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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.1038 of 2005

Jabalpur this the 10th day of October, 2006.

Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

Cyril David, Son of Shri Soloman David, Aged about 51
years, resident of 19-A, Vatika Vihar, Near St.Joseph
Convent School, Ranjhi, Jabalpur (M.P.).

-Applicant

(By Advocate – Shri Sapan Usrethe)

VERSUS

1. Union of India through Secretary, Ministry of Finance,
North Block, New Delhi-110001

2. Central Board of Direct Taxes through its Chairman,
North Block, New Delhi.

3. Chief Commissioner of Income tax, Aayakar Bhawan,
Hoshangabad Road, Opposite Maida Mill, Bhopal
(M.P.).

4. Commissioner of Income tax II, Central Revenue
Building, Napier Town, Jabalpur

-Respondents

(By Advocate – Shri M.Chourasia on behalf of Shri A.P.Khare)

ORDER

By Dr.G.C.Srivastava,VC.-

This Original Application has been filed against the order
dated 20.5.2004 (annexure A-1) promoting the applicant
notionally as Head Clerk with effect from 27.11.1995 without

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payment of back wages in the higher scale. Through this OA, the applicant has sought for the following main relief :-

"A. To direct the respondent to fix pay of the applicant as Head Clerk as at 27.11.95.

B. To direct the respondent to pay arrear to the applicant w.e.f.27.11.95.

C. To direct the respondent to correct seniority list of Inspector in consequence to correction made by the respondent in the seniority list of UDC".

2. The case of the applicant is that he was appointed as Upper Division Clerk (for short 'UDC') through direct recruitment on 13.4.1976. He passed the departmental examination for UDC in July, 1978 and for Income-tax Inspector in 1983. He was confirmed as UDC with effect from 18.11.1981. Aggrieved by the fact that his seniority as UDC was not fixed properly, he approached this Tribunal through OA No.25/99, which was decided on 21.1.2004.

The operative part of the order reads as follows:

"8. In the similar case of P.R.Deshpande (supra) this Tribunal held that unless the respondents are able to indicate the reasons for delay in confirmation, government servant cannot be held responsible for the delay. In the instant case also the respondents have not been able to show the reasons for delayed confirmation. The Tribunal is, therefore, of the opinion that the relief granted in the case of P.R.Deshpande (supra) should be granted to the applicant in this case also, and grant him all consequential benefits within a period of three months from the date of communication of this order. Ordered accordingly."

In pursuance of the above directions of the Tribunal, the seniority list was corrected and the applicant was promoted on notional basis with effect from 27.11.1995 vide order dated 20.5.2004 (annexure A-1). In the said order, it was specifically mentioned that "no arrears would be admissible". The applicant was actually promoted as a Head Clerk on 15.10.1999. He filed a representation to the



department on 7.6.2004 (annexure A/3) claiming arrears of pay as Head Clerk with effect from 27.11.1995 but this was rejected on 29.10.2004 (annexure A-4). He filed another representation on 19.11.2004 (annexure A-5) but having received no reply, he approached this Tribunal again and filed an execution application bearing MA No.61/2005 alleging that the respondents have not given all the consequential benefits to the applicant in terms of the order of this Tribunal in OA No.25/1999. The said MA was rejected by the Tribunal on 15.9.2005 (vide annexure A-7) by the following order:

"We have perused the order passed by the respondents Annexure R-5 dated 20.5.2004. This order seems to be passed in compliance of the order of the Tribunal. Thus this MA has become infructuous. Accordingly, the same is disposed of with a liberty to the applicant to file an OA if he still feels so aggrieved and so advised".

As a result, the applicant has approached this Tribunal once again seeking payment of arrears as Head Clerk with effect from 27.11.1995 and correction in the seniority list of Inspector - a post to which he was promoted on 29.6.2001.

3. We have heard the arguments advanced by the counsel of both the parties.

4. The claim of the applicant for payment of arrears is based on the fact that the delay in promotion was not because of any lapse on the part of the applicant and, therefore, he is entitled to the arrears. The applicant also submitted that in similar cases, arrears have been paid to A.D.Arjaria, R.K.Dubey and D.K.Jain. The learned counsel for the applicant also cited following cases in which it has consistently been held that if a promotion is denied because of no fault on the part of the employee, he would be



entitled to get monetary benefits along with promotion from retrospective effect:-

