

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/01167/2016

Chandigarh, this the 27th day of February, 2018

...
**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Avnish Bansal son of Sh. R.C. Bansal, aged 34 years, working as Deputy Commissioner, office of Commissioner of Central Excise, Customs and Service Tax, Panchkula (Haryana). (Group 'A')

....Applicant

(Present: Mr. Madan Mohan, Advocate, proxy counsel for
Mr. V. K. Sharma, Advocate)

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. Chairman, Central Board of Excise and Customs, North Block, New Delhi.
3. Senior Accounts Officer, Pay and Account Office, Commissionerate of Customs & Central Excise, 6th Floor, C.R. Building, Sector 17-C, Chandigarh – 160017.

....Respondents

Present: Mr. Sanjay Goyal, Advocate)

**ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)**

1. The challenge in the instant Original Application (O.A.) instituted by applicant Avnish Bansal, Deputy Commissioner, Central Excise, Customs and Service Tax, is to the impugned Pay Bill dated 10.6.2016 (Annexure A-1), whereby the Senior Accounts Officer, has raised certain objections and returned it without making the payment of pay of period of adhoc service to the applicant, as Deputy Commissioner.

2. The contour of the facts & material, which needs a necessary mention, for the limited purpose, of deciding the core controversy, involved in the instant O.A., and expositored from the record, as claimed by the applicant, is that having passed the ordeal of prolonged litigation, in O.A. NO. 1538/2009, which was allowed,

vide order dated 08.10.2009 (Annexure A-2), by the Principal Bench of this Tribunal, the applicant was appointed to the Indian Revenue Service (for brevity, IRS), in Civil Services Examination (CSE), 2008 Selection, vide orders dated 09.04.2012 and dated 09.07.2012 (Annexures A-3 and A-4). He was duly granted seniority, increments and all consequential benefits. Thus, he will be deemed to have joined IRS (Customs and Central Excise) w.e.f. 31.08.2009.

3. The case set up by the applicant, in brief, in so far as relevant, is that the next promotion is to the post of Deputy Commissioner of Customs and Central Excise [DC(CCE)]. After completion of four years of service, he was entitled for promotion to the post of DC(CCE), along with other officers, who joined on the basis of CSE 2008, as per the rules, but he was denied the benefit. He submitted a representation dated 26.04.2012 (Annexure A-6), requesting the respondents, to fix his seniority, on the basis of CSE, 2008 and to give him consequential benefits. His case was forwarded by the Commissioner, Service Tax & Chief Commissioner, vide letter dated 29.04.2013. He, then, sent a reminder dated 23.04.2014 (Annexure A-7), but in vain. It was claimed that the officers, who joined, on the basis of CSE, Selection 2008, were given promotion to the post of Deputy Commissioner Grade V in Senior Time Scale, after completion of four years of regular service. However, the same very benefit was denied to the applicant, despite repeated requests/representations. Ultimately, in the wake of pendency of M.A. No. 510/2015 in O.A. NO. 1538/2009, he was promoted on the post of DC (CCE) on adhoc basis, vide order dated 08.04.2016 (Annexure A-8). Subsequently, his promotion was ante- dated to

18.07.2014 on notional basis, by virtue of order dated 6.5.2016 (Annexure A-9).

4. According to the applicant, that although his colleagues were also promoted in similar fashion, and they were granted actual benefits of pay and allowances for notional promotion, but in that process, the Pay Bill with regard to the grant of arrears of pay and allowances, to the applicant, was returned, with certain objections, vide impugned letter / order dated 10.06.2016 (Annexure A-1), by the Senior Accounts Officer (SAO) of respondents.

5. Aggrieved thereby, the applicant has filed the instant O.A., challenging the impugned letter/order, Annexure A-1, inter-alia, on the following grounds:-

(a) That admittedly Hon'ble Apex Court has while considering the FR 17 (1) relating to denial of back wages on promotion, has settled the issue in the case of Union of India Vs. K.V. Janki Raman, AIR 1991 SC 2010 holding that the normal rule of no work no pay is not applicable to cases where the employee although he is willing to work is kept away by the authorities for no fault of his and it was not a case where he employee remained away from work for his own reason although the work was offered to him and it is for this reason that F.R. 17 (1) was inapplicable to such cases. In this case also the applicant was willing to work but he was not given work and as such respondents cannot take benefit of their own wrong.

