiting written statement from the Respondents.

Send copies of this order to the Respondents in the address given in the E.P.No. 6 of 2009.

(M.R. Mohanty)
Vice-Chairman

lm

Notice duly served on Resp. No. 1, 2, 3, 4, 5, 6

23/1/09

Reply not filed.

16.3.09

Order dt. 17.3.09 is prepared & sent to Section for issuance to the Respondent by post.

IN NO. 1335-1341

dt. 19.3.09

19.3.09

W/S not filed.

22.4.09


E.P.6/2008

24.04.2009

Respondents were to produce compliance report by today. No report has yet been furnished.

In the aforesaid premises, call this matter on 15.05.2009 awaiting compliance report from the Respondents.


Send copies of this order to the Respondents and free copy of this order be supplied to Mr.M.U.Ahmed, learned Addl. Standing counsel.


(M.R. Mohanty)
Vice-Chairman

/bb/

15.05.2009 Mr M.U.Ahmed, learned Addl. Standing counsel filed an additional affidavit dated 12.05.2009 after serving a copy thereof on Mrs U. Dutta representing the Applicant.

Call this matter on 03.06.2009; by which time the Applicant should furnish his views on the additional statement.


(M.R. Mohanty)
Vice-Chairman

pg

15.5.09
Addl. Affidavit
has been filed by
the Respondents
through their Ld.
Att. M. U. Ahmed, Addl.
C&SC in the Court
on 15.5.09. Copy
served.

18/5/09

Addl. Affidavit
billed.

2.6.09

PTO

E.P.6-08

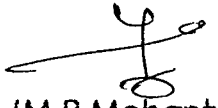
03.06.2009

Mr.M.U.Ahmed, learned Addl. Standing counsel, with reference to papers produced today, makes a statement that orders of this Tribunal have already been complied with.

Mrs.U.Dutta, learned counsel appearing for the Applicant, states that she should get an opportunity to verify the matter from the Applicant.

Accordingly, call this matter on 23.06.2009 for orders.

Send a copy of this order to the Applicant in the address given in the O.A.


(M.R.Mohanty)
Vice-Chairman

/bb/

23.06.2009

On the prayer of Mrs.U.Dutta, learned counsel for the Applicant (made in presence of Mr.M.U.Ahmed, learned Addl. Standing counsel) call this matter on 21.07.2009.


(M.R.Mohanty)
Vice-Chairman

/bb/

24.6.09
Copy of this order
dt. 3-6-09 Send to
the Applicant vide
no. 3554 dt. 24-6-09.


24/6/09

Advt. Affidavit filed.


20.7.09.

21.07.2009

A rejoinder has been filed by the Applicant, in Court to-day; after serving a copy thereof on Mr. M.U. Ahmed, learned Addl. Standing Counsel representing the Respondents. On the prayer of Mr. M.U. Ahmed, learned Addl. Standing Counsel representing the Respondents, call this matter on 3rd September awaiting instruction from the Respondents.

21.7.09

Applicant filed The Reply against the Affidavit filed by the Respondents. Copy served.

(M.K. Chaturvedi)
Member(A)

(M.R. Mohanty)
Vice-Chairman

lm

03.09.2009

A reply (to the rejoinder of the Applicant) is undertaken to be filed in course of the day.

4.9.09
Reply to the Rejoinder has been filed by the Respondents. Copy served.

On the prayer of counsel for both

the parties, call this matter on 20.10.2009.

4.9.09
Affidavit and rejoinder filed by the parties.

(M.K. Chaturvedi)
Member (A)

(M.R. Mohanty)
Vice-Chairman

/bb/

19.10.09

20.10.2009 Question arising for consideration is whether order dated 25th April, 2007 passed in O.A.No.310 of 2005 requiring the Respondents to convene Review DPC ^{is} to consider the Applicant, and if found fit be promoted from the date his immediate junior was promoted with consequential benefits include payment of arrears or not ?

Hearing concluded. Judgment reserved.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm

26/10/09

23.10.2009 Order pronounced in open Court.
Kept in separate sheets. Application is
dismissed.

Copy of judgment
order dated 23/10/09
has been prepared
and send to the
D/section for issuing
to the Applicant and
Respondents by Regd. post,
and both side standing
counsel by hand.

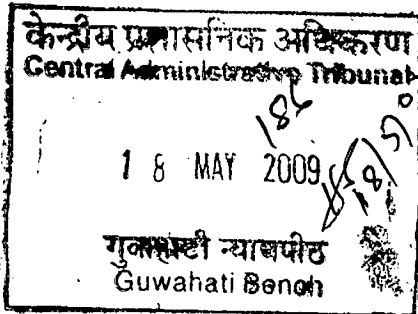
(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

D/No. ²⁰⁰⁹12266 & 26/10/09
12324
Dtd. — 4-11-2009

File in Court on.....
Court Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.



IN THE MATTER OF :

E. P. 6/2008 in
Shri N.C. Malakar

..... Applicant

-Versus -

Union of Inda & Ors.

..... Respondents.

Compliance Report.

IN THE MATTER OF :

Addl. Affidavit submitted by the Respondents No.

ADDITIONAL AFAFIDAVIT.

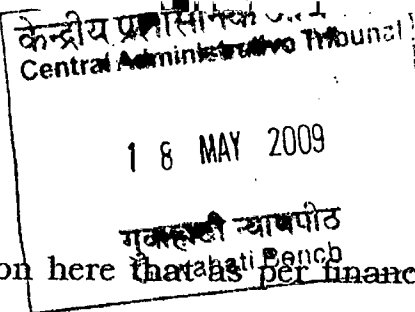
The humble answering respondents submit their addl.

Affidavit/compliance report as follows :

1. That I, Sri Bijoy Kumar Tiru and Respondents No. 4, Respondents in the above case and I have gone through a copy of the Execution Petition served on me and have understood the contents thereof. Save and except whatever is specifically admitted in the Addl. Affidavit/Compliance report, the contentions and statements made in the Execution Petition may be deemed to have been denied. I am competent and authorized to file the Addl. Affidavit on behalf of all the respondents.

95
Bijoy Kumar Tiru
(B. K. TIRU)
Assistant Commissioner
Central Excise,
Guwahati Division
M.A., B.Sc., LL.B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)
Shri M. U. Ahmed
All Case - 15/5/09

Reviewed
15.05.09



2. Further it is pertinent to mention here that as per financial benefit is concerned the pay of the applicant has been fixed notionally w.e.f. 23.09.2002 and actually w.e.f. 23.11.2007 in the grade of Superintendent (Pre-revised pay scale Rs.7500-250-12000/-) and the petitioner is entitled for arrears of pay difference for one year i.e. 23.11.07 to November, 2008.

The petitioner is not entitled for arrears of pay and allowances as claimed in terms of FR 17 which read as under :-

"Subject to any exception specially made in these rules and to the provision of sub-rule(2), AN OFFICER SHALL BEGIN TO DRAW THE PAY & ALLOWANCES attached to his tenure of a post with effect from the date when he assumes the duties of that post & shall cease to draw them as soon as he ceases to discharge those duties."

Now in compliance of the Hon'ble Court order and/or consequent upon the order dated 25th April/07 passed in O.A.No.310/05 filed by the petitioner, who joined as Superintendent on 23.11.07, extending consequential benefits are appended below :-

"Subject : Fixation of pay of Sri N.C.Malakar, Superintendent as per order of Hon'ble CAT in OA No.310/2005 filed by Sri N.C.Malakar.

In pursuance of the Ministry of Finance, Deptt. of Revenue, Govt. of India, New Delhi's letter F.No.C.18012/1200-Ad.II(B) dated 16th December, 2008 communicated by the Superintendent (PLC), O/O the Commissioner of Central Excise, Shillong vide letter C.No.11(39)35/Misc/PLC/2005/44521 dated 31.12.2008, the pay of Sri N.C.Malakar, who joined as Superintendent on 23.11.2007 at Customs Division, Agartala has been fixed notionally w.e.f. 23.9.2002 and actually w.e.f. 23.11.2007 as per Order of the Hon'ble CAT in O.a.No.310/05 extending consequential benefits as under :

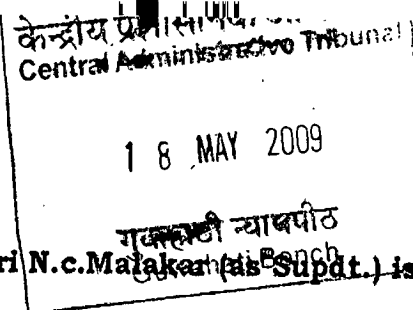
(A)

- i) Pay as on 23.9.2002 as inspector in the pay scale Rs.5500-175-9000/- **Rs.7950/-**
 - ii) Notionally increased by allowing one increment(Rs.7950/-+175/-) Rs. **8125/-**
 - iii) Pay fixed at stage next to Rs.8125/-w.e.f. 23.9.02 as Superintendent in the pay scale Rs.6500-200-10500/- with next date of increment on 01.09.2003 **Rs.8250/-**
- Pay w.e.f.01.09.2003 (after accrual annual increment) **Rs. 8500/-**

Subsequently, consequent upon the upgradation of pay scale of the Superintendent from the pay scale Rs.6500-200-10500/- to Rs. 7500-250-12000/- w.e.f. 21.4.2004 as per Ministry's letter No.A.26017/65/2003-

(B. K. TIRU)
Assistant Commissioner
Central Excise,
Guwahati Division

Pratibha Kumar Jha



Ad.II.A(Pt) dated 11.5.2004, the pay of Shri N.c.Malakar (as Supdt.) is fixed as under :

(B)

- i) Pay as on 21.4.2004 in the pay scale Rs. 6500-200-10500/- **Rs. 8500/-**
 ii) Pay fixed in the scale of Rs.7500-250-12000/- with Next Date of Increment 01.04.2005 **Rs. 8750/-**

Pay w.e.f. 01.04.2005 (after accrual annual increment) **Rs. 9000/-**

(C) Pay under Central Civil Service (Revised Pay) Rules, 2008 has been fixed as stated in the enclosed statement of fixation of pay corresponding to the pay of Rs.9000/- of pre-revised pay scale."

A copy of the above pay fixation order dated 5.2.2008 is enclosed herewith and marked as Annexure -

3. That this addl. affidavit is made for the ends of justice & equity.

Under the above circumstances, your Lordships may be pleased to drop this petition and dispose of the case since no grievance left on the part of the applicant and/or to pass such order/s as your Lordship may deem fit and proper.

For this act of kindness your humble petitioner/Respondents shall ever pray.

