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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A. NO. 1382 OF 1987

DATE OF DECISION 12-9-1991.

Shri D.P.Arya.

.. Applicant.

v.

Union of India and others.

.. Respondents.

Shri Jagdev Singh, counsel for the applicant.

Mrs. Raj Kumari Chopra, Counsel for the respondents.

CORAM:

Hon'ble Mr. G.Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr. S.Gurusankaran, .. Member (A)

—  
J U D G M E N T

Hon'ble Mr. G.Sreedharan Nair, Vice-Chairman:

The applicant while working as Lower Division Clerk was considered for promotion to the cadre of Upper Division Clerk ('UDC') with effect from 1-1-1982 and was recommended by the Departmental Promotion Committee for such promotion. However, he was actually not promoted in view of the pendency of a criminal case. It is alleged that the applicant was acquitted on 26-8-1986 and that thereafter by the order dated 27-1-1987 he was promoted as UDC with effect from 1-1-1982, but the arrears of pay during the period was not allowed. The applicant prays for a direction to the respondents for grant of arrears. It is urged that the action of the respondents in denying the arrears is illegal.

2. In the reply filed by the respondents, it is contended that the denial of arrears was having regard to the instructions contained in the O. M./31-1-1982 which specifically forbids the payment of arrears, but enables only

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the grant of benefit of seniority and fixation of pay on a notional basis.

3. The applicant has to succeed. The sustainability of the instructions contained in the O.M. relied upon by the respondents was considered by a Full Bench of this Tribunal sitting at Madras in K.Ch.Venkata Reddy and others Vs. Union of India and others (T.A.No.849 of 1986 and connected matters decided on 2-3-1987). It was held that withholding of salary of the promotional post for the period during which the promotion had been withheld, while giving other benefits will clearly violate Articles 14 and 16 when compared with other employees against whom disciplinary proceedings had not been initiated. The operation of the instruction forbidding the payment of arrears was struck down and it was directed that on exoneration, the salary, the person concerned would have received on promotion if he had not been subjected to the proceedings, should be paid along with other benefits.

4. We direct the respondents to pay the applicant the arrears of pay on account of the promotion to the cadre of Upper Division Clerk during the period from 1-1-1982 to 27-1-1987. This shall be done within a period of two months from the date of receipt of the copy of this order.

5. The application is disposed of as above.

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12-9-1991  
MEMBER (A)

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12-9-1991  
VICE-CHAIRMAN.