

Reserved on 25.8.2017

**Central Administrative Tribunal, Allahabad Bench,
Allahabad**

Original Application No. 330/00541/2014

This the 14th day of February, 2018

**Hon'ble Mr. Justice Dinesh Gupta, Member (J)
Hon'ble Mr. Gokul Chandra Pati, Member (A)**

Vijay Bahadur Singh s/o Sri Ram Singh Joint Commissioner of Income Tax, Office of the Principal Chief Commissioner of Income Tax (Uttarakhand & U.P. West Region), 16/67, Civil Lines, Kanpur-208001

Applicant

By Advocate: Sri P.K. Shukla

Versus

1. Union of India through the Secretary, Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-1.
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi-1.
3. The Secretary (Revenue) Ministry of Finance, Department of Revenue, North Block, New Delhi.
4. The Principal Director General of Income Tax (HRD), ICADR Building, Plot No. 6, Vasant Kunj Institutional Area Phase II, New Delhi-110070.

Respondents

By Advocate: Sri M.K. Yadav for Sri A.K. Singh

By Hon'ble Mr. Justice Dinesh Gupta, Member(J)

The applicant has preferred this O.A. under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- a) The Hon'ble Tribunal may be pleased to issue suitable order or direction to the opposite parties 2,4 to grant NFSG with effect from 1.1.2009 for the grade of Additional Commissioner of Income Tax in favour of the applicant within a fortnight of order of this Hon'ble Tribunal.
- b) That Hon'ble Tribunal be pleased to command the opposite party to pass a suitable order as pay refixed on account of his all notional promotions be paid forthwith from the very beginning as ACIT with effect from 10.4.1997 for the post of DCIT w.e.f.1.1.2000 for the post of JCIT w.e.f. 25.1.2007 and for the post of Additional CIT w.e.f.1.1.2009.
- c) This Hon'ble Tribunal be pleased to command the opposite parties to issue suitable order for paying the amount of salaries other emoluments along with the consequential benefits flowing from the above re-fixation of pay and also to command the opposite parties to pay penal interest on the entire amount so payable to the applicant.
- d) Any other relief which this Hon'ble Court may deem fit and proper on the facts and circumstances of the case.
- e) An order holding accountability of the opposite parties for depriving the applicant of his right of

promotion thereby passing structure against the opposite parties in the interest of natural justice to the undersigned applicant so as it may not recur in future and an order as to the costs.

2. Brief facts emerging from the O.A. are that the applicant was appointed as Inspector of Income Tax through direct recruitment and joined on the said post on 21.3.1977.

2.1 The services of the applicant was confirmed and applicant is going to complete 37 years of service. He was granted notional promotion in the grade of Assistant Commissioner of Income Tax vide order dated 15.6.2012 (Annexure No. A-1) w.e.f. 10.4.1997.

2.2 Notional promotion order in the grade of Deputy Commissioner of Income Tax w.e.f. 1.1.2000 was issued in favour of the applicant on 22.2.2013 (Annexure No. A-2). The last promotion order was issued on 28.11.2013 (Annexure No. A-3) to the grade of Joint Commissioner of Income Tax notionally w.e.f. 25.1.2007.

2.3 The first DPC was held on 18.12.2013 to consider the placement of Joint Commissioner of Income Tax in NFSG and in this DPC, in spite of the fact that applicant has fulfilled all the eligibility criteria, was not considered.

2.4 The applicant moved representation dated 2.12.2013 for promotion to the post of Additional Commissioner Income Tax which was forwarded by DCIT (Admn.) on 10.12.2013 to the Joint Secretary, C.B.D.T. Further, on 10.1.2014, applicant sent an application for releasing the arrears to the Chief Commissioner of Income Tax (CCA) Kanpur. The applicant has represented in the matter of grant of NFSG to him on 18.3.2014 and persons referred in Notification dated 28.2.2014 are junior from the applicant whereas the NFSG to the applicant is due since 1.1.2009 which has been delayed considerable. Representation dated 10.1.2014 and 18.3.2014 are annexed as annexure No. A-5 and A-6.