Pratibha Kumar Jindal

(B. K. TIRU)
Assistant Commissioner
Central Excise,
Guwahati Division

AFFIDAVIT

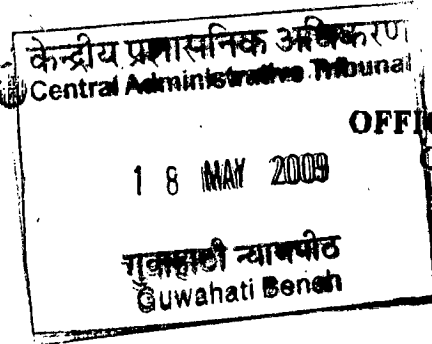
I Sri Bijoy Kumar Tiru aged about 57 years son of Dan Tiru residence of Chillarai Nagar , Dist. Kamrup (Metro) at present working as Assistant Commissioner, Central Excise, Guwahati who is one of the respondents in the present application and hence competent to sign this Affidavit do hereby solemnly affirm and state that the statements made in paragraphs 1 are true to my knowledge and belief , those made in paragraph 2 being matter of records, are true to my information derived there from and the rest are my humble submission before this Hon'ble Tribunal . I have not suppressed any material fact.

And I sign this affidavit on this 12/5 day of May, 2009 at

Guwahati

Bijoy Kumar Tiru

(B. K. TIRU)
Assistant Commissioner
Central Excise,
Guwahati Division



(5)

Annexure = R

99

**OFFICE OF THE DEPUTY COMMISSIONER
CUSTOMS DIVISION, AGARTALA**

ORDER

Dated, Agartala, the 5th February, 2008 ✓

Subject: Fixation of Pay of Sri N.C.Malakar, Superintendent as per Order of Hon'ble CAT in OA No-310/2005 filed by Sri M.C.Malakar.

In pursuance of the Ministry of Finance, Deptt.of Revenue, Govt.of India, New Dehli's letter F.No.C-18012/1200-Ad.II(B) dated 16th December, 2008 communicated by the Superintendent(PLC), O/O.the Commissioner of Central Excise, Shillong vide letter C.No.II(39)35/Misc/PLC/2005/44521 dated 31.12.2008, the pay of Sri N.C.Malakar, who joined as Superintendent on 23.11.2007 at Customs Division, Agartala, has been fixed notionally w.e.f. 23.9.2002 and actually w.e.f.23.11.2007 as per Order of the Hon'ble CAT in OA No.310/05 extending consequential benefits as under :

(A)

- i) Pay as on 23.9.2002 as Inspector in the Pay Scale Rs.5500-175-9000/- = Rs.7950/-
- ii) Notionally increased by allowing one increment (Rs.7950/- + 175/-) = Rs.8125/-
- iii) Pay fixed at stage next to Rs. 8125/- w.e.f. 23.9.2002 as Superintendent in the Pay Scale Rs.6500-200-10,500/-with next date of increment on 01.09.2003 = Rs.8250/-
- Pay w.e.f. 01.09.2003 (after accrual annual increment) = Rs.8500/-

Subsequently, consequent upon the up gradation of Pay Scale of the Superintendent from the Pay Scale Rs.6500-200-10,500/-to Rs.7500-250-12000/- w.e.f. 21.4.2004 as per Ministry's letter No.A.26017/65/2003-Ad.II.A(Pt) dated 11.5.2004, the pay of Sri N.C.Malakar(as Supdt.) is fixed as under;

(B)

- i) Pay as on 21.4.2004 in the Pay Scale Rs.6500-200-10,500/- = Rs.8500/-
- ii) Pay fixed in the Scale of Rs.7500-250-12000/-with Next Date of Increment 01.04.2005 = Rs.8750/-
- Pay w.e.f. 01.04.2005 (after accrual annual increment) = Rs.9000/-

(C) Pay under Central Civil Service (Revised Pay) Rules, 2008 has been fixed as stated in the enclosed Statement of fixation of pay corresponding to the pay of Rs.9000/-of pre-revised pay scale

Sd/-
(SUCHETA SREEJESH)
DEPUTY COMMISSIONER

Contd.at page-2

केन्द्रीय प्रशासनिक अदालत
Central Administrative Tribunal

18 MAY 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Page.../2

Dated:-

C.NO. (24)/ET/ACA/2003

Copy forwarded for information and necessary action:-

1. The Chief Commissioner of Customs & Central Excise, Shillong
2. The Commissioner of Customs (Preventive), N.E.R., Custom House, 110, M. G. Road, Shillong
3. The Commissioner of Central Excise, N.E.R. Shillong
4. The Administrative Officer (ET), O/O. the Commissioner of Customs (Preventive), N.E.R. Shillong
5. The Superintendent (PLC), O/o. the Commissioner of Central Excise, Morello Compound, M.G. Road, Shillong with reference to his letter under C.No.11(39)35/Misc./PLC/2005/44521 dated 31.12.2008.
6. The Chief Accounts Officer (Accounts), O/O. the Commissioner of Customs (Preventive), N.E.R. Shillong. She/He is requested to confirm the above fixation of pay for further necessary action at this end.
7. The Pay & Accounts Officer, Customs & Central Excise, Shillong.
8. Shri N.C. Malakar, Superintendent, Mohanpur C.P.F.

(SUCHETA SREEJESH)
DEPUTY COMMISSIONER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....

E.P. No. 6 of 2008 in O.A. No. 310 of 2005

DATE OF DECISION: 23-10-2009.

Sri N.C. Malakar

.....Applicant/s

Mr. M. Chanda

.....Advocates for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Mr. M.U. Ahmed, Addl. C.G.S.C.

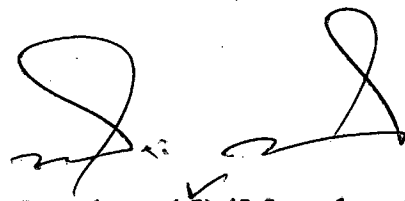
.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR MUKESH KUMAR GUPTA, MEMBER (J)

THE HON'BLE MR MADAN KUMAR CHATURVEDI, MEMBER (A)

1. Whether reporters of local newspapers may be allowed to see the judgment ? ~~Yes~~/No
2. Whether to be referred to the Reporter or not ? Yes/No
3. Whether their Lordships wish to see the fair copy of the judgment ? Yes/No


Member (J)/Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI :

E.P. No.6 of 2008 in O.A. No. 310 of 2005
DATE OF DECISION : THIS IS THE 23RD OF OCTOBER, 2009

THE HON'BLE MR MUKESH KUMAR GUPTA, MEMBER (J)

THE HON'BLE MR MADAN KUMAR CHATURVEDI, MEMBER (A)

Shri Niranjana Chandra Malakar
Superintendent
Mohanpur Customs Preventive Force
Customs Division, Agartala
P.O- Mohanpur, Tripura.

.....Applicant

By Advocate : Mr. M. Chanda

-VERSUS-

1. The Union of India
Represented by the Secretary to the
Ministry of Finance
(Department of Revenue)
Government of India
North Block, New Delhi - 110002.
2. The Chairman
Central Board of Excise & Customs
North Block, New Delhi - 110004.
3. The Chief Commissioner
Customs & Central Excise
N.E. Region, Crescens Building
M.G. Road, Shillong - 793001.
4. The Commissioner
Central Excise, Post Box No.8
Morellow Compound, Shillong.
5. The Additional Commissioner (P&V)
Customs & Central Excise, Crescens Building
M.G. Road, Shillong - 793001.
6. Sri Gopal Chandra Das
Superintendent Group 'B'
Central Excise & Customs, Shillong.
7. Sri N.N. Deka
Superintendent Group 'B'
Central Excise & Customs, Shillong.

Respondents

By Advocate: Mr. M.U. Ahmed, Addl. CGSC.



ORDER

MUKESH KUMAR GUPTA, JUDICIAL MEMBER

By present Application filed under Rule 24 of the CAT (Procedure) Rules, 1987, Sri Niranjana Chandra Malakar seeks implementation of order dated 25th April, 2007 passed in O.A. 310 of 2005, which reads thus :-

“ After carefully considering the pleadings submissions advanced by either sides we are of the view that ends of justice will be met if a direction is issued to the third Respondent to conduct a Review DPC based on the observations made in the preceding paragraphs to consider the case of the Applicant for promotion and if found fit to promote the Applicant. Accordingly, third Respondent is directed to convene a Review DPC and consider the case of the Applicant for promotion to the post of Superintendent (Group -B), and if found fit, promote, the Applicant from the date of promotion of his immediate juniors with all consequential benefits. The above directions shall be complied with the concerned Respondent within a period of two months from the date of receipt of a copy of this order.

The Original Application is allowed to the extent indicated above. There will be no order as to costs.”

(emphasis supplied)

2. His grievance is that in purported compliance of aforesaid direction though he has been promoted as Superintendent (Group - B) but he has been denied consequent service benefits including arrears of pay and allowances of said promotional post.

3. Sri M. Chanda, learned counsel appearing for the Applicant contends that term “all consequential benefits”, includes arrears of pay and allowances of the promotional post also. He relied upon 1990 Vol.1 (SLJ) CAT 637 (Principal Bench) (Sri Rai Singh vs. Union of India). He

made representation [dt. 14.01.2008 Annexure - IV]) seeking monetary benefits including seniority from the date of his immediate junior had been promoted, but it remain unconsidered. It was further contended that FR 17(1) will not be applicable as there had been direction of this Tribunal to grant all consequential benefits, which order and directions, having not been challenged before any higher court, has attained finality. Thus there remains no scope for denying him arrears of pay & allowances.

4. By filling reply, the Respondents stated that in compliance of directions of this Tribunal, applicant was promoted to the post of Superintendent vide establishment order No. 89/07 dated 20.11.2007. Vide order issued on 05.12.2008 his seniority was determined he was placed below Shri G. N. Haloi and above Shri N.N. Deka. As far as financial benefit is concerned, his pay had been fixed notionally w.e.f. 23rd September, 2002 and actually w.e.f. 23.11.2007 when he assumed the charge of promotional post. It was also emphasized that direction of this Tribunal vide order dated 25th April, 2007 stood implemented in its true spirit. The same nowhere mentioned that consequential benefits would mean payment of arrears and salary of promotional post, as projected. He is not entitled to arrears of pay and allowances in terms of F.R. 17 (1), which prescribes that Officer is entitle to draw pay and allowances attached to his post w.e.f. the date when he assumes the duty.

5. Strong reliance was placed on Apex Court judgment dated 25th July, 2007 in C.A. No. 5898 of 2006, (Union Territory, Chandigarh vs. Brijmohan Kaur) wherein it was held that when an incumbent did not discharge any duty, the principle of "no work - no pay" would be

applicable, which view is consistent with the view taken earlier that any Government Servant who did not discharge his duty should not be allowed to draw pay and allowances at the cost of the public exchequer. Similar view has been taken vide judgment dated 24.10.2007 in C. A. No. 5128 of 2007 (Union of India V. B.M. Jha).

