

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 538/2014
MA 3149/2015

Order reserved on: 1.12.2015
Order pronounced on: 8.12.2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K. Basu, Member (A)

S.L. Gupta, SSP (Retd), CBI
R/o C-302, DJA Apartments,
Plot No. 1A, Sector 13, Dwarka
New Delhi-110078

... Applicant

(Appeared in person)

Versus

1. Secretary
Government of India,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel and Training
North Block, New Delhi

2. Director,
Central Bureau of Investigation
5B, CGO Complex,
Lodhi Road, New Delhi

... Respondents

(Through Dr. Ch. Shamsuddin Khan, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant superannuated as Additional S.P. on 31.01.2010 from the CBI. He was imposed the punishment of 'censure' vide order dated 10.06.2009. The said order of punishment was challenged by the applicant in OA 2328/2009

and vide order dated 5.02.2010, this Tribunal passed the following order:

"14. In totality of the facts and circumstances of this case, while allowing this Application, we set aside the memorandum dated 27.6.1996 initiating departmental proceedings against the applicant, all proceedings taken in the matter, as also order dated 10.6.2009 inflicting the punishment of censure upon the applicant. In consequence of setting aside of the memorandum, proceedings and the order aforesaid, the applicant would be considered for promotion for all posts on which his juniors may have been promoted from the date they were promoted, and would be fixed in proper pay scales accordingly, which would be notional, but the pay and emoluments of the applicant shall be worked out as mentioned above and he would be paid post-retiral dues accordingly. These directions shall be complied with within six weeks from today. As we have already mentioned, the applicant has suffered irreparable damage which cannot be compensated, but surely, the applicant, for putting him through untold misery and hardship, would be entitled to costs, which we quantify at Rupees twenty thousand, which, we may mention, are only conciliatory and not compensatory."

2. After the aforesaid order of the Tribunal, the respondents granted notional promotion to the applicant in the rank of Additional S.P. with effect from 31.05.2001 vide CBI order dated 16.07.2010 and his pay was fixed at Rs.37240/- as on 1.07.2009. Later, vide order dated 22.03.2011, the CBI promoted the applicant in the rank of S.P. and again refixed his pay at Rs.39200/- as on 1.07.2009. The applicant has also been promoted to the rank of SSP on the basis of recommendations of review DPC.

3. The applicant referred to DoP&T OM dated 14.09.1992, para 3 whereof reads as follows:

"3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enunciate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified."

4. In view of above 1992 OM of DoP&T, the applicant filed a representation followed by reminders but did not get any response from the respondents. He, therefore, filed OA 3356/2013 and vide order dated 24.09.2013, the Tribunal disposed of the OA with the following direction:

"In my considered view, the relief sought by the applicant in this case is quite justified. Consideration of representations by the competent authority and decisions on them are a fundamental right of the employee. I, therefore, allow this OA and direct the

respondent namely, Secretary, Ministry of Personnel & Training, New Delhi to look into the aforesaid representations of the applicant and dispose of them as early as possible but in any case within 6 weeks from the date of receipt of a copy of this order."

5. The DoP&T thereafter issued order dated 26.11.2013 conveying the decision of the competent authority not to pay arrears of pay to the applicant on following three grounds:

- (i) That the respondent has complied with the order dated 5.02.2010 of Hon'ble CAT passed in OA No.2328/2009 by granting notional promotions to the petitioner in the rank of Addl. SP and SP etc. and paying him his post retiral dues.
- (ii) That the applicant was not holding any of the posts on actual promotion.
- (iii) That the said CAT order dated 5.02.2010 passed in OA No.2328/2009 had not given any direction on payment of salary arrears of pay and emoluments to the applicant.

6. According to the applicant, the 1992 OM stipulates that arrears of pay for the period of notional promotion will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceedings. It is the case of the applicant that the respondents did not point out any facts and circumstances of the disciplinary proceedings which does not entitle him for payment of arrears of pay for the period of his promotion on notional basis.