(b) That the aforesaid view was also taken in the case of State of A.P. Vs. K.V.L. Narasimha Rao & Others, AIR 1999 SC 2255; State of Kerala & Others Vs. E.K. Bhaskaran Pillai, JT 2007 (6) SC 83; Mohd. Ahmed V. Nizam Sugar Factory & Others, 2004 (11) SCC 210; Nalini Kant Sinha Vs. State of Bihar & Others, 1993 Supp. (4) SCC 748; Shri Kalyan Singh Vs. UOI etc. 2001 (1) AISLJ (DHC) 216 and Indraj Singh Vs. State of Haryana, (2013) 14 SCC 491.

© That the aforesaid view was also followed by Hon'ble Delhi High Court in case of Govt. of NCT of Delhi etc. Vs. Rakesh Beniwal and others, WP © No. 7423/2013 decided on 4.8.2014.

(d) That in this case the applicant was ready to work but he was denied by the respondents as the orders of Hon'ble CAT were not implemented for long which resulted in the delayed promotion of the applicant. Had the respondents implemented the order in time, the applicant would have got promotion along with others and would have got salary and as such he cannot be denied back wages more so when colleagues of him who are similarly situated and have been given back wages and denial of same to applicant is violative of articles 14 and 16 of the Constitution of India and as such impugned orders stand vitiated.

6. Levelling a variety of allegations and narrating the sequence of events, in detail, in all, the applicant claims that although he is entitled to the benefits of pay of the post of DC(CCE), but the same were wrongly denied to him, by the Competent Authority. On the

strength of the aforesaid grounds, the applicant seeks to quash the impugned letter/order (Annexure A-1), in the manner, indicated hereinabove.

7. On the contrary, the respondents have refuted the claim of the applicant and filed the written statement, wherein, it was pleaded that there is no provision of payment of arrears of pay and allowances for the past period. As per FR 17(1), an officer shall begin to draw the pay and allowances, attached to his tenure post, w.e.f. the date when he assumes the duties of that post. The arrears were denied to the applicant as he assumed the duties in the grade of DC(CCE) on 10.05.2016, so he is not entitled to the pay and allowances for the period of notional promotion i.e. from 18.07.2014 to 09.05.2016. It was claimed that the cases of Ms. Suja K.K. and Shri Kul Parkash Singh, referred to by the applicant, for claiming parity with them, were different from that of the applicant, as both of them were granted promotion in their respective grades, after culminating of the pending vigilance cases, and by way of opening of the sealed covers, kept by the relevant DPC.

8. According to the respondents, that the applicant was granted ante-dated promotion in the grade of DC(CCE), on adhoc basis initially w.e.f. 18.7.2014 vide order dated 6.5.2016. There is no provision under F.R 17 for payment of arrears of pay and allowances for the past period. In fact, the applicant assumed his duty in the grade of DC(CCE) on 10.5.2016 and his promotion was antedated w.e.f. 18.7.2014, so he is not entitled for the pay, of the adhoc period. Instead of reproducing the entire contents of the reply, in toto, and in order to avoid repetition of facts, suffice it to

say that virtually acknowledging the factual matrix and reiterating the validity of the impugned letter/order, the respondents have stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal. That is how, we are seized of the matter.

9. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance, and after considering the matter, we are of the firm view that the instant OA deserves to be partly accepted, in the manner and for the reasons mentioned here-in-below.

10. As depicted hereinabove, the facts of the case are neither intricate, nor much disputed, and fall within a very narrow compass, to decide the real controversy between the parties. Such being the material on record and legal position, now the short and significant question, that arises for our consideration, in this case is as to whether the applicant is entitled to the pay of relevant period of the post of DC(CCE), in the given peculiar facts and special circumstances of this case or not?

11. Having regard to the rival contentions of the learned counsel for the parties, to our mind, the answer must obviously be in the affirmative, in this relevant connection.

12. As is evident from the record that applicant being a physically impaired person, appeared for CSE, 2008 examination and after qualifying the written test, he was called for interview, as well. However, he was not recommended for appointment by the UPSC. Thereafter, the applicant and other similarly situated persons, preferred separate O.As, which were allowed, with the main OA

Commsision & Another, vide order dated 8.10.2010 (Annexure A-2), by the Central Administrative Tribunal, Principal Bench, New Delhi, wherein it was ruled that the allocation of services to the Applicants would be from the date of allocation of services to the candidates of CSE 2008, on notional basis. However, it would count towards seniority and calculation of increments, at par with selectees of the CSE 2008.

13. Meaning thereby, the allocation of the service of the applicants (therein) including the present applicant was ordered to be from the date of allocation of the service to the selectees of CSE, 2008.

