

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.No.80/2012

DATED THIS TUESDAY THE 16TH DAY OF OCTOBER, 2018.

**CORAM: DR.BHAGWAN SAHAI, MEMBER (A)
SMT.RAVINDER KAUR, MEMBER (J) .**

Shri D.S. Bhavar,
Age 60 years,
Retd. Superintendent of Central
Excise,
Residing at 26/002, MHADA,
Oshiwara Link Road,
Andheri (W),
Mumbai - 400 053.

.. Applicant.

**(By Advocate Shri S.V. Marne
alongwith Shri Vishal Shirke).**

Versus

1. Union of India, through
the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.

2. Commissioner of Central
Excise,
HQ, Mumbai I,
Central Excise Bldg.,
Maharshi Karve Road,
Churchgate,
Mumbai - 400 020.

.. Respondents.

(By Advocate Shri R.R. Shetty).

**Order reserved on : 08.08.2018
Order delivered on : 16.10.2018**

O R D E R

Per : Dr.Bhagwan Sahai, Member (A) .

1. Through this O.A., the applicant Shri D.S. Bhavar seeks relief by quashing and setting aside the orders dated 06.06.2011 and 11.07.2011 issued by

the Commissioner of Central Excise, Mumbai-I and directing the respondents to pay actual arrears of pay and allowances arising out of his promotion to the post of Inspector, Central Excise with effect from 17.12.1985 and Superintendent of Central Excise from 30.06.2005, alongwith interest @ 12% per annum.

2. Facts stated in brief:

2(a). The applicant was appointed to the post of Lower Division Clerk (L.D.C.) in 1975, was promoted to the post of Upper Division Clerk (U.D.C.) in 1979, and on 03.11.1983 he was promoted on adhoc basis to the post of Inspector of Central Excise.

2(b). When the applicant was working as adhoc Inspector of Customs at Marine and Preventive Wing of Customs Preventive Commissionerate, Mumbai, CBI registered a case against him (R.C.No.64/1984) on the charges of aiding and abetting smuggling activities at Bassein Division and accepting of illegal gratification from landing agents.

2(c). Following the above, in the course of disciplinary proceedings against him he was suspended on 10.10.1984 and his suspension was revoked on 14.06.1985. Because of the disciplinary proceedings and suspension, he was reverted from the post of Inspector (adhoc) to the post of U.D.C. by the order dated 26.11.1985.

2(d). This reversion order was challenged by the

applicant before this Tribunal through O.A.110/1998. It was decided on 23.08.2002 and the order of reversion was set aside and it was held that the applicant was entitled only for notional benefits till 21.05.1998 and thereafter he would be entitled to monetary benefits. This decision of the Tribunal was challenged by the respondents in Writ Petition No.5434/2003, in Hon. Bombay High Court. It came to be decided on 13.04.2006 holding that the order of the Tribunal dated 23.08.2002 was erroneous since the applicant before his suspension was working as Inspector only on adhoc basis as a stop-gap arrangement.

2(e). A memorandum of charge-sheet was issued to him on 06.07.1989. The disciplinary proceedings came to be dropped with the order of 15.04.1998 without prejudice to further action which may be considered in the circumstances of the case. Another charge-sheet memorandum was issued to the applicant on 13.10.1998, against it he filed O.A.313/1999 before this Bench of the Tribunal, which was disposed of at the stage of admission on 23.12.1999 with a direction to the respondents to complete the pending departmental enquiry expeditiously within six months and in case it was not completed during that period, then the applicant should be considered for ad-hoc promotion which would be subject to review depending

upon the final result of the departmental enquiry.

2(f). Since the departmental enquiry could not be completed within six months, the applicant was considered for promotion and was promoted to the post of Tax Assistant by order dated 06.10.2000. This promotion was accepted by the applicant under protest, simultaneously making a representation for grant of promotion to the post of Inspector.

2(g). After completion of the departmental enquiry, the Disciplinary Authority ordered for dropping of the charges against him vide order dated 25.11.2005. The applicant's suspension from 10.10.1984 to 14.06.1985 was also regularized treating the suspension period as period of duty.

2(h). The applicant filed another O.A.No.161/2007 which was decided on 18.04.2011 directing the respondents to review the applicant's claim for promotion with reference to the date on which his immediate junior had been promoted, if he makes a representation in this regard.

2(i). Based on his representation dated 09.05.2011, the respondents reviewed his case for promotion and by order dated 06.06.2011 promoted him to the post of Inspector, Central Excise on notional basis with effect from 17.12.1985 but salary of the promoted post in the applicable scale was allowed from the date on which he actually joined as

Inspector. Later on vide order dated 11.07.2011 he was promoted to the post of Superintendent, Central Excise Gr.'B' also on notional basis from 30.06.2005.