6. Sri M.U. Ahmed learned Addl. Standing Counsel appearing for the Respondents contended that reliance placed by Applicant on Sri Rai Singh judgment (supra) is misconceived and said judgment is not applicable as the issue raised there had been regarding termination of service and not promotion, which is a subject matter in case at hand.


7. We have heard learned counsel for parties, perused the pleadings and judgments relied upon, as noticed hereinabove. The question which arises for consideration is whether the term "consequential benefits" in the given facts would include arrears of pay & allowances of promotional post.

8. It is undisputed fact that directions of this Tribunal vide order dated 25th April, 2007 in O.A. 310 of 2005 had been to convene Review DPC, consider him for promotion to the Post of Superintendent (Group - B) & if found fit, promote him from the date his immediate juniors was promoted with all consequential benefits.

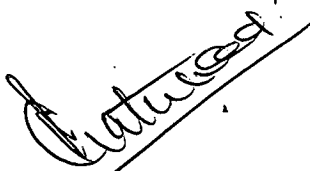
9. Admittedly in compliance of said direction, Review DPC was convened and based on its recommendation he was promoted vide order dated 20.11.2007, and he took over the charge of promotional post on 23.11.2007. His pay has been fixed notionally w.e.f. 23.09.2002 and actually w.e.f. 23.11.2007. Since his junior had been promoted w.e.f 23rd September, 2002, he had been granted promotion retrospectively on



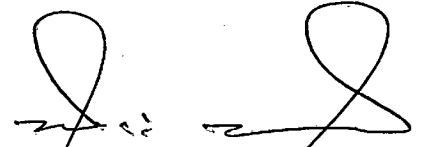
notional basis and also accorded seniority. Thus, the only issue which remains for consideration is regarding his entitlement to arrears of promotional post. The direction issued by this Tribunal on 25.04.2007, as extracted herein above, would reveal that specific direction was to convene review DPC and to consider him for promotion to the post of Superintendent (Group -B), which directions admittedly had been fully carried out. Further direction was that if found fit for promotion, he would be entitled to such promotion from the date his immediate junior was promoted. Even said direction has been fully complied with. Thus issue remaining for consideration lies in a narrow compass, whether consequential benefits would include arrears of promotional post. The direction issued by this Tribunal on earlier occasion, in our considered view, would not include a specific direction to grant arrear of promotional post, which is the basic bone of contention. It is true that F.R.17(1) stipulates that an officer shall begin to draw the pay and allowance attached to his post w.e.f. the date when he assumes duty of that post. Applicant resumed the duty of promotional post on 23.11.2007, from which date he had been allowed the actual benefits. Further ratio of Brijmohan Kaur as well as B.M. Jha (supra) is that when a promotion is allowed on notional basis from retrospective date, the employee is not entitled to arrears of salary of promotional post, adhering to the principle of "No work - no pay". In our view, the reliance placed on Sri Rai Singh (Supra) is not applicable in the given facts as it was a case where a person was retired as a measure of penalty, which action had not been approved by the Tribunal. On the other hand, in present case, we are considered with the issue regarding retrospective promotion. Thus said judgment of Sri Rai Singh is totally distinguishable.



10. In this view of the matter and for reasons noticed herein above, we are of the considered view that there was no specific direction to the Respondents to grant arrears of promotional post. Therefore there is no justification in the contention raised by the Applicant that he is entitled to arrears of pay and allowances of the promotional post. Thus, present Execution Application fails and dismissed. No costs.

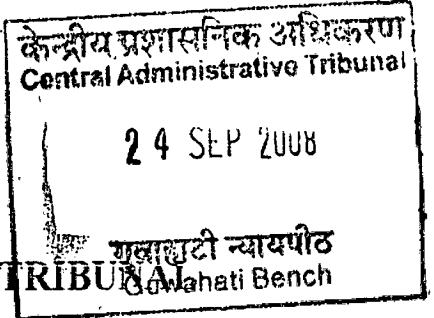


(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER



(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

/PB/



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An application under Rule 24 of Central Administrative Tribunal
(Procedure) Rule 1987)

E. P No. 6 /2008

In O.A No. 310/2005

Shri.Niranjan Chandra Malakar

-Versus-

Union of India & Ors.

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Filed By:

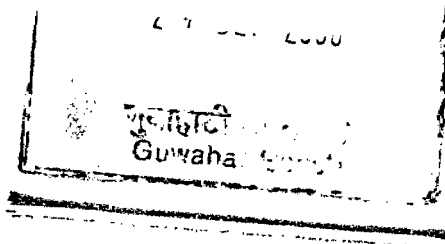
M. Dutta

Advocate

Date: - 24.09.08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Execution Petition No. 6 / 2008
In O.A. No. 310 / 2005



In the matter of:

E.P. No. 6 / 2008

O. A. No. 310 / 2005

Shri Niranjana Chandra Malakar.

-Versus-

Union of India & Ors.

-And-

In the matter of:

Non implementation of Hon'ble
Tribunal's judgment and order dated
25.04.2007 passed in O.A. No. 310/2005.

-And-

In the matter of:

An application under Rule 24 of Central
Administrative Tribunals (Procedure)
Rule, 1987, praying for a direction upon
the respondents for implementation of
the judgment and order dated 25.04.2007
in O.A. No. 310/2005.

-And-

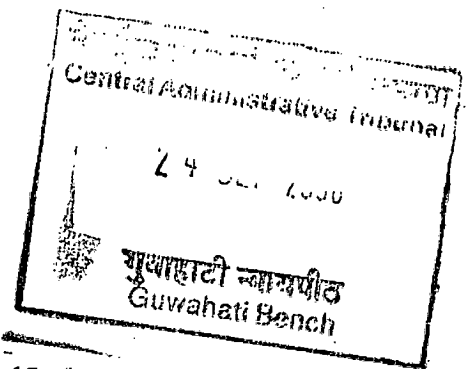
In the matter of:

Shri Niranjana Chandra Malakar,
Superintendent
Mohanpur Customs Preventive Force,
Customs Division, Agartala,
P.O- Mohanpur, Tripura.

...Applicant.

Filed by the applicant
Through U. Dutta, Advocate
on 24.09.08

Niranjana Ch Malakar



-AND-

1. The Union of India,
Represented by the Secretary to the
Ministry of Finance,
(Department of Revenue)
Government of India,
North Block, New Delhi- 110002.
2. The Chairman,
Central Board of Excise & Customs,
North Block,
New Delhi-110004.
3. The Chief Commissioner,
Customs & Central Excise,
N.E. Region,
Crescens Building,
M.G. Road, Shillong- 793001.
4. The Commissioner,
Central Excise,
Post Box No. 8, Morellow Compound,
Shillong.
5. The Additional Commissioner (P&V),
Customs & Central Excise,
Crescens Building,
M.G. Road, Shillong- 793001.
6. Sri Gopal Chandra Das,
Superintendent Group 'B',
Central Excise & Customs,
7. Sri N. N. Deka,
Superintendent Group 'B',
Central Excise & Customs,

..... Respondents.

The humble applicant above named-

Most respectfully sheweth: -

1. That the applicant being aggrieved due to non consideration of his promotion, approached this Hon'ble Tribunal by filing O.A. No. 310/2005 praying for a direction upon the respondents to promote the applicant to the cadre of Superintendent Group 'B' from the date of promotion of his

Niranjana Ch. Malakar

immediate juniors, with all consequential service benefits and monetary benefits including seniority etc. by constituting a review DPC.

2. That the Hon'ble Tribunal after hearing both the parties and after carefully examining the written statement of the respondents, allowed the original application vide its judgment and order dated 25.04.2007 in O.A. No. 310/2005 whereby it was held as follows:-

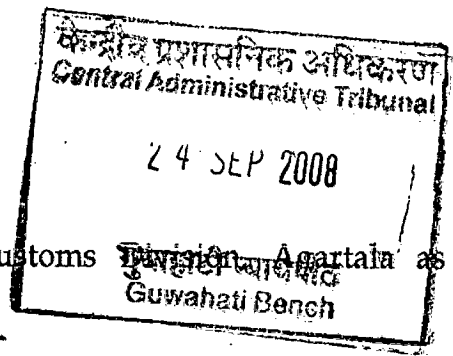
"5. After carefully considering the pleadings and submission advanced by either sides we are of the view that ends of justice will be met if a direction is issued to the respondent to conduct a Review DPC based on the observations made in the preceding paragraphs to consider the case of the applicant for promotion and if found fit to promote the applicant. Accordingly, third Respondent is directed to convene a Review DPC and consider the case of the applicant for promotion to the post of Superintendent (Group-B), and if found fit, promote, the applicant from the date of promotion of his immediate juniors with all consequential benefits. The above directions shall be complied with by the concerned respondent within a period of two months from the date of receipt of a copy of this order.

6. The original application is allowed to the extent indicated above. There will be no order as to costs."

(Copy of the judgment and order dtd. 25.04.2007 is enclosed as Annexure-I).

3. That eventually the applicant was promoted to the post of Superintendent (Group-B) and vide order No. 42/2007 issued under No. C. No. II (3) 3/CC/Hqrs.Estt/SH/2004/7185-98 (A) dated 27.11.2007, the applicant was transferred and posted to Agartala Customs Division where he joined in his promoted post of Superintendent on 03.12.2007 and posted to the

Niranjana C. Malakar



Mohanpur Customs Preventive Force, Customs Division, Agartala as Superintendent.

(Copy of order dated 27.11.2007 is annexed hereto and marked as Annexure- II).

4. That on 11.01.2008, the respondents filed one Misc. petition before this Hon'ble Tribunal, which was registered as M.P. No. 122/2007 in O.A. No. 310/2005. In the said Misc. Petition, the respondents prayed for extension of 6 (six) months time for implementation of the judgment and order dated 25.04.2007 passed in O.A. No. 310/2005. The Hon'ble Tribunal, however, pleased to dismiss the said Misc. petition on merit vide order dated 12.02.2008.

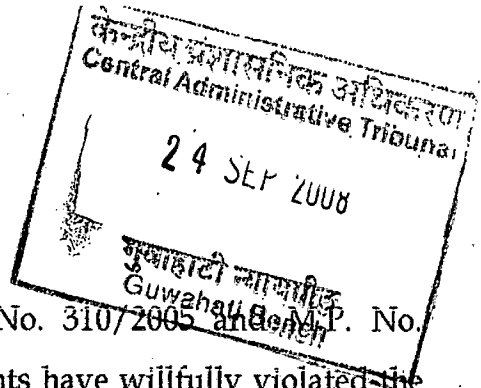
(Copy of order dated 12.02.2008 is annexed hereto and marked as Annexure- III).

