

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 1108 of 1988

Date of decision: 24.5.1989

Shri K.K. Aggarwal

....

Applicant

Vs.

Union of India & Others

....

Respondents

PRESENT

Shri K.L. Bhatia, counsel for the applicant.

None for the Respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application filed by Shri K.K. Aggarwal, a retired officer of the M.E.S., against impugned order vide letter No. 34989/E1B dated 7.9.85 passed by the Engineer-in-Chief, Army Headquarters, New Delhi, and conveyed to him through the Central Command on 10.6.87. The applicant has sought pay and allowances in the rank of Executive Engineer w.e.f. 13.1.1975 to the date of superannuation i.e. 30.6.78 and pensionary benefits thereafter.

2. In this case the respondents have not filed their counter affidavit despite several opportunities given to them and it was decided to finalise the case on the basis of available records without the written statement or counter affidavit by the respondents.

3. The case of the applicant in brief is that he joined M.E.S. in 1940 as Overseer. He was promoted as Assistant Executive Engineer w.e.f. 6.9.1961 and continued as such till the date of his superannuation on 30.6.1978. On many occasions he was delegated powers of Executive Engineer, but did not get regular promotion because of junior position in the seniority list drawn up on 14.6.1974. The seniority list of Asstt. Executive Engineers drawn up in 1974 was challenged by one of his colleagues in the Karnataka High Court and final decision in this writ

the Supreme Court on
petition became available from / 26.4.1983. The seniority list
of 1974 was quashed and set aside and it was declared that

"the seniority lists of 1963 and 1967/68 were valid
and hold the field till 1969 and their revision can
be made in respect of members who joined service
after 1969 and the period subsequent to 1969. The
panel for promotion in respect of 102 officers included
in E in C's proceedings No. 65020/EE/74/EIR dated
January 13, 1975 is quashed and set aside. All the
promotions given subsequent to the filing of the
petition in the High Court are subject to this decision
and must be readjusted by drawing up a fresh panel
for promotion keeping in view the 1963 and 1967/68
seniority list of A.E.E. in the light of observations
contained in this judgement."

Thereafter, the respondents passed promotion orders on 29.9.1984
with effect from 12.1.1975. The applicant's name appears at
Sl. No. 88 of this order. The applicant has been requesting
the respondents to pay him the monetary benefits which have
accrued to him as a consequence of the promotion orders issued
on 29.9.1984, but the same have not been allowed. He was
informed by the respondents that the promotion order was for
the purpose of confirmation and further promotion and as the
applicant had retired well before the implementation of the
Review DPC for promotion to the grade of Executive Engineer,
the question of entitlement of financial benefits to him did not
arise. The Ministry of Defence again confirmed that promotion
was only notional and, therefore, grant of financial benefits
did not arise.

4. The learned counsel for the applicant stated that
the stand of the respondents was wholly illegal as once the appli-
cant had been promoted with effect from 13.1.75 by orders dated
29.9.84, he has to be given all the consequential benefits and
by no stretch of imagination such promotion should be further
promotion/confirmation only which could not be given to him
after retirement. Notional promotion is given in respect of only
those persons who are already working in the Department so
that they may not be entitled to arrears of pay but otherwise



they may be given pay and other benefits like seniority, confirmation and promotion. He stated that it would be misnomer that the valid promotion of the applicant should be considered as only notional. The learned counsel invited attention to Government of India Order No.8 under F.R. 27 containing instructions regarding benefits of notional fixation of pay in the seniority revision cases. It was stated that the Ministry of Home Affairs vide their orders dated 22.7.72 have laid down that arrears arising out of the notional fixation of pay would be admissible from the actual date of promotion only. The employees whose notional seniority was fixed with effect from 4.1.72 and those promoted after 1.1.1973 would be treated as if they had been promoted from 4.1.72 i.e. from the date of promotion mentioned in the original order. As such, the date of promotion in the case of the applicant would be 13.1.1975 and the applicant would be entitled to full pay and allowances along with arrears and other consequential benefits as Executive Engineer.

5. The learned counsel cited the Supreme Court judgement in the case of Ranbir Singh Yadav Vs. U.O.I. - ATR 1988(1) page 210 - following the decision of the Court in the State of Mysore and Another Vs. Syed Mohd. and others and State Bank of India Vs. Mohd. Moisdin. He also invited attention to the case of Shri P.S. Mahal Vs. U.O.I. and others - 1984 (2) SLR SC498 - and A. Janardhan Vs. U.O.I. - AIR 1983 SC 769 - where Government have been directed to prepare a common seniority list of Executive Engineers and give benefits according to the correct seniority list. He also cited the case of Shri P.N. Tandon and another Vs. U.O.I. - ATL 1988(1) CAT 295.

6. It is true that the applicant had not agitated regarding his seniority or refixation of his salary on the basis of the Court's judgment, it has been held by this Tribunal in A.K. Khanna Vs. U.O.I. - A.T.R. 1988(2) CAT 518 - that similarly placed persons

should not be deprived of the benefits merely on the ground that they were not a party to a Court's decision. The Supreme Court has also held similarly in the case of Amrit Lal Berry Vs. Collector of Central Excise - Supreme Court Cases 1975 Vol. IV p. 714 - that the benefit of the rule need not be confined to parties to a case.

7. The applicant was promoted on 29.9.84 to the rank of Executive Engineer and given seniority from 13.1.1975. The order states that this is for the purpose of confirmation and further promotion. Since the applicant has already retired when this order was issued, the question of further promotion would not arise. Since he has also not worked at any time as an Executive Engineer, the question of paying him the actual salary on that basis when he has not worked as Executive Engineer would also not arise, but as far as pensionary benefits are concerned, these are continuing benefits and cannot be denied to the applicant. Had the applicant been in service in September 1984, on the basis of his notional seniority, his pay in 1984 would have been fixed taking into consideration his service as Executive Engineer since 1975. Although no arrears of salary would have been paid to him, but had he retired after 1984, his pay would have been fixed taking into consideration the increments he would have drawn from 1975. As such, the notional increments should be taken into consideration and his pay refixed on 30.6.1978 and all his pensionary benefits fixed accordingly on such fixation of salary at the time of superannuation. It is, therefore, directed that the pay of the applicant at the time of his superannuation should be fixed as if he had been promoted on 13.1.1975. While no arrears ^{of salary} would be admissible, he would be entitled to all arrears of pensionary benefits, including pension, gratuity, encashment of earned leave etc. with effect from 1.7.78. In the circumstances, the application is allowed

[Signature]

accordingly. The respondents are directed to recalculate the amount of payment due to the applicant and make the payment within a period of six months from the date of receipt of these orders.

B.C. Mathur
(B.C. Mathur) 24.5.88
Vice-Chairman