

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4425 of 2019 (O/M)
Date of decision : 20.2.2019

Chairman, Central Board of Excise Indirect Taxes and Customs, North
Block, New Delhi, and others Petitioners

Versus

Avnish Bansal and another Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Praveen Chander Goyal, Advocate,
for petitioners.

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KULDIP SINGH, J.

Challenged in the present civil writ petition is the order dated 27.2.2018 (Annexure-P-3), passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'the Tribunal'), vide which the Tribunal set aside the impugned letters/orders dated 10.6.2016 (Annexure-A-1) and competent authority was directed to make the payment of pay and allowances etc. for the adhoc period of applicant respondent No. 1 with effect from 18.7.2014 to 9.5.2016 as well, at par with other similarly situated persons of Civil Services Examination, 2008 (hereinafter referred to as 'CSE 2008'), within a period of two months, from the date of receipt of copy of the order.

We have heard the learned counsel for petitioners and have also carefully gone through the file.

The short controversy involved in this case is that applicant respondent No. 1 Avnish Bansal, who is physically impaired person, appeared in CSE 2008, but was not recommended for appointment by Union Public Service Commission. In the litigation that ensued before Central Administrative Tribunal, Principal Bench, New Delhi, vide order dated 8.10.2010 (Annexure-A-2), it was ordered that applicant-respondent No. 1 will be allocated services 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 CSE 2008. After completion of four years services, applicant-respondent No. 1 was entitled to promotion for the post of Deputy Commissioner (CSE) alongwith other officers, who joined on the basis of CSE 2008. The officers, who joined on the basis of CSE 2008, were promoted to the post of Deputy Commissioner Grade-V in senior time scale after completion of four years of regular service. However, same benefit was denied to applicant respondent No. 1, despite his repeated representations. Ultimately, in the wake of pendency of OA No. 1538/2009, applicant respondent No. 1 was promoted to the post of DC (CSE) on adhoc basis, vide order dated 8.4.2016 (Annexure-A-8). Subsequently, his promotion was made ante dated with effect from 18.7.2014, vide letter dated 6.5.2016 (Annexure-A-9). The pay bills submitted by applicant-respondent for adhoc period i.e. from 18.7.2014 to 9.5.2016, were returned with objections by Senior Accounts Officer without making payment for the period of adhoc service rendered by applicant respondent No. 1 as Deputy Commissioner.

The Tribunal has taken into consideration that it was not disputed before it that applicant respondent No. 1 actually worked on adhoc

basis on the post of Deputy Commissioner before he was made regular.

Therefore, he is entitled to the pay of service rendered for adhoc period as well. It was further observed that there was no fault on the part of applicant respondent No. 1, but it was fault of the department, which did not promote him in time, though he was ordered to be given all benefits as given to appointees of CSE 2008. Applicant respondent No. 1 was willing to work, but he was kept away by authorities for no fault of his. It was further observed that it is not a case where employee remained away from work for his own reasons. The Tribunal applied the law laid down by Hon'ble Supreme Court of India in Union of India Versus K.V. Janki Raman AIR 1991 SC 2010 to hold that normal rule of no work no pay is not applicable in cases where employee is willing to work but is kept away by the authorities for no fault of his. It was further observed that orders of CAT were not implemented for long, which resulted in delayed promotion of applicant respondent No. 1. His colleagues, who were similarly situated, were given back wages, but same have been denied to applicant respondent No. 1. The Tribunal also relied upon authority of Apex Court in State of A.P. Versus K.V.L. Narasimha Rao and others AIR 1999 SC 2255.

Considering the fact that though applicant respondent No. 1 was allowed to be given same benefits as given to other appointees of CSE 2008, but he was denied the benefit of promotion as Deputy Commissioner (CSE) due to fault of the department, despite orders of CAT and that applicant respondent No. 1 is not to be blamed for same and also considering that applicant respondent No. 1 had worked for adhoc period before he was made regular, we do not find any illegality or infirmity in the

impugned order dated 27.2.2018 (Annexure-P-3), passed by the Tribunal.

The petition is thus dismissed.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

20.2.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No