5. That thereafter, the applicant approached the respondents' authorities time and again praying for grant of consequential service benefits and monetary benefit including seniority from the date of promotion of his juniors in terms of the judgment and order dated 25.04.2007 in O.A. No. 310/2005. He submitted representations to the respondents authorities with prayer as stated above and two of his representations dated 14.01.2008 and dated 04.03.2008 are annexed hereto. Even thereafter, the respondents have not taken any step to implement the directions contained in the judgment and order dated 25.04.2007 aforesaid and the claim of the applicant remains unsettled.

(Copy of representations dated 14.01.2008 and dated 04.03.2008 are annexed hereto and marked as Annexure- IV and V respectively).

6. That the applicant most respectfully begs to state that due to non-granting of consequential benefits and seniority etc. the applicant has been incurring irreparable losses and the respondents by their inaction, have been disregarding the order dated 25.04.2007 and further order dated 12.02.2008

Ninangar Ch. Malakar



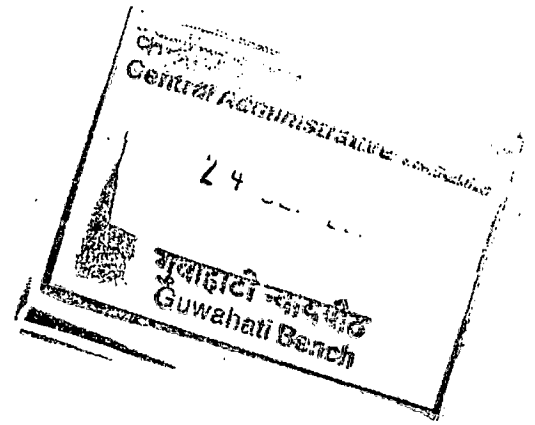
passed by this Hon'ble Tribunal in O.A. No. 310/2005 and O.A. No. 122/2007 respectively. As such the respondents have willfully violated the direction contained in judgment and order dated 25.04.2007 in O.A. No. 310/2005. Therefore, finding no other alternative the applicant is approaching before this Hon'ble Tribunal for further direction upon the respondents for compliance of the order dated 25.04.2007 in O.A. No. 310/2005 of this Hon'ble Tribunal and to pass further order under Rule 24 of Central Administrative Tribunal (Procedure) Rule, 1987 for compliance of the order of the Hon'ble Tribunal.

7. That this application is made bonafide and for the ends of justice.

Under the facts and circumstances stated above, the Hon'ble Tribunal be pleased to direct the respondents to implement the order dated 25.04.2007 passed in O.A. No. 310/2005 with immediate effect and further be pleased to pass any other or orders as deemed fit and proper by the Hon'ble Tribunal.

And for this act of kindness, the applicant as in duty bound, shall ever pray.

Niranjana Ch. Malakar



VERIFICATION

I, Shri Niranjana Chandra Malakar, S/o Shri Naresh Chandra Malakar, aged about 52 years, presently working as Superintendent, Customs and Central Excise, Mohanpur, C.P.F, Agartala Customs Division, Agartala, Tripura, do hereby verify that the statements made in Paragraph 1 to 7 are true to my knowledge and I have not suppressed any material fact.

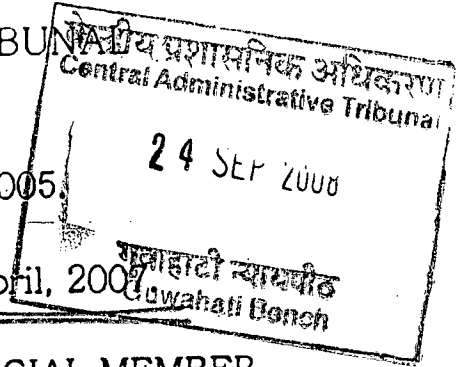
And I sign this verification on this the 20th day of September, 2008

Niranjana Ch. Malakar

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 310 of 2005.

Date of Order: This, the 25th day of April, 2007



THE HON'BLE SHRI G. SHANTHAPPA, JUDICIAL MEMBER

THE HON'BLE SHRI GAUTAM RAY, ADMINISTRATIVE MEMBER

Shri Niranjana Chandra Malakar
Son of Shri Naresh Chandra Malakar
Inspector, Customs and Central Excise
O/o Deputy Commissioner
Customs Division
Karimganj.

...Applicant.

By Advocates Mr. M.Chanda, Mr.S.Nath & Mr. G.N.Chakraborty.

- Versus -



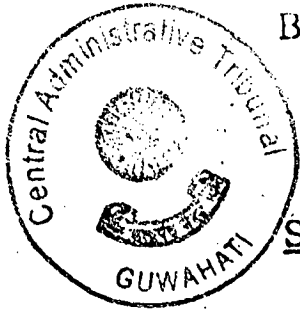
1. The Union of India
Represented by the Secretary
to the Ministry of Finance
(Department of Revenue)
Government of India
North Block
New Delhi-110 002.
2. The Chairman
Central Board of Excise & Customs
North Block, New Delhi -110 004.
3. The Chief Commissioner
Customs & Central Excise
N. E. Region
Crescens Building
M.G. Road, Shillong-793001.
4. The Commissioner
Central Excise

*Accepted
Under
Adv*

Post Box No.8, Morellow Compound
Shillong.

5. The Additional Commissioner (P&V)
Customs & Central Excise
Crescens Building.
M.G. Road, Shillong-793001.
6. Sri Gopal Chandra Das
Superintendent Group 'B'
Central Excise & Customs.
Commissioner, Central Excise, Shillong.
7. Sri N. N. Das
Superintendent Group 'B'
Central Excise & Customs.
Commissioner, Central Excise, Shillong... Respondents.

By Mr.M.U.Ahmed, learned Addl.C.G.S.C.



ORDER (ORAL)

SHANTHAPPA, G. MEMBER (J):

This Application has been filed by the Applicant
under Section 19 of the Administrative Tribunals Act, 1985
seeking the following main reliefs:-

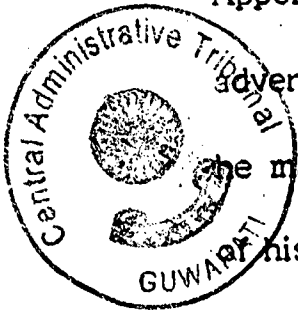
"8.1 That the Hon'ble Tribunal be pleased to direct the respondents to promote the applicant to the cadre of Superintendent Group 'B' from the date of promotion of his immediate juniors, with all consequential service benefits and monetary benefits including seniority etc. by constituting a Review DPC.

8.2 That the Hon'ble Tribunal be pleased to declare that the DPC is not entitled to take into consideration any downgraded ACR or

Signature

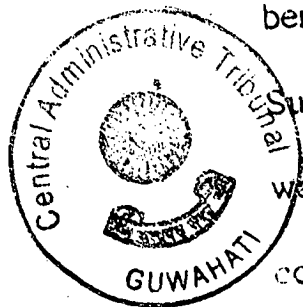
ACR recorded below benchmark without providing any opportunity to the applicant."

2. We have heard Mr. M. Chanda, learned counsel for the Applicant and Mr. M. U. Ahmed, learned Addl. C.G.S.C. for the Respondents. After hearing them for quite some time the short question arises for our consideration is as to whether the Applicant is to be considered for promotion by the Review DPC. In the ACR for the year 2000-2001 there were adverse remarks against the Applicant. Applicant submitted his representation against such adverse remarks, which was rejected by the authority. Applicant then filed an appeal on 08.02.2001 and the Appellate Authority considered his appeal and expunged the adverse remarks. Based on the expunction of adverse remarks the made representations before the authority for consideration of his promotion by Review DPC. The first Respondent directed the third Respondent i.e., the Chief Commissioner, Central Excise to convene a Review DPC. The said letter dated 24.06.2004 is annexed at Annexure-13 of the O.A. Subsequently Applicant submitted representation (Annexure-14) to the fifth Respondent on 28.09.2005. Since the said Respondent has not



considered his representation Applicant has approached this Tribunal by way of this O.A.

3. Per contra Respondents have filed a detailed written statement denying the reliefs of the Applicant. Learned counsel for the Respondents has relied on paragraphs 5 and 7 of the written statement filed in this case. At paragraph 5 of the written statement the Respondents contended that in the ACR of the Applicant for the year 2000-2001 in most of the columns the gradings were "JUST ADEQUATE" which is below the benchmark "GOOD" for promotion to the grade of Superintendent Group-B. In the aforesaid ACR adverse entry was recorded only at column No.3 (Industry and conscientiousness) as "POOR" and in other columns, the gradings were recorded as "JUST ADEQUATE" except in column 7(a). Though the said adverse entry was expunged his case is not fit for promotion by way of Review DPC or otherwise due to gradings in other columns. At paragraph 7 of the written statement Respondents contended that the benchmark in the ACR grading for promotion to the grade of Superintendent (Group-B) are good. Applicant's representation was examined in the past on more than one occasion. However,



[Signature]

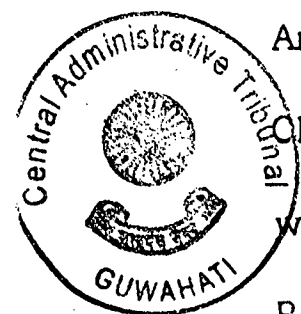
in terms of para 18.4.1 of the DPC guidelines, the ACR for the period 2000-2001 of the Applicant was thoroughly scrutinized further with a view to whether or not a review of his case by Review DPC was justified or not. On scrutiny it was found that most of the gradings - "JUST ADEQUATE" in the ACR for the aforesaid period were below the benchmark - "GOOD" for promotion.

4. On careful examination of the written statement it is found that the Respondents have not answered anything about Annexure-13 communication dated 24.06.2004 wherein the Chief Commissioner of Central Excise i.e., the third Respondent was requested to direct the fourth Respondent to conduct a Review DPC. For better elucidation, the contents of the said letter is reproduced as under:-

"Sir,

I am directed to refer to your letter C.No.II(20)1/CON/2003/151 dated 25.2.2004 on the above cited subject. Shri N.C.Malakar vide his representation dated 16.6.2003 has stated that inspite of adverse remarks contained in ACR for the year 2000-2001 has been expunged, the competent authority is not holding a review DPC for consideration for promotion to the post of Superintendent. His representation was considered in detailed in consultation with DOP&T and it was requested to CCE, Shillong to hold review DPC vide letter

Yf.



- 12 -

of even number dated 13.10.2003. CCE Shillong did not follow the Board's instruction and avoided to hold a review DPC on one ground or other.