3. Notices were issued to the respondents who in turn filed the Counter Reply through which it is stated that Selection Committee was held on 11.7.2014 to consider the case of applicant for grant of NFSG in P.B. -4 Rs.37400-67000 + Grade pay Rs.8700/- w.e.f. 1.1.2009. The minutes of the meeting have been forwarded to the Joint Secretary CBDT on 16.7.2014. Copy of letter dated 30.7.2014 is annexed as (Annexure No. CA-1) and the same fact was well within the knowledge of the applicant but without justifiable

ground the present O.A. has been preferred before the Tribunal.

3.1 The applicant was promoted on notional basis w.e.f. 10.4.1997 i.e. the date of promotion of his batch mate against the vacancy year 1996-97 and actually w.e.f. the date of assumption of duties as Assistant Commissioner of Income Tax.

3.2 It is also mentioned that promotion order dated 28.11.2013 to the grade of Joint Commissioner was also notional w.e.f. 25.1.2007 i.e. the date of promotion of his immediate juniors and actually from the date of assumption of charge on the post and seniority of the applicant was fixed below Mr. S.K. Saxena and above Mrs. Abha Rani Singh.

3.3 The promotion order dated 1.8.2014 by which the applicant was granted NFSG to the grade of Additional Commissioner w.e.f. 1.1.2009 is annexed as Annexure No.CA-2.

4. Rejoinder reply is filed by the applicant through which he has reiterated the facts as stated in the O.A. and also stated that respondents now granted NFSG in PB-4 on 1.8.2014 and when it was granted, the same was informed to the applicant as well as to this Tribunal vide Misc. Application no.3424/2015. It is further submitted that promotion has been granted to

the applicant and the grant of NFSG is now not required. Moreover, the applicant has retired. Hence, there is no claim as such to promotion. The main relief of this OA remained is that any of the overdue arrear out of the promotions effect and its over due interest and the benefits attached thereto, has been denied, be awarded.

4.1 It is further stated that there is no justifiable ground on the part of the respondents to deny the payment of arrears of salary and interest thereon as the same can only be denied in case the acquittal is on the basis of three reasons as mentioned by the opposite parties in their counter affidavit which are as under:-

- i) Whether the delay is attributable to the employee in the conduct of criminal prosecution;
- ii) Whether acquittal is based on benefit of doubt;
- iii) Whether the acquittal is non-availability of evidence due to acts attributable to employee.

The applicant has also enclosed a copy of the order passed by the CBI Court in CBI Case No.4/1997 titled CBI vs. Krishan Dev and others dated 22.12.2011 and stated that the applicant has been exonerated in the criminal case honorably.

4.2 Finally the applicant submitted that relief prayed at clauses 8 a) and 8 e) have already not pressed and

now only judgment is required in respect of relief clauses 8 b), 8 c) and 8 d).

5. We have heard learned counsel for the parties and perused the material placed on record.

6. Counsel for the applicant reiterated the facts as stated by him in the OA and further submitted that since the respondents have already granted NFSG in PB-4 w.e.f. 1.1.2009, as claimed by the applicant in his relief clause 8 a), hence, no need to grant the said relief. Further the applicant has already retired from service and therefore there is no question of promotion and therefore, his relief in clause 8 e) is not pressed. Counsel further submitted that only relief now the applicant claiming is regarding the payment of arrears of salary as the applicant has been granted promotional notionally and after exoneration of the applicant from the criminal case, he is entitled for the salary for that period. In support of his contention, the applicant also relied upon the judgment of the Hon'ble Supreme Court passed in Civil Appeal No.3041/2010 (***State of U.P. & others vs. B.B.S. Rathore***) clubbed with other civil appeals dated 21.5.2014.

7. Counsel for the respondents submitted that at the time of filing of the OA, the recommendations of the DPC were already sent to the higher authorities for

approval. However, the applicant was granted NFSG in PB-4 on 1.1.2009 vide order dated 1.8.2014. They have clearly stated in their counter affidavit that the applicant is fully aware that recommendations of the DPC were already sent to the higher authorities for approval. However, he intentionally filed this OA just to harass the department.

7.1 Counsel further submitted that the applicant was involved in a criminal case and was acquitted in that case. However, he was not honorably acquitted as claimed by the applicant and as such the applicant is not entitled to any arrears of salary as he has not worked on that promoted post. The case law referred by the learned counsel for the applicant has no relevancy of this case.