2(j). After his promotion order, the applicant made a representation to Respondent No.2 on 21.07.2011 for grant of arrears of actual pay based on his promotion as Inspector and Superintendent of Central Excise from 17.12.1985 and 30.06.2005, respectively. However, he did not receive any reply from the respondents. He retired from service on superannuation on 31.07.2011. In this O.A. he is seeking direction to the respondents to pay him salary for the post of Inspector and Superintendent, Central Excise from the dates of his notional promotions.

3. Contention of the parties:

The applicant's counsel has contented that -

3(a). since both the disciplinary proceedings initiated against him vide order dated 06.07.1989 and 13.10.1998 were dropped in 1998 and 2005, respectively, the applicant should be paid arrears of actual salary of the posts of promotions from the dates of notional promotions granted to him subsequently. The two departmental enquiries against him should have been completed in six months

but the respondents took 9 years and 6 years to do so;

3(b) . on 28/29.02.1984, the applicant was actively involved in interception and seizure of contraband goods for which he was given a merit certificate and cash award. In spite of this, two charge-sheets were issued to him later which came to be dropped subsequently. Hence he should not be denied benefit of arrears of pay as a result of notional promotions; and

3(c) . in view of Apex Court decisions in **Union of India and others Vs. K.V. Janakiraman and others, (1991) 4 SCC 109**), **Commissioner, Karnataka Housing Board Vs. C. Muddaiah (2007) 7 SCC 689** and **Union of India & Another Vs. Cheddi Lal (W.P.No.810/2010 Delhi High Court)** cases, he should be granted benefit of payment of actual salaries by allowing the O.A.

The respondents' counsel has submitted that -

3(d) . while the applicant was working as adhoc Inspector of Central Excise in the Marine and Preventive Wing of the Customs (Preventive) Commissionerate, the Criminal Case (R.C. No.64/84) was registered against him by Central Bureau of Investigation (CBI) as he was found to be aiding and abetting smugglers in smuggling activities at Bassein Division and accepting illegal gratification

from landing agents. Therefore, he was suspended on 10.10.1984, but was reinstated on 14.06.1985. Later on the charges against him in the disciplinary proceedings came to be dropped on 15.04.1998 because of deficiencies in the proceedings;

3(e). based on the false statements made by the applicant before Departmental Officers on 03.09.1984 and 24/29.09.1984, the second charge-sheet was issued against him on 13.10.1998;

3(f). however, in these disciplinary proceedings, the charges against him came to be dropped later. The applicant had filed another O.A.1120/1998 for quashing his reversion order from the post of Inspector (adhoc) to U.D.C. While this reversion order was set aside by the Tribunal, this order of the Tribunal was quashed by the Bombay High Court in Writ Petition No.5434/2003 on 13.04.2006 and this decision of the High Court was also upheld by the Hon'ble Supreme Court on 09.10.2006 in Civil Appeal-CC 6986/2006. Hence in view of the decision of the High Court dated 13.04.2006, the benefits sought by the applicant through representation dated 12.12.2005 were not granted to him;

3(g). after dropping of the charges against him in the disciplinary proceedings, the applicant has already been promoted on notional basis as Inspector and Superintendent of Central Excise;

3(h). no arrears are payable to the applicant based on these notional promotions because he did not shoulder the duties and responsibilities of higher posts from those dates of the notional promotions. This is as per the view taken by the Apex Court in Civil Appeal No.8904/1994 (Union of India Vs. P.O. Ibrahim & Others) - i.e. no arrears are payable when the person did not actually shoulder the duties and responsibilities of higher post;

3(i). in another case i.e. **Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha & others (1990)2 SCR 769**, the Apex Court has upheld the principle of "No work no pay". The decision of the respondents is also in consonance with these case laws and DOPT OM dated 10.04.1986;

3(j). the respondents replied on 03.04.2012 and 17.04.2012 to the representation of the applicant dated 21.07.2011. Hence his claim in this O.A. that he did not get any reply to his representation is false;

3(k). the O.A. filed by the applicant is also time-barred and suffers from limitation because if he wanted to challenge the subject matter then he ought to have challenged the order of 25.11.2005 when the charges against him were dropped;

3(1). there is no undue delay on the part of the respondents in completing the disciplinary proceedings and the charges against him came to be dropped because of deficiencies in the proceedings, not based on his exoneration; this fact has also been accepted by the Tribunal in its order dated 23.12.1999 on O.A.313/1999; and

3(m). therefore, the present O.A. being devoid of merit, ill-conceived and not maintainable, it should be dismissed.

