

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.2746/2003

This the 8th day of July, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

G.D.Goel,
Retired Principal,
A.C.C.Wing,
Dehradun.

... Applicant

(Shri D.R.Gupta, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Defence,
South Block, New Delhi.

2. Lt. Col. Offtg. Est. Officer,
for Commandant,
Indian Military Academy,
Chakrata Road,
Dehradun (Uttaranchal).

... Respondents

(By Shri Bhaskar Bhardwaj, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)

Applicant has challenged Annexure A-1 dated 4.12.2002 issued by respondent No.2 whereby applicant has been promoted to the post of Principal w.e.f. 24.10.1986 notionally in the pay scale of Rs.4500-150-5700 up to 31.12.1995 and thereafter again notionally in revised pay scale of Rs.16400-22400 up to 11.8.2002 allegedly denying arrears of pay and allowances from the date of applicant's promotion from 24.10.1986. Applicant has claimed that as he had been wrongly denied promotion and was not allowed to work on the higher post even though he was willing to work, he could not have been denied arrears of pay and allowances of the higher post from the

(10)

date he became entitled for promotion to that post. The learned counsel of applicant in support of claims of applicant relied upon the following :

- (1) **Union of India & Ors. v. K.V.Jankiraman & Ors.,** 1993 SCC (L&S) 387;
- (2) **B.S.Tyagi v. S.P.Mehta, General Manager, Northern Railway & Ors.,** C.P. No.154/2001 in C.A. No.2066/1997 decided on 2.1.2002 (Full Bench, CAT Principal Bench) and reported in A.T.Full Bench Judgments (2002-2003) p.143.

2. The learned counsel further pointed out that applicant was entitled to rent-free accommodation on the post of Principal which perquisite was denied to the applicant as he was by-passed in promotion.

3. On the other hand, the learned counsel of respondents stated that vide order dated 30.7.1999 in OA No.2029/1993 respondents were directed to convene a review DPC to consider the case of applicant on the basis that he was eligible to be considered for the post of Principal w.e.f. 24.10.1986. Accordingly, a review DPC was convened on 16.3.2000. However, applicant was not considered fit for promotion to the post of Principal at that time. Applicant filed another OA No.276/2001 which was decided on 5.11.2001 whereby result of the review DPC held in March, 2000 was quashed and set aside directing the respondents to re-convene a review DPC to consider the claim of applicant for promotion from 24.10.1986 in accordance with OM dated 30.10.1976 and such other OMs on the subject as might have been issued by the DOP&T before 24.10.1986. Applicant was promoted as Principal w.e.f. 12.3.2002 vide Annexure A-1. However, no arrears of pay,

11

and allowances were paid to him as the Tribunal's orders were silent in that regard. The learned counsel stated that financial benefits can be granted only from the date of assumption of charge of the higher post in accordance with FR-17. The learned counsel relied on **State of Haryana & Ors. v. O.P.Gupta & Ors.**, (1996) 7 SCC 533.

4. As regards the applicant's claim for compensation in lieu of rent-free accommodation, respondents have stated that necessary DO Pt.II order has been published to this effect and the applicant has been issued non-availability certificate to claim special house rent allowance in lieu of rent-free accommodation for the said period of his appointment as Principal. However, applicant has not preferred any claim for the same, and that as and when claim is preferred by the applicant, the same would be passed and paid as per extant rules.

5. We have considered the rival contentions.

6. The case of **O.P.Gupta** (supra) is distinguishable. That related to a seniority dispute. The Supreme Court had directed the department to prepare fresh seniority list strictly in accordance with the rules ignoring any inconsistent administrative instructions. Fresh seniority list was prepared accordingly and eligible persons were given notional promotion from the deemed date. In such circumstances, it was held that the promotees were not entitled to arrears of pay from the deemed date to the date of their

h

12

posting in promotional posts as they had not worked during that period. In the present case applicant has not been accorded promotion on the basis of a corrected seniority list later on prepared on the basis of relevant rules and instructions. Applicant herein had been denied promotion as the respondents relied on wrong instructions. The wrong was set right by convening a review DPC on the basis of Tribunal's orders dated 5.11.2001. Applicant has been accorded promotion on the basis of recommendations of that review DPC. The ratios of the cases of K.V.Jankiraman (supra) and B.S.Tyagi (supra) are certainly applicable to the facts of the present case. It was held in the case of K.V.Jankiraman as follows :

"25. We are not much impressed by the contentions advanced on behalf of the authorities. 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. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases."

7. In this case as the applicant had been denied promotion erroneously, ^hhe ^his held entitled to all consequential benefits, even the benefit of enhanced pay in the higher grade retrospectively.

3. Having regard to the discussion made above, the OA is allowed with the following directions :

h

3

- (1) Annexure A-1 dated 4.12.2002 is quashed and set aside insofar as it denies payment of arrears of pay and allowances on the post of Principal for the period 24.10.1986 to 11.8.2002 by treating the promotion of the applicant on notional basis.
- (2) Respondents are directed to pay difference of arrears of pay and allowances to the applicant treating his promotion to the post of Principal on a regular basis from 24.10.1986 to 11.8.2002 within a period of three months from the date of communication of these orders.
- (3) As respects the special house rent allowance as Principal for the period 24.10.1986 to 11.8.2002, applicant may prefer his claim to the respondents. Respondents may consider the same and make necessary payment to the applicant as per extant rules within a period of three months of submission of the claim.

No costs.

S Raju

(Shanker Raju)
Member (J)

/as/

V. K. Majotra

(V. K. Majotra)
Vice-Chairman (A)

8.7.04.