

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

....

Original Application No. 332/2000

Jabalpur, this the 17<sup>th</sup> day of March, 2004

HON'BLE SHRI M.P. SINGH, VICE CHAIRMAN  
HON'BLE SHRI MADAN MOHAN, MEMBER (J)

Hari Singh Sharma,  
Retired Postman, Central T.T.Nagar,  
Bhopal.  
R/o C/30, Sahan Shah Garden,  
Govindpura, Bhopal (MP).

...Applicant

(By Advocate: Shri M.R.Chandra)

-versus-

1. Union of India through  
Secretary,  
Ministry of Communication,  
Dak Bhawan,  
Sansad Marg, New Delhi.
2. The Chief Post Master General  
M.P.Circle, Bhopal.
3. The Senior Supdt.,  
Post Offices, Bhopal Division,  
Bhopal.
4. Director,  
Postal Services  
C/o respondent no. 2. ....Respondents

(By Advocate: Shri P.Shankaran)

O R D E R

By Shri Madan Mohan, Member (J):

By filing the present O.A., the applicant has sought  
the following reliefs:

- i) to direct the respondent to provide the calculation sheet of the pay and allowances, granted to the employee for treating the 18 years period of suspension as duty.
- ii) to direct the respondent to give the applicant his due promotion to the post of Clerical Grade from the date of his promotion or from the date his juniors have been promoted, whichever is earlier.



- iii) to direct the respondents to make available all consequential benefits e.g. OTBP, E.B., encashment of leave, bonus etc. since the entire period has been held to be on duty, revising the retiral benefits.
- iv) to allow exemplary cost of Rs. 10,000/- for deliberately setting criminal trial into motion by implicating falsely by denying promotion on irrelevant consideration by wasting government revenue for a continuous period of 18 years by keeping the employee under illegal suspension without extracting any work and for cost of petition forced upon in violation of extant rules, regulation, etc.

2. The brief facts of the case are that the applicant entered in the cadre of Postman, Central T.T.Nagar, HPO, Bhopal. While working as such, he was implicated in a case of forgery and cheating in respect of Saving Bank deposit and withdrawl though being a Postman he was doing all along out door delivery duties and not any clerical or table work. As a result, he was placed under suspension vide order dated 16.12.1978 on the sole ground that a disciplinary proceedings is contemplated.

2.1 From 16.12.1978 till the date of his superannuation on 31.12.1996, the applicant was neither issued with any departmental charge sheet nor any departmental proceedings was initiated against him. On the other hand, inspite of various representations from time to time requesting for revocation of suspension, the authority took no action and continued his suspension from 16.12.1978 till the date of his superannuation on 31.12.1996. The said suspension for 18 years was nothing but victimisation and unfair labour practice solely intended to shield and protect guilty persons responsible for fraud, forgery and cheating with whom the administration had some vested interest. He was wilfully made a scape goat to protect the guilty persons.

2.2 Meanwhile, the applicant appeared in the examination for promotion to clerical cadre held on 18.11.1978 and was declared successful. He was posted to Sihora Division as Clerk and Sorter vide letter dated 15.12.1979 in which his name appeared at serial no. 3 and against his name a remark was



endorsed 'under suspension, case of promotion to be considered after the case is decided'. But surprisingly, neither any disciplinary proceeding was pending nor any case of any nature was found pending against the applicant during such material period of promotion. The authority did not allow the applicant to join in clerical cadre on promotion solely on the ground that he has been kept under suspension. However, a criminal case No. RT 2828/93 was tried at the instance of T.T.Nagar Police Station before the JMFC, Bhopal and the said trial ended on 19.6.1996 with the acquittal of the applicant. After several representations made by the applicant, the authorities were pleased to treat the entire period of suspension from 16.12.1978 to 31.12.1996 as spent on duty and paid pay and allowances without incorporating therein the benefit of OTBP Scheme promotion on completion of 16 years service, regular increment including efficiency bar and early bonus. Besides for his being acquitted of the criminal charge he is due to be promoted from the date of his juniors have been promoted i.e. 9.1.1980 to the clerical grade higher to the grade of Postman. Under these circumstances, the applicant is entitled for the relief prayed for in the O.A.

3. We have heard the learned counsel for both the parties and have carefully perused the pleadings.

4. It is argued on behalf of the applicant that after acquittal of the criminal <sup>Trial</sup> ~~trial~~, the applicant is entitled for the benefit of OTBP Scheme from the date his juniors have been given the promotion i.e. from 9.1.1980 with all consequential benefits. But the respondents have withheld the above benefits without any reasonable and justifiable cause and in an illegal manner.

5. In reply, the learned counsel for the respondents has argued that the applicant was acquitted from the serious charge of forgery and cheating under Sections 420, 468 and 471 IPC on benefit of doubt but even then the respondents have considered his case sympathetically and treated the entire period of suspension as spent on duty and consequently paid all the

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allowances. He further argued that since the applicant did not work on the promoted post, he is not entitled for the pay and allowances for the promoted post on the basis of "No work no pay". It is further argued that the applicant is not entitled for the reliefs sought for in the O.A.

6. After hearing the learned counsel on either side and perusing the material on record, we are of the considered opinion that since the applicant has been acquitted from the criminal charge, he is entitled to be promoted to the clerical cadre from the date from which his juniors have been given the promotion i.e. from 9.1.1980 as his entire suspension period has already been treated to be spent on duty. He is, therefore, entitled for notional fixation of pay on the promoted post of Clerical cadre for the purpose of calculating his pension and consequential benefits thereof.

7. In view of the above discussion, the O.A. is partly allowed with direction to the respondents to grant the promotion to the applicant to the Clerical Cadre w.e.f. 9.1.1980 and fix his pay on notional basis. Respondents are further directed to grant the retiral benefits to the applicant on the basis of his notional pay fixation, within a period of three months from the date of receipt of a copy of this order. No costs.

  
(MADAN MOHAN)  
MEMBER (J)

  
(M.P. SINGH)  
VICE CHAIRMAN

/na/

मुख्यमंत्री राज्यालय, दिल्ली  
मुख्यमंत्री राज्यालय, दिल्ली

(1) सचिव, राज्यालय, दिल्ली ..... श. काउर  
(2) सचिव, राज्यालय, दिल्ली ..... श. काउर  
(3) प्रधारी, राज्यालय, दिल्ली ..... श. काउर  
(4) उपसचिव, राज्यालय, दिल्ली ..... श. शुभ्रामण  
सूचना एवं आवश्यक कार्यवाही द्वारा  
श. राजेश्वरी/04

  
Jitendra  
20/3/04