4. Analysis and conclusions:

We have considered the contents of the O.A. memo and its annexes, the orders under challenge, reply of the respondents dated 03.05.2012 alongwith its annexes, earlier decisions of this Tribunal in O.A.1120/1998, O.A.313/1999 and O.A.161/2007, High Court decision in Writ Petition No.5434/2003, Apex Court decision dated 19.10.2006 and various case laws cited by counsels for the parties, including the DOPT OMs dated 10.04.1989 and 14.09.1992.

From the consideration as above, the position in this case gets clarified as follows:-

4(a). The applicant's claim is that there has been long delay in the departmental enquiries and they were not completed by the respondents in time. With reference to this aspect, it must be noted that the O.A. has not sought any relief. In earlier

O.A.313/1999, the Tribunal has already taken a view that the delay in completion of the disciplinary proceedings was not undue. Hence the applicant's claim on this aspect at this stage is not acceptable.

4 (b) . The disciplinary proceedings for major penalty initiated against the applicant (along with 14 others) were dropped by order dated 15.04.1998 by considering the reply of the Inquiry Officer holding that the charges had not been proved and several serious deficiencies observed in the entire proceedings, and without prejudice to further action which may be considered in the circumstances of the case.

4 (c) . The applicant has relied on the decision of the Hon'ble Supreme Court in K.V. Janakiraman's case and the DOPT OM dated 14.09.1992, and claims that as per the position clarified in them, he can be paid arrears of pay from the dates of his notional promotions. But a close perusal of the O.M. reveals that it specifically provides for the Disciplinary Authority to decide the issue based on facts and circumstances of each case. In the case law i.e. K.V. Janakiram and others on a number of Civil Appeals decided on 27.08.1991, the same view has been held i.e. when an officer/employee is exonerated in disciplinary proceedings, or criminal

proceedings then whether he 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 proceedings/ criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.

In the present case it appears that although the charges in the departmental inquiry came to be dropped later, the Disciplinary Authority concerned has considered the relevant facts and based thereon it has decided not to pay to the applicant the arrears of pay from the dates of his notional promotions. We find no infirmity in this decision.

4 (d) . The applicant claims that he can be paid the arrears of pay based on the notional promotion also in view of the decision of the Delhi High Court in Writ Petition (C)No.810/2010, Union of India and another Vs. Cheddi Lal decided on 15.09.2010. In this decision, a series of earlier judgments were referred to in which it had been held that 'No work no pay' is premised on the norm that apart from not working on the post, the person concerned had not shouldered the responsibilities of the higher post

and Government finances are being held in trust for public, it would be against the public interest to pay higher wages to a person who has not shouldered the responsibilities of the higher post. The contra-reasoning is premised on the reason that why should the Government servant suffer for no fault of his when he was ready to should the responsibilities of the higher post but was denied the opportunity to do so by the Department.

In the context of the above conflicting values, it has also been held that where the private interest conflicts with a public interest, the latter must prevail. But in that case the conflicting values were not reconciled. The High Court in that particular case only held that in view of the order of the Tribunal not having been challenged or got set aside, its direction should be implemented. There is no such context in the present case.

4(e). The applicant further relies for his benefit on the case law - **Commissioner, Karnataka Housing Board Vs. C. Muddaiah decided by the Hon'ble Supreme Court in Civil Appeal No.4108/2007 on 07.09.2007.** However, it needs to be noted here that the issue in that civil appeal before the Apex Court was about implementation by the party concerned of a direction issued by a Competent Court. In that case

a Single Judge of the Karnataka High Court had issued a direction to pay arrears to then petitioners by reassigning their seniority but it was not implemented. In the above Civil Appeal, the Apex Court has held that the normal rule is 'No work no pay'. But if a competent Court makes an exception to it in a specific case depending upon facts and circumstances, then it should be implemented. Hence the context of that civil appeal was different from the present case. Therefore, for the claim of the applicant that he should be paid arrears of pay from the dates of his notional promotions by making exception to the normal rule, we do not find any justification.

4(f). It is important to recall the concluding views of the High Court specifically recorded in this context in Writ Petition No.5434/2003 (in which the present applicant was the respondent) that the order of 26.11.1985 was not an order of reversion of the applicant as prior to that he was working as Inspector only on adhoc basis which was a stop-gap arrangement. He had not been promoted as per the provisions of rules and, therefore, he had no right to continue in the same cadre of Inspector when his promotion had been only as a stop-gap arrangement to meet the administrative exigency. The reinstatement of the applicant as UDC by the respondents was

proper and legal.