7. It is further argued that based on the judgment dated 27.08.1991 of the Hon'ble Supreme Court in **Union of India etc. Versus K.V. Jankiraman etc.**, AIR 1991 SC 2010, the DoP&T issued aforementioned OM dated 14.09.1992. The Hon'ble Supreme Court, in its judgment, held as under:

- (i) The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his.
- (ii) When an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings.
- (iii) However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does the extent to which he deserves it.
- (iv) Whether the officer concerned will be entitled to any arrears of pay for the period of notional

promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution.

- (v) When the authority denies arrears of salary or part of it, it will record its reasons for doing so.

8. The applicant has also cited the cases of Shri N.M.P. Sinha, Shri Sandeep Chaudhary and Shri R.D. Meena who, under similar circumstances, after being exonerated, were not only given promotion but also arrears of pay and allowances by the CBI. Being aggrieved by the action of the respondents in not giving him arrears of pay and allowances, the applicant has filed the instant OA seeking the following reliefs:

- 8.1 DP&T order No.202/53/2010-AVD-II dated 26.11.2013 denying salary arrears to the applicant be quashed.
- 8.2 Respondents may be directed to pay the arrears of pay and allowances to the applicant for the period of notional promotion for the period from 31.05.2001 to 31.01.2010 as well as compound interest @ 18% on the amount from the date the same is due till the date same is paid.
- 8.3 Cost of the proceedings may be allowed.

9. In their reply, the respondents state that in the order of the Tribunal dated 5.02.2010, it was directed as follows:

".....the applicant would be considered for promotion for all posts on which his junior may have been promoted from the date they were promoted and would be fixed in proper pay scales accordingly, which would be notional but the pay and emoluments of the applicant shall be worked out as mentioned above and he would be paid post retiral dues accordingly."

10. The department had promoted the applicant to the posts of Additional S.P., S.P. and Sr. S.P.; his pay has been fixed on notional basis in the rank he was promoted and the pay and emoluments were reworked out and he was paid retiral dues accordingly. The respondents state that, therefore, they have complied with the order of the Tribunal. It is further argued that there was no direction of the Tribunal beyond what has been stated above and certainly not for payment of arrears. In fact, it is argued whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceedings according to OM dated 14.09.1992 and the competent authority has decided not to pay arrears.

11. The reply of the respondents is, however, silent on the matters of Shri N.M.P. Sinha, Shri Sandeep Chaudhary and Shri R.D. Meena, as pointed out by the applicant, barring reiterating the stand that this is to be decided by the competent authority and in the case of the applicant, the competent authority has

denied the payment of arrears in the light of the orders of the Tribunal. It is, therefore, contended that there is no case for granting arrears to the applicant.

12. We have heard the learned counsel for the parties and gone through the pleadings available on record.

13. We feel that the applicant's case has been thoroughly examined by this Tribunal in OA 2328/2009 and the Tribunal made a specific direction that the applicant would be considered for promotion for all posts on which his juniors may have been promoted from the date they were promoted, and would be fixed in proper pay scales accordingly, which would be notional, but the pay and emoluments of the applicant shall be worked out as mentioned above and he would be paid post-retiral dues accordingly. In OA 3356/2013, the direction of the Tribunal was to look into the representations of the applicant and dispose them of. The respondents did so vide order dated 26.11.2013 and discussed the whole case in detail, examining the Tribunal's order in the applicant's case. The respondents have implemented the Tribunal's directions and the competent authority, in view of the facts and circumstances of the case, decided not to pay any arrears and thus disposed of his representation.

14. In our view, the order of the Tribunal in OA 2328/2009 has been implemented by the respondents in letter and spirit. The respondents have acted both in terms of DoP&T OM dated 14.09.1992 as well as in compliance of the directions of the

Tribunal in OA 2328/2009 and OA 3356/2013. As regards the cases of Shri N.M.P. Sinha, Shri Sandeep Chaudhary and Shri R.D. Meena, the applicant has not placed full facts of their cases to allow us to determine whether the facts are indeed identical. In fact, in disciplinary matters the facts of each case has to be seen and a decision taken by the competent authority. The impugned order dated 26.11.2013 is a reasoned and speaking order and not without application of mind. Thus no case for interference is made out. The OA is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

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