14. That being so, the applicant became eligible for promotion to the post of DC(CCE) after completion of requisite period. It was the competent authority, which delayed the promotion on speculative grounds including the present applicant. Ultimately, the applicant was promoted to the post of DC(CCE), during the pendency of the Execution Petition, before the Principal Bench of C.A.T. and then on regular basis, from the pointed dates. The applicant always remained ready and willing to perform the duties of the promotional post. Since the matter was delayed by the respondents, so the applicant cannot be blamed in it, in any other manner, in this relevant connection. It is not a matter of dispute that the applicant was promoted to the post of DC(CCE), firstly on adhoc basis and then on regular basis, from the indicated dates and he performed the duties, as such from the date of assumption of charge. In that eventuality, the applicant was entitled to the pay of adhoc period, in question.

15. Ex-facie the argument of the learned counsel and ground projected by the respondents that since the applicant was promoted

against the rank of DC(CCE), on notional basis since 18.7.2014 and assumed the charge of the post w.e.f. 10.5.2016, so he is not entitled for pay for the period from 18.7.2014 to 9.5.2016, is not only devoid of merit but mis-placed, as well. Similar objection was raised by SAO in impugned letter / Bill, Annexure A-1. In other words, the SAO has refused to pay salary for the indicated adhoc period on the post of DC (CCE), to the applicant, by raising the objection on the impugned pay bill, Annexure A-1.

16. Here, to us, the respondents and SAO, have slipped into deep legal error, in this regard. It is now well settled principle of law that if an employee is willing and ready and actually performed his duties, though on adhoc basis, he cannot be denied the pay and allowances of that period. This matter is no longer res-integra and is now well settled.

17. An identical question came to be decided by the Hon'ble Apex Court in the judgment in the case of **Union of India Vs. K.V. Janki Raman**, AIR 1991 SC 2010, wherein it was ruled that in such circumstances, an employee cannot be deprived of any pay and allowances of the promotional post. The normal rule of "no work no pay" is not applicable to the cases, where the employee, although he is willing to work, is kept away by the authorities, for no fault of his. Same view was reiterated by Hon'ble Supreme Court in the case of **State of A.P. Vs. K.V.L. Narasimha Rao & Others**, AIR 1999 SC 2255 and by Delhi High Court in the case of **Shri Kalyan Singh Vs. UOI etc.** 2001 (1) AISLJ (DHC) 216.

18. There is yet another aspect of the matter, which can be viewed entirely from a different angle. Admittedly, the applicant was held entitled to all the service benefits at par with selectees of the CSE,

2008 vide orders dated 8.10.2010 (Annexure A-2). It is not a matter of dispute that the applicant has also actually worked on adhoc basis on the post of DC (CCE), before he was made regular. Therefore, the applicant is entitled to the pay of the adhoc period, as well, in this regard, in view of law laid down by Constitution Bench of Hon'ble Apex Court in the cases of **Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others**, (1990) 2 SCC 715, wherein it was held that once an incumbent is appointed to a post according to the rules, the seniority has to be counted from the date of initial appointment and not from a subsequent period, for all intents and purposes and **Rudra Kumar Sain and others v. Union of India & others**, (2000) 8 SCC 25, in which it was held that in service jurisprudence, a person, who possesses the requisite qualification for being appointed to a particular post, and then he is appointed with approval and consultation with the appropriate authority and continues in the post for a fairly long time, then such an appointee cannot be held to be stop-gap or fortuitous or purely adhoc. Such employees are entitled to benefit of their service w.e.f. their initial appointment. Therefore, the contrary argument of the learned counsel for the respondents, ***stricto sensu***, deserves to be and is hereby repelled, in the present set of circumstances. Sequelly, the ratio of law laid down in the indicated judgments of Hon'ble Apex Court, ***mutatis mutandis***, is applicable to the present controversy and is the complete answer to the problem in hand. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

19. In the light of the aforesaid prismatic reasons, the instant O.A. is accepted. As a consequences thereof, the objection raised by the SAO is over-ruled and accordingly the impugned letter/order dated 10.6.2016 (Annexure A-1) is hereby set aside. At the same time, the competent authority is directed to make the payment of pay and allowances etc. for the adhoc period of the applicant w.e.f. 18.07.2014 to 09.05.2016 as well, at par with other similarly situated persons of CSE, 2008, within a period of two months from the date of receipt of a copy of this order. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 27.02.2018

'HC'

