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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA=709/88

Date of decision: 23.4.1992

Shri Lal Singh

....Applicant

Vs.

Union of India through the
Chief Secretary, Delhi Administration

....Respondents

For the Applicant

..Shri R.K. Kamal, Counsel

For the Respondents

Mrs. Avnish Ahlawat,
Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

We have heard the learned counsel for the applicant and have gone through the records of the case carefully and have heard the learned counsel for both parties.

2. The applicant was appointed to Grade II(Executive) of the Delhi Administration Subordinate Service (DASS) as a direct recruit as a result of the competitive examination
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held in 1973. He has prayed for the following reliefs:-

- (i) To direct the respondents to revise the impugned order dated 21.4.1988 in respect of 1973 examination batch of direct recruits and to consider officials of that batch for promotion to Grade I in order of his merit position; and
- (ii) to direct them to consider him for promotion to Grade I of DASS before considering the cases of officials of 1973 examination batch who were assigned merit position lower than him.

3. On 26.4.1988, the Tribunal passed an ex-parte interim order to the effect that any promotion made will be subject to the outcome of this application. On 26.5.1988, the Tribunal continued the interim order and directed that the promotees should specifically be informed about the same.

4. It may be stated at the outset that the question of seniority of the members of the Delhi Administration Subordinate Service has been the subject matter of protracted litigation. The applicant has also filed another OA 325/87 wherein he has challenged the validity of the Seniority List circulated on 9.1.1987.

5. During the hearing, the learned counsel for the applicant produced before us photocopy of an order dated 8.7.1991 issued by the respondents regarding the promotion on regular basis of officials to the post of Grade-I of DASS with effect from the dates mentioned against each of them. By the impugned order dated 21.4.1988, the respondents had promoted 11 persons belonging to the 1973 batch who were junior to the applicant in Grade-I. The promotions were made on ad hoc basis for a period of six months in the first instance and were subject to the outcome of ~~the~~

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several matters pending in the Supreme Court/this Tribunal. According to the applicant, while correct seniority has been assigned to him by the subsequent order dated 8.7.1991, he is aggrieved that he was promoted to Grade-I only on 8.7.1991 whereas his juniors had been so promoted with effect from 21.4.1988. For example, Shri Prakash Chand who was promoted to Grade-I by the impugned order dated 21.4.1988 was junior to the applicant and this is duly reflected in the subsequent order dated 8.7.1991 (vide Serial No.63 of the order dated 21.4.1988 and Serial No.74 of the order dated 8.7.1991). The applicant is shown at S.No.59 of the order dated 8.7.1991 as senior to Shri Prakash Chand.

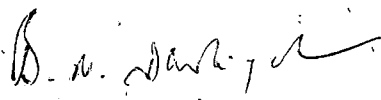
6. Para 2 of the order dated 8.7.1991 states that the officers promoted to Grade-I by that order would not be entitled to the payment of arrears of pay and allowances for the period for which they have not actually worked on the post of Grade-I of DASS. In the integrated seniority list as on 4.12.1980, circulated on 9.1.1987, the name of Shri Prakash Chand figures at S.No.1299 while that of the applicant at S.No.1357. That seniority list has been superseded by the seniority list circulated on 20.10.1989 in which the applicant's name is shown at S.No.1307 while that of Prakash Chand at S.No.1334. By order dated 8.7.1991 which was issued after the seniority list had been so revised, the applicant was given notional promotion from 1.10.1986. The learned counsel for the respondents stated that not only the applicant but many others were given notional promotion retrospectively as a result of revision of seniority but they are not entitled to back wages on the ground that the seniority had to be revised pursuant to the judgments of Court/this Tribunal. As against this, the learned counsel for the applicant submitted that the Tribunal had passed an interim order that any promotion made will be subject to the outcome of this application and consequently, the applicant would be entitled to back wages from the date his junior was promoted.

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7. The question whether a Government servant would be entitled to back wages in the case of notional promotion has been considered by the Supreme Court in Paluru Ramakrishaniah Vs. Union of India, 1989 SCC(L&S) 375 and Northern Railway Vs. A.C. Chadha, 1990(1) SCALE 857 and held in the negative. At the most, he would be entitled to refixation of his present salary on the basis of the notional seniority granted to him so that his present salary is not less than ^{that of a} the person who was immediately below him.

8. Accordingly, the application is disposed of with the direction to the respondents to refix the present salary of the applicant on the basis of the notional seniority granted to him by order dated 8.7.1991 so that his present salary is not less than ^{that of a} the person who was immediately below him. The respondents shall do so within a period of 3 months from the date of communication of this order.

There will be no order as to costs.


(B.N. DHOUNDIYAL)
MEMBER (A)


(P.K. KARTHA)
VICE CHAIRMAN (J)