The decisions to hold review DPC has to be taken by the cadre controlling authority (C.C.E., Shillong). He is unnecessarily trying to complicate the matter and consequently pass on decision making to the Board with attendant delay. As per the rule position, a review DPC has to be held.

You are therefore, requested to direct the CCE, Shillong to hold a review DPC of 30.7.2002 immediately and promote Shri Malakar to the post of Superintendent if he is found fit. A compliance report be also sent to the Board at the earliest.

Yours faithfully,

(S.K.THAKUR)

Under Secretary to the Govt. of India"

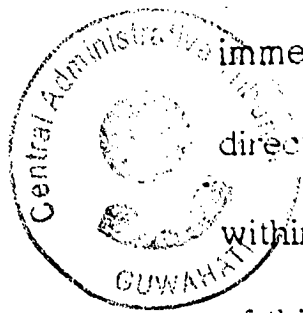


Subsequent to that, the Applicant has submitted representation for consideration of his case for promotion to the Grade of Superintendent (Group-B) by a Review DPC. Inspite of directions issued vide aforesaid letter dated 24.06.2004 on what reason the Respondents are not holding the Review DPC for considering Applicant's case is not understood from their written statement.

[Handwritten signature]

5. After carefully considering the pleadings and submissions advanced by either sides we are of the view that ends of justice will be met if a direction is issued to the third Respondent to conduct a Review DPC based on the observations made in the preceding paragraphs to consider the case of the Applicant for promotion and if found fit to promote the Applicant. Accordingly, third Respondent is directed to convene a Review DPC and consider the case of the Applicant for promotion to the post of Superintendent (Group-B), and if found fit, promote the Applicant from the date of promotion of his immediate juniors with all consequential benefits. The above directions shall be complied with by the concerned Respondent within a period of two months from the date of receipt of a copy of this order.

6. The Original Application is allowed to the extent indicated above. There will be no order as to costs.



SCJ/MEMBER (D)
SCJ/MEMBER (A)

TRUE COPY

4.5.07

/BB/

Cent

Local

4/5/07



14-

ANNEXURE - III II

OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
NORTH EASTERN REGION
SHILLONG
Guwahati Bench

110 Mahatma Gandhi Road, Shillong - 793001, Meghalaya
Phone: 0364-2222597/2225325/2229005. Fax: 0364-2223440/2229007. E-mail: cussgh@sancharne

ORDER NO. 42/2007

Dated. Shillong, the 27th Dec 2007

Subject: - Estt. Promotion, transfers and posting in the grade of Group 'B' (Gazetted)
Superintendent - Order regarding.

In pursuance of Establishment Order No. 89/2007 dated 20th Nov 2007 communicated vide endorsement C.No.II (3) 2/ET-III/2005/61683-107 dated 21st Nov 2007 by the Commissioner of Central Excise, Shillong, *Shri. Niranjana Chandra Malakar*, Superintendent (on promotion), is hereby transferred and posted to Agartala Customs Division, of Customs (P) Commissionerate North Eastern Region, Shillong with immediate effect and until further orders.

This issues with the approval of Commissioner of Customs (Preventive), North Eastern Region, Shillong.

Sd/-

(M .Marbaniang)

Assistant Commissioner

Dated:- 27.11.07.

C.NO.II (3) 3. /Hqrs.Est/SH/2004/ 1185.98 (A)

Copy forwarded for information and necessary action to: -

1. The Chief Commissioner, Customs & Central Excise Shillong Zone, Shillong.
2. The Commissioner of Central Excise, Shillong.
3. The Additional Commissioner (P&V), Customs & Central Excise, Shillong.
4. The Deputy Commissioner, Customs Division, Agartala, *Relieve Order & joining Report enclosed to w/a at your end pl.*
5. The Chief Accounts Officer, Customs (Preventive), N.E.R., Shillong.
6. The Pay & Accounts Officer, Customs & Central Excise, Shillong.
7. The Branch-in-charge, ET /Accts. / Conl / CIU/VIG Branch of C & Cen Ex, Shillong.
8. The Superintendent, SIU-VIG, Customs Hqrs. Office, Shillong.
9. *Shri. Niranjana Chandra Malakar*, Superintendent for compliance.
10. The General Secretary, Group 'B' Executive Officers' Association, Customs & Central Excise, Shillong.
11. Guard File.

*Attested
Adm
Adm*

(M. Marbaniang)
27/11/07

(M .Marbaniang)
Assistant Commissioner

1. Original Application NO. _____

2. Misc Petition No. _____ 122/07 in O.A 310/05

3. Contempt Petition No _____

4. Review Application No. _____

Applicant(S)..... VS Union of India & Ors

Advocate for the Applicants M. U. Ahmed, N. C. Malakar
Addl. case.

Advocate for the Respondent(S): M. Chanda, S. N. G. Chakraborty

Central Administrative Tribunal
24 SEP 2008
Guwahati Bench

12.02.2008

Misc. Petition No. 122 of 2007 has been filed by the Respondents in Original Application No. 310 of 2005 seeking extension of six months time to implement the order dated 25.04.2007 of this Tribunal rendered in O.A.No.310 of 2005. No reason as to why it will take six months time to convey the Review DPC to take final decision has not been disclosed in the Petition/Misc. Petition.

Mr. M. U. Ahmed, learned Addl. Standing Counsel appearing for the Union of India has placed before us the communications (which he has received from the Respondents) dated 31st January, 2008 and that of 27.11.2007 and placed before us a copy of the promotion order dated 28th November, 2007. Nothing has been stated in the said written instructions dated 31st January, 2008, and written instructions dated 27.11.2007 nor in the promotion order dated 28th November, 2007 about the reasons as to why six months time is required by the Respondents to comply with the order dated 25th April, 2007 of this Tribunal rendered in O.A.No.310 of 2005.

By order dated 21st November, 2007 and 11.01.2008, we repeatedly called upon the Respondents to place on record all details as to the steps taken by the Respondents to comply with the orders of the Tribunal rendered in O.A.No.310 of 2005. Despite such opportunity was given to the Respondents, no materials have been produced by the Respondents showing the reasons for which they are really not able to comply with this order of this Tribunal.



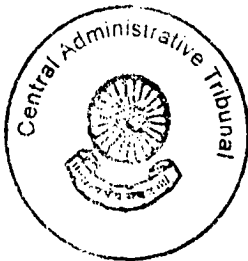
Attested
M. U. Ahmed
Adv

B.P.122 of 07 (O.A.No.315 of 05)

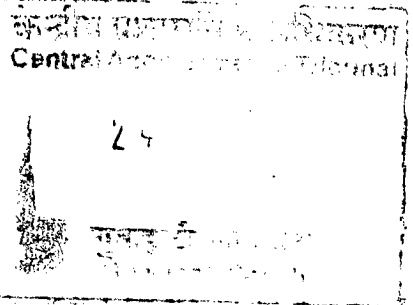
12.03.2008

In the aforesaid premises, we find no merit in Misc. Petition No.122 of 2007, which is accordingly, dismissed.

Send copies of this order to the Applicant and to all the Respondents of O.A.No.310 of 2005.



Sd/-
Manoranjan Mohanty
Vice Chairman
Sd/-
Khushiram
Member (A)



Dated 22-2-08

For information and necessary action to :

1. The Secretary to the Ministry of Finance (Department of Revenue),
North Block, New Delhi-110 002.

2. The Central Board of Excise & Customs,
New Delhi - 110 004.

3. The Commissioner, Customs & Central Excise, N.E. Region,
Shillong - 793001.

4. The Officer, Central Excise, Post Box No.8, Shillong - 793001.

5. The Commissioner (P & V), Customs & Central Excise,
Shillong - 793001.

6. The Officer, G/o Shri Naresh Ch. Malakar,
Customs & Central Excise, G/o Deputy Commissioner,
Shillong - 793001.

7. The G.O. C.E., G.O. C.E., Shillong.

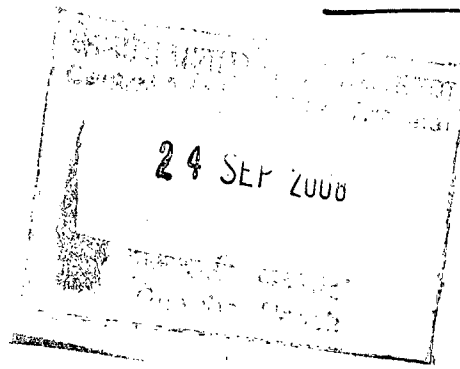
8. The Advocate, Gauhati High Court, Gauhati.

SECTION OFFICER (JCL).

To
The Chief Commissioner
Customs & Central Excise
N. E. Region
Crescans Building
M. G. Road, Shillong – 793 001

- 17 -

ANNEXURE - IV



(Through proper channel)

Sub :- Prayer for consequential service benefits and monetary benefit including seniority from the date of promotion of my immediate juniors.

Hon'ble Sir,

Most submissibly, I beg to state the following few lines for favour of your kind consideration and sympathetic order please.

That Sir, in pursuance of Estt. Order no. 89/2007 dated 20th November, 2007 communicated vide endorsement C. No. II(3)2/ET-III/2005/61683-107 dated 21.11.2007 by the Commissioner of central Excise, Shillong. I have joined as Superintendent on promotion since 23.11.2007 in Customs Hqrs. Office, Shillong., thereafter on being transferred, I joined in Agartala Customs Division on 03.12.2007.

That Sir, I have got the opportunity to meet Hon'ble Commissioner, Central Excise, N.E.R., Shillong and Joint Commissioner (P & V), Customs & Central Excise, Shillong in the last week of November, 2007. Both of them assured me to wait for some days so that they will provide me the requisite benefits as deem fit. But I have not yet received any communication in this regard.

Under the above circumstances, I therefore, humbly pray to your gracious self to consider my case sympathetically and arrange to pass necessary order in the light of the order dated 25.04.2007 of Central Administrative Tribunal, Guwahati Bench at the earliest.

*Dated Agt.
14.01.08.*

Yours faithfully

(Signature)
(Niranjana Ch. Malakar)
Superintendent
Mohanpur C.P.F.
Agartala Customs Division

Copy to :-

1. The Commissioner, Central Excise, N.E.R., Shillong.
2. The Joint Commissioner (P & V), Customs & Central Excise, Shillong.

*Forwarded
to Hqs. concern
with authority from Agt. Dir.
vide cr. II(3)1/ET/ACA/
2002/P-1/53-A dt 25/1/08
Attested
Mulla
adv*

(Signature)
14/01/08

To
The Chief Commissioner
Customs & Central Excise
N.E. Region; Crescans Building
M.G. Road; Shillong - 793 001.

4 SEP 2008

(Through proper channel)

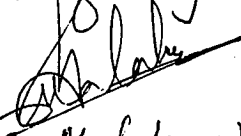
Sub:- Prayer for consequential service benefit and monetary benefit including seniority from the date of promotion of my immediate juniors.