4(g). The respondents' counsel has relied on the decision of the Hon'ble Supreme Court in **Civil Appeal No.2013/1990 decided on 25.04.1990 in Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and others.**

The relevant para in this case law is Para 13, in which it has been mentioned that High Court had categorically denied the emoluments of higher post to the respondents with retrospective effect. This is because the respondents had not actually worked on the said post and, therefore, on the principle of 'No work no pay' they were not entitled for higher salary. In view of the similar facts in the present case, the applicant is also not entitled for payment of salary based on his notional promotions. This contention of the respondents has force and is justified.

4(h). The respondents have also relied on the decision of the Apex Court in a number of **writ petitions (Civil) dated 28.03.1989 Paluru Ramakrishniah and others Vs. Union of India and another/others.** In this decision, it was held that rule of 'No work no pay' will also apply where a person was given a notional promotion with effect from the date his junior was promoted. No financial benefits can be claimed retrospectively by such

persons and they would be entitled only to refixation of pay on the basis of notional seniority granted to them. Here the Apex Court had cited a decision of the Madhya Pradesh High Court in which it had been held that the service rule is that there has to be no pay for no work, that a person will not be entitled to any pay and allowances during the period for which he did not actually perform the duties of higher post. At the most the entitlement would be only to refixation of salary on the basis of notional seniority. In view of the settled law on this aspect as above, the respondents have rightly contended that the applicant is not entitled for the payment of higher salary from the dates of his notional promotions.

4(i). The respondents have further relied on another case law i.e. a decision of the High Court of Delhi in **Writ Petition (Civil) No.7334/2012 decided on 20.05.2013 (Union of India & another Vs. Thanglalmuon)** in which the issue of payment of arrears dealt with in various decisions of the Supreme Court was mentioned, such as the decisions in **State of Haryana Vs. O.P. Gupta [(1996) 7 SCC 533]**, **Paluru Ramkrishnaiah & Ors. Vs. Union of India & Another [1989 2 SCC 541]** and **Virender Kumar G.M., Nrllys. Vs. Avinash Chandra Chadha**, in which the Apex Court directed for preparation of fresh seniority

list and accordingly promotion to eligible persons on notional basis from due dates but without arrears of pay. The view taken in the **Union of India Vs. B.N. Jha [(2007) 11 SCC 632]** was also cited here in which it had been held that arrears of salary cannot be granted in view of the principle of 'No work no pay' in case of retrospective promotion. A decision in **Amar Singh Vs. Union of India [2002 III AD Delhi 264]** was also cited in which denial of arrears based on promotion from retrospective deemed date was held as fully justified. Lastly the respondents have also relied on the case law - **Union of India and others Vs. Jaipal Singh in Civil Appeal No.8565/2003 decided on 03.11.2003**. However, a perusal of that decision reveals that it was based on a different set of facts, which are not similar to those of the present case.

4(j). The views taken in the above case laws clearly bring out that the normal rule is 'No work no pay' and benefit of higher salary cannot be paid retrospectively on the basis of the notional promotions. Depending upon particular facts and circumstances of each case, the Competent Authority has to decide on this aspect i.e. as to whether any arrears of salary for the period of notional promotions are to be paid.

4(k). The record of the present case also reveals

that the applicant came to be promoted as per order of this Tribunal dated 23.12.1999 in O.A.313/1999 not based on exoneration in the departmental enquiry but only because of the specific direction in the order of the Tribunal that he should be promoted in case the departmental enquiry is not completed within six months. Since the departmental enquiry could not be completed within six months, the applicant was promoted as Tax Assistant.

4(1). We have also perused the nature of the charges based on which the charge-sheet was issued to him on 13.10.1998. The charges consisted of inter-alia, illegal gratification, aiding and abetting smuggling, etc, and misconduct - false statements made by the applicant before the senior officers of the respondents department during inquiry. Also contradictory statements made by the applicant during the departmental enquiry and failure in asking relevant questions to the charged officer, the Inquiry Officer seems to have concluded that the charges were not proved. Thus although the charges against him were subsequently dropped, it was not a case of complete exoneration of the applicant.

4(m). All the above facts of the case being material in the course of the disciplinary proceedings and criminal prosecution against the

applicant, by considering them the Disciplinary Authority seems to have taken the decision not to pay him arrears of pay from the dates of his notional promotions. Therefore, we find no infirmity in this decision of the respondents authorities.

4(n). Hence in view of the specific facts of this case in the O.A. and the views taken in the case laws cited by the respondents, they thus succeed in justifying fully their decision to deny payment of arrears of salary to the applicant from the dates of his notional promotions. The applicant has not been able to make out any case for which an exception may be justified to the normal rule of no work, no pay. Resultantly the O.A. fails.

5. Decision:-

The O.A.80/2012 is dismissed. No order as to costs.

(Smt.Ravinder Kaur)
Member (J).

(Dr.Bhagwan Sahai)
Member (A).

H.

