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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH,  
NEW DELHI.

O.A.No.844 of 1989.

DATE OF DECISION 26.5.92

N.Mookerjee .....Applicant.  
APPLICANT IN PERSON.

Versus

Union of India & others .....Respondents.

Shri M.L.Verma .....Counsel for the  
respondents.

CORAM:

THE HON'BLE MR.JUSTICE RAM PAL SINGH, VICE CHAIRMAN.  
THE HON'BLE MR.A.B.GORTHI, MEMBER(A)

1. Whether Reports of local papers  
may be allowed to see the Judgment?
2. To be referred to the Reporter or  
not?

J U D G M E N T

(Delivered by Hon'ble Mr.A.B.Gorthi, Member(A))

The relief sought by the applicant

N.Mookerjee in this application under section 19 of the Administrative Tribunals Act, 1985 initially was for re-fixation of his seniority and the grant of consequential benefits to him. In due course of time, the respondents redressed his grievance substantially by refixing his seniority and giving him notional promotion w.e.f. 11.6.84. The respondents have also paid him the consequential pensionary benefits, namely, the difference of pension, difference of commutation and difference of gratuity totalling to an amount of Rs.21,243/- . By means of Misc.Petition No.319/92, the applicant prayed for arrears of pay and allowances and for difference of amount on account of encashment of leave together with interest.

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2. The respondents have taken the view that the applicant is not entitled to difference of salary (pay and allowances) from 11.6.84 to 31.12.86 i.e. from the date of his notional promotion to the date of his superannuation, on the ground that the promotion granted to him was only notional and hence he was clearly not entitled to pay and allowances for the said period. We find that the respondents' contention is reasonable. In the case of 'Paluru Rama Krishnaiah & others Vs. Union of India & others' S.L.J. 1990(2) 146 the Hon'ble Supreme Court approved the following observation of Madhya Pradesh High Court:-

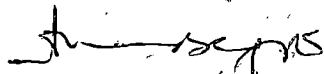
"It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to refixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them."

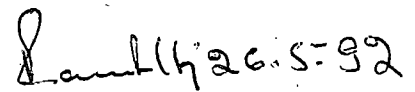
3. In the light of above, the request of the applicant for arrears of pay and allowances cannot be acceded to. As regards the payment of

difference of the amount on account of encashment of leave, the respondents' contention is that it is not a pensionary benefit and hence need not be freshly worked out. The applicant's contention is that the question of encashment of leave arises only when an individual retires after attaining the age of superannuation and not before. Although his promotion w.e.f. 11.6.84 was notional, the higher scale of pay to which he became eligible should be the basis for calculation of the value of the encashment of leave. Since the respondents have calculated the pension and other pensionary benefits on the basis of notional pay fixed, we do not see any reason why the same should not be applied for calculation of encashment of leave. To reject the applicant's plea on the technical ground that the encashment of leave was not pensionary/retirement benefit as was done by the respondents vide letter dated 20.9.91 is clearly unreasonable. Encashment of leave is certainly a retirement benefit even if it may not fall within the limited meaning of the term 'pensionary benefit'. We, therefore, find that the applicant's prayer for the grant of Rs.2,165/- on account of difference of encashment of leave deserves to be allowed. The respondents are accordingly hereby directed to accurately calculate the amount due on account of encashment of leave on the basis of refixed pay, and pay the amount to the applicant within three months from the date of communication of

this order together with an interest at the rate of 10% per annum from the date of his superannuation.

4. The application is thus partly allowed.  
There shall be, however, no order as to costs.

  
MEMBER (A)

  
VICE CHAIRMAN.

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