

U

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.2963/2004

New Delhi this the 25th day of October,2004

Hon'ble Mr. S.K. Malhotra, Member (A)

Ishwar Dass,
A-306. Navin Apartments,
Plot No.13, Sector-5,
Dwarka,
New Delhi-45

.....Applicant
(Applicant in person)

Versus

1. Union of India
through
The Chief Executive Officer,
Prasar Bharati,
PTI Building, IIInd Floor,
Sansad Marg,
New Delhi-110 001
2. The Dy. Director General (A),
All India Radio,
Akashvani Bhawan,
Sansad Marg,
New Delhi-110 001

Respondents.

(By Advocate Shri R.N. Singh)

ORDER

In this OA, the applicant has approached the Tribunal with the prayer that the respondents may be directed to grant him the arrears of pay and allowances for the notional period of promotion as Administrative Officer (A.O) from 26.12.1988 to 23.5.1990 and as Senior Administrative Officers (Sr.A.O) from 16.2.1994 to 5.5.1996.

2. The facts of the case, in brief, are that the applicant was promoted notionally as A.O w.e.f. 26.12.88 and Sr. A.O from 16.2.94 after review DPCs in terms of the

4

✓

Tribunal's order dated 27.7.2001 in OA No.2145/2000 and MA No.2563/2000. It has been contended that the Tribunal had ordered that the applicant should be treated identical beneficiary of the order of Jabalpur Bench of CAT dated 13.5.99 in OA No.562/90 **Suresh Kumar D. Vs. UOI & others.** According to the applicant, although he has approached the department through representations that he should be allowed arrears of pay and allowances of the higher post but he has not received any favourable response. It has been stated by him that when his juniors were considered for promotion as A.O in 1988 and Sr.A.O in 1994, the applicant was also required to be considered being senior, along with his juniors. Since he has been prevented from working on higher post on account of fault of respondents Department, he is entitled for pay and allowances of the higher post. One of his juniors Ms. D. Uma was also promoted earlier than him. This anomaly was corrected in the case of **Suresh Kumar D (Supra)** and the applicant regained his seniority and got promotions as A.O and Sr.A.O from the dates Ms. Uma was given promotions. Since Ms. Uma had drawn the emoluments from the dates of original promotions, the applicant deserves to be treated on the same footing.

3. In support of his request, he has cited a number of judgments of the Hon'ble Supreme Court and also of the Tribunal. He has cited **58 Swamy's Cl Digest 1995/2 P.65 Harbans Singh Vs. State of Punjab & Ors. SC-Civil Appeal No.7412 of 1995 arising out of SLP © No.5902/1994 dated 3.8.1995** to the effect that when a Govt. employee is eligible for promotion from a particular date and is wrongly overlooked, it must be deemed that he was duly promoted from that date and he is entitled to all consequential benefits.

4. The respondents have filed a counter affidavit in which they have taken the stand that the applicant, who has now retired, had been working in All India Radio (AIR). In Schedule VII appended to the Recruitment Rules for various posts in AIR, it is stipulated

l

14

5. I have heard the applicant in person and Shri R.N.Singh, the learned counsel for the respondents and have also gone through the pleadings.

6. There is no doubt that whole emphasis of the applicant is for grant of similar benefits to him as in the case of **Suresh Kumar D.(Supra)** in OA No.562/90. In this case, Shri Suresh Kumar D was not considered for promotion as A.O as he had not completed the requisite qualifying service of seven years. It is mentioned in the order dated 13.5.99(Annexure-IV) that the recruitment rules for the post of A.O do not contain a clause as per instructions of DOPT dated 18.3.88. However, considering the facts and circumstances of that case, the Tribunal had directed the respondents to resort to relaxation of the recruitment rules in regard to the length of service of Shri Suresh Kumar D by holding a review DPC after giving due relaxation and promote him with effect from the date he is found suitable for promotion. A specific direction was also issued that if he is entitled for ante-dated promotion, he should be given seniority and notional fixation of pay but arrears of pay and allowances should not be given. Since the applicant in the present case is seeking the same benefits, he is also not entitled to the arrears of pay and allowances of the higher post. The applicant pointed out that in a number of judgments given by various Hon'ble Courts it has been held that if an employee is not promoted earlier due to administrative lapse and he is subsequently given notional promotion from retrospective date, he is entitled to arrears of pay and allowances. The main emphasis in all these decisions is that the promotion was not given to the employee due to simple administrative lapse. However, these decisions do not cover such cases where the applicant had not been promoted due to application of certain rules and regulations in force at the relevant time and the employee was subsequently given notional promotion based on his change of seniority etc. In this

15

connection, it would be relevant to cite the judgment of the Hon'ble Supreme Court in the case of **Paluru Ramkrishniah Vs. Union of India**, 1989(2) SLR 202(SC) and also **Virinder Vs. Avinash Chandra Chadha** (1990)3 SCC 482 wherein it was held that "if such an employee who is promoted w.e.f retrospective date, is entitled to be given a proper place in the gradation list, having been deemed to be promoted to the higher post w.e.f. the date his junior was promoted, he is also entitled to stepping up of the pay retrospectively from the deemed date but is not entitled to the payment of arrears of salary. In another case of **State of Haryana Vs. O.P.Gupta**, 1996 (2) SLR 466 (SC) it was held that "In a case where the seniority list was prepared and finalized and promotions were made in accordance with the Rules on the basis of the said seniority list, the question of entitlement to work on the promotion post did not arise. Consequently, the payment of arrears of salary to such an employee on retrospective/notional promotion, does not arise."

8. The present case is squarely covered by the above two cases. The applicant in this case was not ignored for promotion on account of administrative lapse on the part of the respondents. As mentioned in the case of Suresh Kumar D. (supra) the applicant did not have the requisite experience of 7 years for promotion to the post of A.O. It was only in compliance of the directions given by the Tribunal in its order dated 27.7.2001 in OA-2145/2000 (Annexure A-III) that he was considered for promotion from a retrospective date from which his junior had been considered. In such a situation, he is not entitled to the arrears of pay and allowances for the period he did not discharge responsibilities of the higher post. The principle of "No work, no pay" will be applicable in his case. Besides, the applicant is seeking parity with Sh. Suresh Kumar D. (supra) in which case the Tribunal had ordered that no arrear of pay and allowances should be given. Taking an overall view of the facts and circumstances of the case and the

Q

16

judgments cited above, he is not entitled to arrears of pay and allowances of the posts which he did not hold and did not discharge the higher responsibilities of those posts, during the relevant period.

9. As a result of the above discussion, I do not find any merit in the OA and the same is dismissed without any order as to cost.

Amulya
(S.K. Malhotra)
Member (A)

New Delhi
25.10.2004
/ug/