

Central Administrative Tribunal, Principal Bench

Original Application No.630 of 2003

New Delhi, this the 16th day of January, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. R.K. Upadhyaya, Member(A)

V.P. Gupta,  
S/o late Shri T.C. Gupta  
R/o B-260, Lok Vihar,  
Pitampura, New Delhi

....Applicant

(By Advocate: Shri S.K. Das)

Versus

Union of India, through  
The Secretary,  
Ministry of Urban Development &  
Poverty Alleviation,  
JC Wing, Nirman Bhawan,  
New Delhi-1

....Respondents

(By Advocate: Shri V.S. Mishra, proxy for Shri Adish  
C. Aggarwal)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant was working as Senior Architect in C.P.W.D. in August, 1992. In January, 1996, he was promoted as Chief Architect and was transferred to Bombay in September, 1996. A chargesheet was served on him for not taking timely action for demolition of certain unauthorised construction at Bhagwan Dass Road. An enquiry officer was appointed in March, 1998. He completed the proceedings and submitted a report that charges of misconduct were established against the applicant.

2. The disciplinary authority had sent the report of the enquiry officer to the applicant to which he represented. While decision pertaining to the said disciplinary proceedings had not been taken, a meeting of

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the Departmental Promotion Committee took place. Qua the applicant, it was kept in sealed cover and person junior to him was promoted.

3. It appears that there was some difference of opinion between the Central Vigilance Commission as well as the Union Public Service Commission. The matter was referred to the Department of Personnel and Training and thereupon on 30.5.2002, the applicant was exonerated and charges were dropped. The said order reads:

"The President has considered the findings of the I.O., records of the case, representation of the CO and come to the conclusion that ends of the justice would be met if charges against Shri V.P. Gupta, Chief Architect are dropped. President orders accordingly."

4. The applicant preferred O.A.1489/2002 which was disposed of by this Tribunal on 4.6.2002. This Tribunal directed:

"2. Having regard to the submissions made by the learned counsel and keeping in view the fact that the applicant is going to retire from service on 31.7.2002, we find it just and in order to direct the respondents at this very stage even without issuing notices to open the sealed covers expeditiously and consider the applicant's claim and pass final orders in the matter in accordance with the recommendations of the DPC within a period of one month from the date of receipt of a copy of this order."

5. In pursuance of the said direction and keeping in view the fact that the applicant was superannuating on 31.7.2002, on 25.7.2002 the following order had been passed:

"The President is pleased to promote Shri V.P. Gupta, Chief Architect (Rs.18400-22400) to the post of Additional Director General (Architecture) in

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the pay scale of Rs.22400-24500 in CPWD on notional basis with effect from 6.12.2000, i.e. the date on which his immediate junior was promoted to this grade. However, his actual promotion will take place from the date he assumes the charge of the post and until further orders.

Consequent upon promotion of which V.P. Gupta, ADG (Arch.), Shri I.D. Rastogi, the present incumbent of the post, who is junior to Shri Gupta, stands reverted as Chief Architect with effect from the date Shri V.P. Gupta assumes the charge of the post as ADG (Arch.). Shri I.D. Rastogi will again be promoted to the post of ADG (Arch.) with effect from 1.8.02, i.e. after retirement of Shri V.P. Gupta on superannuation."

The applicant superannuated on 31.7.2002.

6. The precise grievance of the applicant is that he has not been given the monetary benefits though his name had been cleared by the Departmental Promotion Committee, from the date his juniors were promoted. This claim of the arrears had been denied to him.

7. The short question, therefore, that comes up for consideration is as to whether the applicant is entitled to the arrears of pay which was denied to him because he was not promoted as a result of the pending departmental proceedings against him.

8. Reliance on behalf of the respondents is being placed on Office Memorandum of 14.9.92 which reads:

"On conclusion of the disciplinary case 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 finding kept in the sealed cover 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 juniormost officiating person. He may be promoted notionally

*(Signature)*

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 proceeding the date of actual promotion and if so, to what extent, will be decided by the Appointing Authority by taking into consideration of facts and circumstances of the disciplinary proceedings."

9. Perusal of these instructions clearly show that it does not state that the concerned person is not entitled to the benefit. In fact, further probing becomes unnecessary because of the decision of the Supreme Court in the case of Union of India vs. K.V. Jankiraman, AIR 1991 SC 2010. It was clearly held that when a person is exonerated, then he has to be given the benefit of salary of the higher post which he would have normally been entitled to but for the disciplinary proceedings. The principle of "no work no pay" will not apply.

10. In the present case, it is not the case of the respondents that the applicant had not been cleared by the Departmental Promotion Committee. Once they have cleared the name of the applicant and his name was kept in the sealed cover because of the pending disciplinary proceedings, we have no hesitation in concluding that applicant would be entitled to the monetary benefit from the date his junior had been promoted to the post of Additional Director General (Architecture).

11. For these reasons, we allow the present application and direct that applicant should be awarded the monetary benefit of the post referred above from the date his junior was promoted. The order should be complied

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within four months of the receipt of the certified copy of the present order.

U. K. Upadhyaya

( R. K. Upadhyaya )  
Member (A)

V. S. Aggarwal

( V. S. Aggarwal )  
Chairman

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