Hon'ble Sir,

Please refer to my representation dated 14/8/08 on the above subject, submitted through proper channel, which was forwarded from Agartala Div. vide crp II(3)/ET/ACA/2002/P1/53A dt. 25/01/08.

Most submissively, the benign applicant prays to your Hon'ble Lordship to kindly intimate the fate of my aforesaid prayer at your earliest possible date and thus oblige.

Dated: Agartala
04/11 March 2008

Yours faithfully,

(N.C. Malakar)

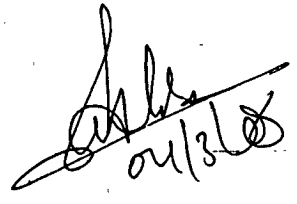
Superintendent,
Customs Prevention Force

- Copy to
- ① The Commissioner, Central Excise, NER, Shillong
 - ② The joint Commissioner (P&V) Customs & Central Excise, Shillong.

Forwarded
to DC, Cus Agt
+ 4a vide his ltr
dt. 03/19 dt. 04/3/08.
crp II(20)2/MNEP

Attested
Mulla
Adv




04/3/08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

File in Court on... 3.9.09

h Court Officer.

IN THE MATTER OF :

E.P. No. 6/2008

In O.A. No.310/2005

Shri N. C. Malakar

.....Applicant

- Versus -

Union of India & Ors.

.....Respondents

- AND -

IN THE MATTER OF :

Reply to the Execution Petition by the

Respondents No.

WRITTEN REPLY

The humble answering respondents
submit their reply to the Execution
Petition as follows :

1. That I Bijoy Kumar Tiwari,
Asst. Commissioner, Central Excise, Guwahati.
and Respondents No. _____ in the above case and I have gone through
a copy of the Execution Petition served on me and have understood the
contents thereof. Save and except whatever is specifically admitted in the
written statement filed in O.A.310/2005, the contentions and statements
made in the Execution Petition may be deemed to have been denied. I am
competent and authorized to file the reply to the Execution Petition on
behalf of all the respondents.

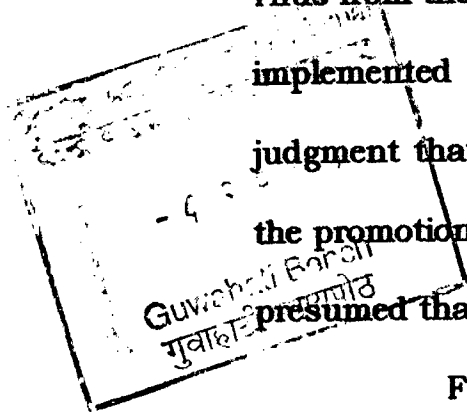
I do hereby
undertake to serve
the copy on the petitioner
3/9/09

Bijoy Kumar Tiwari
B. K. Tiwari
Asstt. Commissioner
Central Excise, Guwahati
03/09/09

2. That with regard to the statements made in para 1 of the Execution Petition the answering Respondents beg to state that the contention of the applicant is not correct. The Judgment dated 25.04.2007 passed by CAT, Guwahati Bench has clearly mentioned that the applicant may be promoted to the grade of Superintendent, if found fit from the date of promotion his immediate juniors with all consequential benefits and in compliance to the above judgment the applicant was promoted to the grade of Superintendent vide Estt. Order No.89/2007 dated 20.11.2007. Further, in compliance of the CAT's order a draft seniority list of Superintendent who have been promoted during the year 2002 was issued on 05.12.2008, wherein the applicant has been placed below Shri G.N.Haloi and above Shri N.N.Deka, Superintendent and accordingly his seniority has been re-fixed. As far as financial benefit is concerned the pay of the applicant has been fixed notionally w.e.f. 23.09.02 and actually w.e.f. 23.11.07 in the grade of Superintendent. Thus from the facts it is evident that the judgment dated 25.04.2007 was implemented in its true spirit and nowhere it is mentioned in the judgment that consequential benefit means payment of arrear salary of the promotional posts as claimed by the applicant in the reply. Thus it is presumed that the applicant is misconceived of fact.

Further, the applicant has contested that non entitlement of arrear pay and allowances is not correct in terms of F.R.17(1) which reads as under :

".....An Officer shall begin to draw pay and allowances attached to his tenure of a post w.e.f. the dated when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties."

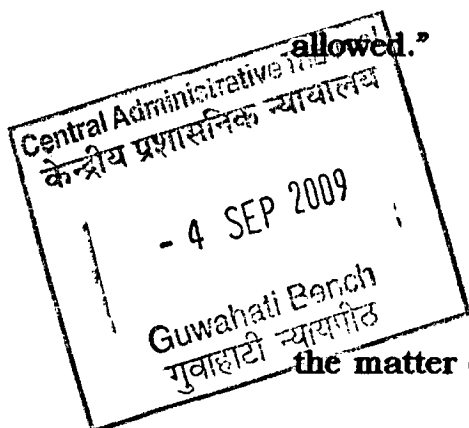


Joyjoy Kumar Jora

In similar case the Apex Court in its judgment dated 25.07.07 in the case of Union Territory, Chandigarh vs. Brijmohan Kaur dealing with the matter of Govt. servant who does not discharge his duty is not allowed pay and arrears at the cost of public exchequer has held that -

"The direction of the Tribunal which is affirmed by the High Court in our view is against the old canons of law directed by the Court. It is settled law that when an incumbent does not discharge any duty, the principle of "no work no pay" would be applicable. This consistent view has been taken by this Court keeping in view the public interest that any Govt. servant who doesn't discharge his duty should not be allowed to draw pay and allowances at the cost of the public exchequer."

In view of the above, the order of High Court, dated 12.7.2005 in CMP No.18840-CAT of 2003 and the Tribunal order, dated 13.08.03 in O.A.No.1030/CH of 2002 are set aside and the appeal is



A copy of the judgment dated 25.07.07 is enclosed as Annexure-A.

In another similar case, in the case of UOI -vs- B.M.Jha in the matter of back wages cannot be granted on notional promotion with retrospective effect based on the principle of "No work - No Pay" the Apex Court in its judgment dated 24.10.2007 has set aside the orders of CAT and High Court based on no work no pay principle.

A copy of the Judgment dated 24.10.2007 is enclosed as Annexure-B.

3. That with regard to the statements made in para 2 of the of the Execution Petition the answering respondents beg to state the same has already been discussed in para 2 of this reply.

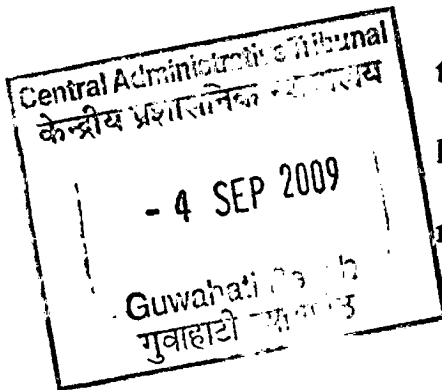
Brijoy Kumar Jha

4. That with regard to the statement made in para 3 of the Execution Petition the answering respondents do not offer any comment.

9. That the Execution Petition is devoid of any merit and has no rational foundation and as such liable to be dismissed.

10. That this reply to the Execution Petition has been made bona fide and for the ends of justice and equity.

*For
Joy
Kumar*

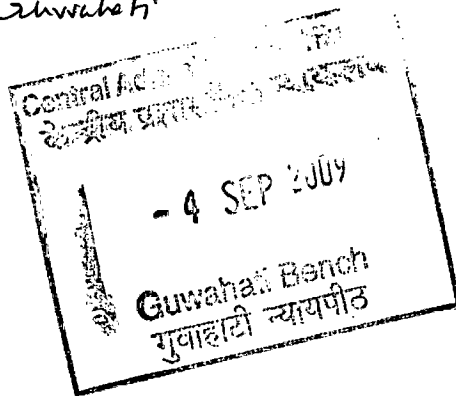


It is therefore humbly prayed before this Hon'ble Tribunal that the present Execution Petition filed by the applicant may be dismissed.

VERIFICATION

I, Bijoy Kumar TIRU Son of
DAN TIRU aged about 57 years resident of
Khanapara, Guwahati
 working as ASSISTANT COMMISSIONER
 being duly authorized and competent to sign this verification, do
 hereby solemnly affirm and verify that the statements made in Para 1 & 2
 are true to my knowledge, belief and information and those made in
 Para 2 are true to my knowledge as per the legal advice and
 I have not suppressed any material facts.

And I sign this verification on this 31st day of August 2009
 at Guwahati



Bijoy Kumar TIRU
B. K. TIRU
 Asstt. Commissioner
 Central Excise, Guwahati

allowed and the judgment of High Court, dated 27-5-2002 is set aside and dismiss the writ petition of the Review DPC.

[Union of India and another v. A.K. Narula, 11/2008, Swamysnews 89, 2008 (1) SCC (L&S), 656, date of judgment 18-5-2007.]

C.A. No. 2717 of 2007

136

"No work-No pay" has been laid down keeping in view the public interest that a Government servant who does not discharge his duty is not allowed pay and arrears at the cost of public exchequer.

Facts: The Respondent herein was engaged as Music Teacher (Instrument) against a vacancy on 30-8-1989 in the school and she was continued till 18-11-1989 when the regular incumbent joined duty. Taking a grievance on her relieve order, she filed an O.A. No. 783 of 1991 on 15-6-1991 before the Central Administrative Tribunal (Tribunal for short), Chandigarh Bench praying for a direction for her re-engagement as *ad hoc* from 19-9-1990 and also regular basis with effect from 1-1-1991. The Tribunal allowed her application by its order, dated 31-10-1995 and directed the administration to regularize her service from 1-1-1991. The order of the Tribunal was not challenged before the High Court.

Director, Public Instructions, Chandigarh administration by his Order, dated 29-12-2000 fixed her pay scale on *ad hoc* basis with effect from 19-9-1990 and on regular basis with effect from 1-1-1991 subject to the condition that she shall not be entitled for any arrears for the period from 19-9-1990 to 28-2-1996 on the principle of "no work-no pay". A miscellaneous application filed by the Respondent to implement the orders in O.A. No. 783 of 1991 was disposed of as the order had already implemented substantially with a direction to fix her increment notionally with effect from 19-9-1990 and on regular basis with effect from 1-1-1991.

But the Respondent once again filed O.A. No. 1030/CH of 2002 in CAT/Chandigarh praying quashing of the order denying her arrears from 19-9-1990 to 24-3-1996 and consequential payment of arrears. She also prayed for granting her seniority on *ad hoc* basis from 19-9-1990 and on regular basis from 1-1-1991 and to grant her proficiency step on completion of 8 years of her entire service with effect from due date and grant her subsequent increments for the year 2001 and 2002 also after fixing her pay at the proficiency step along with arrears and interest at 18% p.a. for delayed payment.