- (i) Shri Muralidhar Moharana Vs. Union of India and others, 1996(2) ATJ 434,
- (ii) B.Muraleedharan and anr. Vs. State of Kerala and ors, 2003(3) ATJ 270
- (iii) Vijay Kumar Verma Vs. State of Haryana & ors, 2002 (3) ATJ 349
- (iv) Devi Lal and ors Vs. Union of India, 2002 (1) ATJ 485(F.B.)
- (v) Bajrang Lal and anr. Vs. Union of India, 2002 (1) ATJ 481
- (vi) Shri C.N.Sahai & ors Vs. Union of India & ors 2002(3) ATJ 159
- (vii) Sh.Ram Roop Sharma and anr. Vs. The General Manager, Northern Rly. New Delhi & ors, 2005 (2) ATJ 103
- (viii) Union of India and ors. Vs. C.N.Sahai & ors, 2003(2) ATJ 362
- (ix) Food Corporation of India Vs.S.N.Nagarkar, (2002)2 SCC 475
- (x) Vasant Rao Roman Vs. UOI & ors, (1993)24 ATC 363 (SC)

The learned counsel for the applicant also cited the case of **Ramesh Chander and another Vs.R.S.Gahlawat and others**, (1993)24 ATC 759 in which it was held that the expression "consequential benefits" means "all benefits which would directly flow or accrue consequent upon happening of a certain event" and therefore, it would also include arrears of salary. It was further contended by the learned counsel for the applicant that consequent to his promotion as Inspector, his seniority in the cadre of Inspectors should also be corrected in accordance with the correction made in the seniority list of UDCs.

5. In their counter reply, the respondents have stated that the Tribunal's order in OA No.25/1999 has been fully complied with by granting notional promotion with effect from the date from which the applicant's immediate junior was promoted. The



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पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि आवे पिल:-

- (1) जतिम, उच्च वृत्तपालक नगर जेतिम, जबलपुर
- (2) उच्चवर्गीय/श्रीमती/कु.....के काउंसल
- (3) फरवरी श्री/श्रीमती/कु.....के काउंसल
- (4) जयपाल, कोप्रअ, जबलपुर जयपाल
सूचना एवं आवश्यक कार्यवाही हेतु

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AN 238
D.P. 1494
AN 238

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applicant, however, is not entitled to arrears of pay because of the principle of 'no work no pay'. It was further contended that the cases of three officials, namely, A.D.Arjaria, R.K.Dubey and D.K.Jain, cited by the applicant, are entirely different as these were the cases of promotion in which the findings of the DPC were kept in a sealed cover due to disciplinary proceedings and on their exoneration they were given the benefit of pay with effect from the date of their retrospective promotion. It was further clarified by the respondents that the applicant was promoted to the post of Inspector not according to his seniority but because of passing of the departmental examination and, therefore, the seniority assigned to him in the Inspectors' cadre is not based on the seniority assigned to him as UDC.

6. We have carefully considered the order passed by this Tribunal in OA No.25/99, wherein it has clearly been stated that "the relief granted in the case of P.R.Deshpande (supra) should be granted to the applicant in this case also". It has been categorically stated by the respondents, in their reply, that no arrears were paid to P.R.Deshpande on his notional promotion, and the case of the applicant has been treated exactly on the same lines. This fact has also been admitted by the applicant in his representation to the respondents (annexure A-5) wherein he has mentioned that "if Shri P.R.Deshpande has not objected to order No.41 of 1996 dated 20.11.1996 passed in his case, that will not deprive me of my legitimate claim of payment of arrears". The learned counsel for the applicant argued that in terms of catena of judgments cited by him, the applicant is entitled to get arrears as the delay in promotion is not attributed to any lapse on his part.

7. It is clear from the order passed by this Tribunal in OA 25/1999 that the applicant has to be given the same treatment by



the respondents as was given to P.R.Deshpande. The present OA has been filed challenging the order passed by the respondents in pursuance of the directions given by this Tribunal in OA 25/1999. The scope of this OA is, therefore, very limited in the sense that we have only to determine whether the impugned order fully complies with the directions given by this Tribunal in the aforesaid OA 25/1999. We cannot travel beyond the scope of this order and issue additional or supplementary directions. The Tribunal's order is very specific inasmuch as it clearly says that the relief that was granted to P.R.Deshpande should be granted to the applicant also. We are, therefore, required to give our finding whether the applicant has been treated differently. Undisputedly, P.R.Deshpande was given only notional promotion with retrospective effect without payment of arrears and the applicant has also been given the same benefit. We, therefore, hold that the impugned order does not suffer from any legal infirmity, and the applicant has not made out any plausible ground for our interference therewith.

8. So far as the seniority of the applicant as Inspector is concerned, the matter has also been clarified by the respondents in their reply and this averment has not been controverted by the applicant in his rejoinder. In view of this, even on this issue, the applicant is not entitled to get any relief.

9. On the basis of the discussion made above, we find that no interference is called for by us and the OA is liable to be dismissed. It is accordingly dismissed with no order as to costs.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

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