8. We are unable to accept the contentions raised by the learned counsel for the applicant. So far as relief clause 8 a) is concerned, the applicant has already been granted NFSG in PB-4 w.e.f. 1.1.2009 vide order dated 1.8.2014 by the respondents and the applicant himself has not pressed this relief. The applicant has further not pressed the relief prayed for in clause 8 e) vide which he has prayed for holding accountability of the opposite party for depriving the applicant of his right of promotion. Now the only

question remained is with regard to entitlement of the applicant for arrears of salary along with interest as he was notionally promoted now and according to the applicant, since he has been exonerated in the criminal case, he is entitled to arrears of salary and interest thereon. The applicant has claimed this relief only on two grounds. Firstly, he has already been exonerated in the criminal case and secondly, the Hon'ble Supreme Court in various cases held that where an employee is inclined to work but he has been deprived to work on promotional post, he is entitled for salary for that period.

9. So far as first part of the applicant's contention is concerned, we are afraid that the applicant's acquittal was not honorable acquittal as it was based on two factors, i.e., firstly, sanction to prosecute the applicant was not obtained and this was a technical ground on which the case of the applicant fails. Secondly, the applicant was given the benefit of doubt and the CBI Court also mentioned that applicant was not really involved in the fraud. However, the CBI Court has not ruled out that the applicant was negligent in discharging his duties. So far as legal position is concerned, in various cases, the Hon'ble Supreme Court held that acquittal should be honorable

acquittal. Even if the judge has failed to mention that it is honorable acquittal, it has to be inferred from the findings and language used by the judge. It is also not disputed that standard of proof in a criminal case is a proof beyond all reasonable doubts. The Hon'ble Supreme Court held in various cases that if an employee is not honourably acquitted by a criminal court, no right is conferred on the employee to claim any service benefit with reference to the charges. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons in criminal case, but can be guilty of misconduct in disciplinary proceedings.

10. In the light of the above settled position when we examined the judgment rendered by the CBI Court in

the above noted case, we find that the judgment is based on two sets of facts. Firstly, that the sanction was not obtained in respect of the applicant for prosecuting him and secondly, there was certain doubts and there was lack of evidence in clearly establishing the fact of involvement of the applicant in fraud. However, the CBI Court has not ruled out negligence on the part of the applicant. Thus, relying upon his own contention of the applicant, the arrears and other dues can be denied when acquittal is based on three reasons as mentioned below:-

- i) Whether the delay is attributable to the employee in the conduct of criminal prosecution;
- ii) Whether acquittal is based on benefit of doubt; and
- iii) Whether the acquittal is non-availability of evidence due to acts attributable to employee.

And the applicant's case falls under above said clauses (ii) and (iii).

11. Further the judgment relied upon by the applicant in the case of ***State of U.P. & others vs. B.B.S. Rathore*** (supra) vide which various civil appeals have been clubbed and common judgment has been passed by the Hon'ble Supreme Court in which the following principles have been laid down:

- (i) When a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing therefrom.
- (ii) In case of a notional promotion with retrospective effect, in normal course the incumbent is not automatically entitled to arrears of salary as he/she has not worked on the promotional post.
- (iii) The principle of "no work, no pay" is not applicable in case of retrospective promotion where the incumbent was willing to work but was denied the opportunity to work for no fault of him.

12. These three principles clearly dispel the case of the applicant. In the case of the applicant, he was involved in a criminal case which was filed in 1997 and acquittal was made in 22.12.2011 and after the acquittal the applicant was granted notional promotions from 1997 and further from 2000 and finally from 2012. Thus the case of the applicant falls within the principles (ii) and (iii) above and those principles clearly prescribe that the incumbent is not automatically entitled to arrears of salary. Admittedly, it is not a case of retrospective promotion as it is a case of notional promotion from back date. Admittedly, the applicant has not worked on the higher post at any point of time. Promotion was withheld due to pendency

of criminal proceedings against the applicant and it was only when the applicant was acquitted, notional promotion was granted to him. Similarly, grant of notional promotion will not automatically entitle the applicant to claim arrears of salary and interest thereon.

13. In view of the above discussion and for theforesaid reasons, we are of the view that the applicant is not entitled to the remaining reliefs, as he has claimed and the instant OA is liable to be dismissed. It is accordingly dismissed. No order as to costs.

(Gokul Chandra Pati)
Member (A)

Justice Dinesh Gupta)
Member (J)

/HLS/ravi/-