The Tribunal disposed of the OA by its Order, dated 13-8-2003 quashing the impugned Order, dated 29-12-2000 that the Applicant is not entitled for any arrears for the period from 19-9-1990 to 24-3-1996. The

order is to be complied after getting a declaration from her that during that period she did work with financial benefit elsewhere.

The Tribunal initially in O.A. No. 783 of 1991 treated the period of her service from 19-9-1990 to 24-3-1996 only notionally granting her notional increment. But in the later judgment in O.A. No. 1030/CH of 2002 ordered for payment of Arrears from 19-9-1990 to 24-3-1996. By an unreasoned order, the High Court on appeal upheld the orders of Tribunal. Hence the present appeal filed in the Apex Court.

The Apex Court held:—

Held: "The direction of the Tribunal which is affirmed by the High Court in our view, is against the old canons of law directed by this Court. It is settled law that when an incumbent does not discharge any duty, the principle of "no work - no pay" would be applicable. This consistent view has been taken by this Court keeping in view the public interest that any Government servant who does not discharge his duty should not be allowed to draw pay and allowances at the cost of the public exchequer."

In view of the above, the order of High Court, dated 12-7-2005 in CMP No. 18440 - CAT of 2003 and the Tribunal Order, dated 13-8-2003 in O.A. No. 1030/CH of 2002 who set aside and the appeal is allowed.

[Union Territory, Chandigarh v. Brijmohan Kaur, 11/2008, Swamysnews 92, 2008 (1) SCC (L&S), 803, date of judgment 25-7-2007.]

C.A. No. 5898 of 2006

137

Even if University Grant Commission, (UGC) raised the age of superannuation from 60 to 62 to University and College teachers, State Governments availing the benefit of Central aid are not bound to raise superannuation age as the UGC scheme is voluntary. Court cannot adjudicate in the raising of age as it "would be trailing into the dangerous area of the wisdom of legislation"

Facts: The case is in regard to raising of age of Lecturers, Professors, Readers, Librarians, Physical Education Teachers, etc. of the affiliate Colleges and Universities getting grant from UGC. By letter, dated 27-7-1998, the Human Resources Development Ministry enhanced the pay scales of teachers following the accepted recommendations of the Fifth Central Pay Commission. The grant given to State Government who wish to avail the grant facility is required to follow the conditions laid down in this letter to avail the benefit of grant in aid to states. One of the conditions laid down in this letter was "The payment of Central Assistance for implementation of the Scheme is subject to the condition that the entire scheme of revision of pay scales, together with all conditions

ANNEXURE - 4

SEP 2009
Guwahati Bench
11/2008

temporary basis. It would indicate that the services of the Appellant can be terminated by requesting to termination *simpliciter*. However, in the instant case, may be on temporary basis, the Respondents allowed the Appellant to continue for about 34 years before his services were done away by the impugned order. In the meantime, the Appellant had attained the age of superannuation on 5-6-2002. Therefore, the prayers of the Appellant that he may be reinstated and he should be provided with pensionary benefits are not tenable. While it is true that the services of the Appellant were purely on temporary basis throughout 34 years of service, we cannot also overlook the fact that the Respondents allowed him to continue for 34 years and ultimately did away his services by the impugned order. Legally speaking, the Appellant would not have any enforceable right but the facts of this case as recited above, deserve a sympathetic consideration on humanitarian grounds".

In the result, the appeal is disposed of directing the Respondents to pay an amount of Rs. 50,000 to the Appellant within 3 months from the date of order failing which an interest of 9% is payable to the Appellant from the date the amount is due.

[*Santokh Singh v. Chandigarh Administration and others*, 12009, SwamysnewsS 93, 2008 (2) SCC (L&S) 173, date of judgment

C.A. No. 7165 of 2002

4

Back wages cannot be granted on notional promotion with retrospective effect based on the Principle of "No work - no pay"

Facts : The Appellant Respondent herein promoted with retrospective effect claimed back-wages on his notional promotion from 27-8-1984 to 5-1-1992. That was allowed by the Tribunal and upheld by the High Court. Hence the present appeal is filed before the Apex Court.

Normally when a retrospective promotion is given, he is entitled for all benefits arising thereof. But the Apex Court in the judgment *State of Haryana v. O.P. Gupta* [1996 SCC (L&S) 633] followed by the other judgment *A.K. Soumini v. State Bank of Travancore*, [2003 SCC (L&S) 1041] had taken the view that even in case of notional promotion from retrospective date, the employee is not entitled to arrears of salary as he has not worked in the promotional post adhering to the principle of no work-no pay. The Division Bench of the High Court relied on the case of *State of A.P. v. K.V.L. Narasimha Rao* [1996 SCC (L&S) 841]. The Division Bench did not read the judgment properly. Even in that case,

the order of High Court granting back-wages was set aside based on no work-no pay principle.

In view of the above, the appeal is allowed setting aside the orders of CAT and High Court.

Appeal is allowed.

[*Union of India v. B.M. Jha*, 1/2009, SwamysnewsS 93, 2008 (2) SCC (L&S), 399, date of judgment 24-10-2007.]

C.A. No. 5128 of 2007

5

Admissibility of Pension for a BSF personnel with less than 20 years of service is to be decided by the department as per law

Facts: Order of Single Judge of the Kerala High Court passed was challenged in the writ appeal in regard to entitlement of pension for a BSF personnel resigning under Rule 19 of the Border Security Force Rules, 1969 ("the Rules"). The writ was dismissed directing the Appellants herein to dispose of the representation of the Appellant in the light of the judgement in *Jose v. Border Security Force*, Writ Appeal No. 1588 of 2000 in Kerala High Court. This SLP is filed against that order.

The Appellants submitted that the Respondent was not eligible for pension as she had completed only 18 years and three months of service. Reliance was placed on the case of *Union of India v. Rakesh Kumar* [2001 (4) SCC 309].

In *Rakesh Kumar's* case it was held:

Held: "In the result, there was no substance in the contention of the learned Counsel for the Respondents that on the basis of Rule 49 of the CCS (Pension) Rules or on the basis of the G.O., the Respondents who have retired after completing qualifying service of 10 years but before completing qualifying service of 20 years by voluntary retirement, are entitled to get pensionary benefits. The Respondents, who were permitted to resign from service, under Rule 19 of the BSF Rules before attainment of the age of retirement or before putting such number of years of service as may be necessary under the Rules, to be eligible for retirement are not entitled to get any pension under any of the provisions under the CCS (Pension) Rules. Rule 49 only prescribes the procedure for calculation and quantification of pension amount. The G.O., dated 27-12-1995 does not confer any additional right of pension on BSF employees".

File in Court on 21/7/09
Court Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An application under Rule 24 of Central Administrative Tribunal
(Procedure) Rule 1987)

Reply in E. P No. 6 /2008

In O.A No. 310/2005

Shri Niranjan Chandra Malakar

-Versus-

Union of India & Ors.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
21 JUL 2009
गुवाहाटी न्यायपीठ
Guwahati Bench

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| 3. | A | Copy of the judgment dated 20.07.1989. | 4-5 |

Date: - 21.07.09

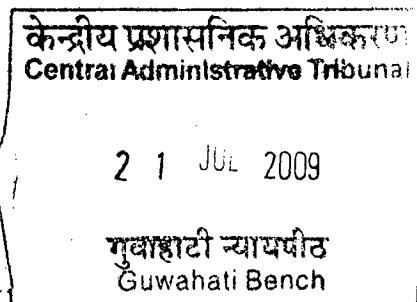
Filed By:

W. S. Datta
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Filed by the applicant
through U. Datta, advocate
on 21.07.09

Niranjani C. Malakar



In the matter of:-

E.P. No. 6/2008

In O.A. No. 310/2005

Shri N.C. Malakar.

-Versus-

Union of India and others.

-And-

In the matter of:-

Counter reply filed by the
applicant against the affidavit filed
by the respondents.

The applicant above named most respectfully begs to state as follows:-

1. That your applicant carefully gone through the additional affidavit filed by the respondents and understood the contents thereof. That your applicant categorically deny the correctness of the statement made in paragraph 1 and 2 of the additional affidavit and further beg to say that the judgment and order of the Ld. Tribunal dtd. 25.04.2007 has not been implemented in its true spirit as directed by the Ld. Tribunal. As such claim of the respondents that the order has been implemented in the manner it has been directed is not factually correct. In the judgment and order dtd. 25.04.2007, it is specifically directed that if the applicant is found fit for promotion, in that case the applicant should be promoted from the date of his immediate junior with all "consequential benefit". It is specifically stated that consequential benefits mean payment of arrear salary of the promotional post, due, to the applicant as indicated in the judgment i.e. from the date of promotion of his immediate junior.

It is relevant to mention here that on a mere reading of the order dtd. 05.02.2008 (Annexure- R) of the additional affidavit filed by the respondents, it appears that the benefit of promotion have been granted notionally w.e.f 23.09.2002 and actually w.e.f 23.11.2007 in terms of the judgment of the Ld. Tribunal passed in 310/2005. Since the benefit of promotion has been granted to the applicant notionally w.e.f 23.09.2002 as such the respondents have deliberately violated the order of the Ld. Tribunal dtd. 25.04.2007 as because the applicant is legally entitled to arrear monetary benefit of salary w.e.f 23.09.2002 whereas the respondents have granted the benefit of promotion notionally w.e.f 23.09.2002 and actually from 23.11.2007 in violation of the order of the Ld. Tribunal.

The further contention of the respondents that the applicant is not entitled to arrear pay and allowances in terms of FR 17 is not correct and the said statement of the respondents is contemptuous on the face of the judgment dtd. 25.04.2007.

Therefore Hon'ble Tribunal be pleased to direct the respondents to pay arrear pay and allowances to the applicant in the promotional post of Superintendent, Group-B w.e.f 23.09.2002 in terms of the judgment and order dtd. 25.04.2007.

The applicant in support of his contention rely upon the decision of the Principle Bench in T.A No. 600/1985 decided on 20.07.1989, wherein it was held by the Ld. Tribunal when a competent Court ordered for payment of consequential benefit it includes arrears for promotion post also i.e in the instant case for the post of Superintendent Group B from the date of promotion of his immediate junior.

A copy of the judgment dated 20.07.1989 is enclosed as Annexure- A.

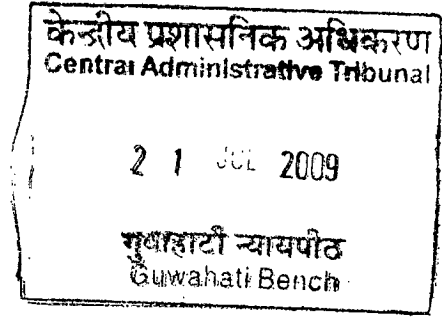
2. In the facts and circumstances stated above the Hon'ble Tribunal be pleased to direct the respondents to pay arrear salary w.e.f. 23.09.2002 in terms of the judgment and order dated 25.09.2007 in O.A No. 310/2005.
3. That this counter affidavit is filed bonafide and for the ends of justice.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

21 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

M. Vinayan Ch. Malakar



VERIFICATION

I Shri Niranjana Chandra Das, son of Shri Naresh Chandra Malakar, aged about 53 years, presently working as Superintendent, Customs and Central Excise, Mohanpur, C.P.F, Agartala Customs Division, Agartala, Tripura, do hereby verify that the statements made in paragraph 1 to 2 are true to knowledge and legal advice and I have not suppressed any material fact.

And I sign this verification on this the 12th day of July, 2009.

Niranjana Ch. Malakar

employee is resigning to join another appointment with proper permission and that the benefit under CSR 418(b) (Rule 26(2)) will be admissible to him. The contents of the above order should also be noted in the service books of the individuals concerned under proper attestation. The issue of any separate sanction has not been considered necessary."

This also elaborates the interpretation of Article 418(b) of Rule 26(2) of CSR. This makes it clear that no separate sanction should be issued indicating that the resignation had been accepted under the above proviso. The Comptroller and Auditor General had also been consulted in the matter and that is indicated in the above quoted portion. All this supports Applicant's case.

6. We may also consider paragraph 4 of the Office Memorandum dated 28th February, 1976 issued by the Government of India, Ministry of Finance, Department of Expenditure. Paragraph 4 reads as follows :

"4 Breaks in Service. In the absence of a specific indication to the contrary in the service records, an interruption between two spells of service rendered under the Central Government including service paid out of Defence Service Estimates or Railways Estimates will be treated as automatically condoned and the pre-interruption service treated as qualifying service for pension except where it is otherwise known that the interruption was caused by resignation, dismissal or removal from service or participation in a strike. The period of interruption itself will under no circumstances be reckoned as qualifying service for pension."

7. Learned counsel urged that when the interruption was caused by resignation then the pre-interruption service will not be treated as qualifying service for pension. It is not necessary to reiterate what has been said earlier except to say that the resignation which has been asked for to join the new service without any pre-condition will not debar the government servant from praying that his pre-interruption service be treated as qualifying service for pension. When the resignation is voluntary and has not been submitted at the instance of the Department or any authority, then the position would be different.

8. Taking into consideration all these aspects, we are of the view that the decision given in the OA earlier needs to be interfered with. Paragraph 7 of that order has to be set aside. We hold that the pre-interruption service of the applicant in the office of Manager Publication from 11.4.40 to 17.5.48 and 19.5.48 to 15.8.48 has to be considered as qualifying service for pension in the case of the applicant. He will be entitled to the benefit of that service for the purpose of pension.

9. We, therefore, direct that the pre-interruption service between two spells of service under the Government of India will be treated as qualifying service for pension in the case of the applicant and the break in the service between the two periods of service is condoned. But we make it clear that the period of interruption itself will not reckon as qualifying service. With these observations, the Review Application succeeds and paragraph 7 of the earlier order dated 20th May, 1988 is set aside. We make no order as to costs.

Application allowed

1990(1)(CAT)

Shri Rai Singh v. Union of India and ors.

गुवाहाटी
Guwahati. 637

CENTRAL ADMINISTRATIVE TRIBUNAL

(New Delhi Bench)

T.A. No. 600/85

Decided on 20.7.1989

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. B.C. Mathur, Vice-Chairman

Shri Rai Singh

Versus

Union of India & ors.

—Petitioner

—Respondents

Consequential benefits, salary benefit for promotion—Applicant was retired compulsorily in 1977—Tribunal ordered reinstatement with consequential benefits—Reinstated and arrears paid—In between was due promotion but no arrears for promotion paid on the plea that he had not worked on that post—Tribunal rejected respondents plea and directed to pay. (Para 5)

Advocates.

For the Petitioner : Shri G.D. Gupta, Advocate
For the Respondent : Shri K.C. Mittal, Advocate

IMPORTANT POINT

When a court has ordered consequential benefits, it includes arrears for promotion post also.

JUDGMENT

Amitav Banerji, Chairman and B.C. Mathur, Vice-Chairman. This CCP has been filed by the petitioner in TA No. 600/85 for suitable action against the respondents for not having complied with Tribunal's order dated 22.4.1988. That order allowed the TA and quashed the order dated 1.12.1976 viz., compulsorily retiring the applicant from service. It was also directed that the applicant shall be paid consequential benefits within a period of three months from the date of receipt of a copy of the above order. The applicant who had been compulsorily retired was reinstated in service and he was entitled to be paid all consequential benefits. The applicant in the meantime retired in June, 1982 on superannuation.

2. Annexure-II to the CCP, dated 23.8.88 shows that an order had been passed re-instating the applicant in service and he was deemed to have continued in service from 22.3.77 to 30.6.82 against a supernumerary post of Information Officer in the pre-revised scale of Rs. 1100-50-1600. It has also been stated that he has been paid all the salary and allowances as Information Officer between the period 22.3.77 to 30.6.82. In Annexure-IV to the CCP, there is a further notification dated 6-1-1989 in which it was stated that the applicant was appointed as Director Information Service in the pre-revised scale of pay of Rs. 1500-60-1800 with effect from 12-8-1977 to the date of his normal superannuation i.e. 30-6-1982. The pay and allowances for this post have, however, not been paid to the applicant.

3. Mr. Mittal appearing for the respondents raised an objection to the payment of any amount towards the difference in pay and allowances for the post of Director Information Service, with effect from 12.8.1977 to 30.6.1982. He has also filed a reply to the CCP wherein it is stated that in view of FR 17(1), the applicant is not entitled to the pay and allowances for the post of Director Information Service as he did not work on that post even for a single day.

4. We are satisfied that the objection raised by the learned counsel for the respondents is not tenable. Once the Tribunal has allowed the TA and passed orders for re-instatement of the Applicant to his old post as Information Officer, he was entitled to be paid all consequential benefits including the pay and allowances for the post of Information Officer and promotions, if any, to any higher post. Since he was promoted to a higher post, he would also be entitled to the pay and allowances of the said post even though he had not worked for a single day.

5. Provision of FR 17(1) does not apply in this case. The very order dated 23.8.88 (Annexure-II) shows that he would be deemed to have continued in service from 22.3.77 to 30.6.82. Annexure IV shows that he was promoted from 12.8.77 as Director Information Service till the date of his superannuation. Because of the order of his compulsory retirement he was not able to join the post or the promotional post. He could not join as the order was passed after his compulsory retirement and even after the date of superannuation. I was not due to any fault on his part. He was excluded by the order passed by the Govt. compulsorily retiring him. He is entitled to the promotion from 12-8-77 and that would be part of the consequential benefits. Hence no part of the same could be withheld from him.

6. We are satisfied that the plea raised on behalf of the respondents is without merit. Learned counsel for the respondents have prayed that they may be granted two months time from today. The order has been passed in the presence of the Departmental Official, Shri P.S. Raghavan, Deputy Secretary (FSP), Ministry of External Affairs. Respondents are granted two months time to pay the difference of pay for the post of Director Information Service less what he has already been paid.

CCP is accordingly disposed of. Notice of contempt discharged.

Order daste.

Application allowed

(SHORT NOTE)

CENTRAL ADMINISTRATIVE TRIBUNAL
(Calcutta Bench)

T.A. No. 414 of 1987
Decided on 11.5.1989

CORAM

The Hon'ble Mrs. Justice Pratibha Bonnerjea, Vice Chairman
The Hon'ble Mrs. J. Anjani Dayanand, Admn. Member

Sanat Kumar Paul

—Petitioner

Versus

Union of India and ors.

—Respondents

Seniority—Claim seniority on the basis of year of selection 1963—Has been allotted seniority from 1964 e.g. when Service Commission recommended his name—Matter had earlier from explained to him by CPO and he had agreed still be agitated before the Tribunal—Tribunal found no irregularity.

Held, we have heard the counsel on either side very carefully. We have also perused all the records placed before us. We are satisfied that no injustice has been caused to the petitioner by placing him between Shri R.R. Mondal and Shri S.P. Mitra in the TFO cadre. It is also seen from the records made available to us by the Standing Counsel that the respondents have taken considerable pains to explain the position to the petitioner at two meetings at the level of Chief Personnel Officer himself. At both these meetings the petitioner had agreed with the view taken by the Government respondents that he can only be given the seniority with effect from 27-10-1964, the date on which his name was forwarded by the Railway Service Commission to the South Eastern Railway for purposes of fixing his seniority. The petitioner has himself given a declaration in his own hand writing accepting the same. It is therefore, not in order for the petitioner now to turn round and seek higher seniority than the one to which he is eligible. merely on the basis of his name figuring in the Merit List knowing fully well that his name had not been sponsored by the Railway Service Commission to the Eastern Railway.

Advocates.

For the Petitioner : Mr. S.K. Dutta, Advocate
For the Respondents : Mrs. Uma Sanyal, Advocate

(SHORT NOTE)

CENTRAL ADMINISTRATIVE TRIBUNAL
(Calcutta Bench)

O.A. No. 527 of 1986

Decided on 14.4.1989

CORAM

The Hon'ble Mrs. Justice Pratibha Bonerjea, Vice Chairman
The Hon'ble Mr. B.N. Jayasimha, Vice Chairman (A.M.)

Indu Bhusan Dey

—Applicant

Versus

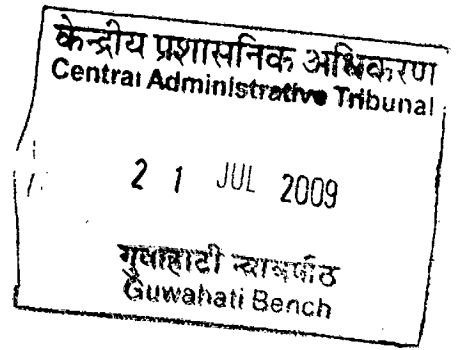
Union of India & ors.

—Respondents

NOTICE

From

U. Dutta
Advocate



To

Mr. M. U. Ahmed
Addl. C.G.S.E.

Sir,

Please find herewith a copy of the counter-reply
filed by the applicant in E.P No. 6/2008 in
O. A. 310/2005, N.C. Malakar - vs- Union of India
& ors.

Thanking you,
Dutta

Received

21/7/09
(M. U. Ahmed)