

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1040 of 1996

Allahabad this the 30th day of August, 2001

Hon'ble Mr.S.K.I. Naqvi, Member (J)

Birendra Kumar Sharma, Son of Shri R.L. Sharma, R/o
28/1 Block II, Arya Nagar, Dehradun.

Applicant

By Advocate Shri Lalji Sinha

Versus

1. Union of India, through D.G.O.F./Chairman, Ordnance Factory Board, Calcutta, 10-A, Auck-land Road, Calcutta.
2. General Manager, Ordnance Factory, Dehradun.

Respondents

By Advocate Shri Amit Sthalekar

O_R_D_E_R (Oral)

By Hon'ble Mr.S.K.I. Naqvi, Member (J)

The applicant has come up seeking relief to the following effect:-

"(a) By means of suitable writ, order quash the order dated 13 Sept. 95 (annexure-1) to this petition and direct the payment of arrears of salary on the basis of refixation with effect from 21.3.1983 as a result of his promotion as Foreman, Ordnance Factory, Dehradun.

(b) To quash the order dated 05.08.96 (annexure-2) to this petition and direct the respondents

.....pg.2/-

S. S. S.

to refix the pension of the applicant on the basis of the fixation of the pay of the application as a result of his promotion as Foreman with effect from 21.3.-1983."

2. In short, the facts giving rise to this application are that while the applicant was posted as Assistant Foreman, he alongwith certain employees of Ordnance Factory, Dehradun were charge-sheeted for gross negligence, failure to maintain absolute integrity and devotion to duty, gross misconduct and conducts unbecoming of a Government servant. The applicant was suspended on 13.04.1977 and charge-sheet was served. The Inquiry Officer found him guilty of charges and the disciplinary authority removed the applicant from service. The applicant also failed before the appellate authority and, therefore, he preferred a Writ Petition before the High Court, which was received in the Tribunal as Transfer Application. Transfer Application was allowed and impugned order of removal was set aside. The Tribunal held that it will be open to the respondents to proceed against the applicant afresh according to law. A review was filed against the operative portion of the Judgment, wherein the Tribunal observed that on setting aside the order of removal, the applicant shall be deemed to have been placed under suspension under Rule 10(4) of the Central Civil Services (C.C.A.) Rules from the date of his removal from the service till he reaches the age of superannuation or till his suspension is revoked by the competent authority, whichever may be earlier. The Tribunal reviewed its order dated 29.04.88 and directed that the interim period shall be regularised in terms of Rule 10(4) of

See

....pg.3/-

C.C.S. (C.C.A.) Rules only in the event of decision to hold further inquiry was taken against the applicant. No further inquiry was held against the applicant and the period was subsequently regularised by an order dated 26.07.1989, and the applicant was given a show-cause notice against the proposal to allow only such pay and allowances as has already been paid to him during the period spent on suspension and for the period 05.06.77 to 04.08.89 as dies-non without duty. The General Manager, Ordnance Factory passed an order dated 30.07.90, directing the payment of arrears of salary for a period of 3 years from the date of re-instatement and to count the rest of the period as on duty for pensionary benefits only. This order was also challenged before the Tribunal, and the O.A. was allowed vide order dated 07.07.1992 and the applicant was held entitled for entire arrears of salary from the date of removal of service till the date of re-instatement. The respondents were also directed to fix the entire pay alongwith entire arrears within the period of 3 months. The respondents passed the order dated 11.11.1992 accordingly. The applicant again filed O.A. No. 715 of 1993 claiming promotion from the date when his juniors were promoted. In reply to O.A. in that O.A. No. 715 of 1993, the respondents made a statement that the applicant's salary had been re-fixed and entire arrears paid, and also that his retrospective promotion was under consideration. The O.A. was decided in the light of this statement with the direction that the applicant's promotion with retrospective effect from the date his juniors were promoted, be considered within a

period of 3 months. In accordance with this direction, the applicant was communicated with order dated 13.09.95 to the effect that he was promoted from the post of officiating Assistant Foreman(Mech.) to the post of officiating Foreman(Mech.) with effect from 21.03.1983 but his pay was to be fixed notionally without arrear of pay or allowances for the period from 21.03.1983 to 31.01.1994. Being aggrieved of this position, the applicant preferred a representation for payment of financial benefits as a result of his retrospective promotion such as hike in the pension and salary thereof, but this prayer was declined and, therefore, he has come up seeking the relief as above.

3. The respondents have contested the case and filed the counter-reply with the mention that the authorities are quite within their competence under rules to promote retrospectively fixing the notional seniority without entitlement for any arrears.

4. Heard Shri Lalji Sinha, counsel for the applicant and Shri Amit Sthalekar, counsel for the respondents. Perused the record.

5. The main point in issue in this matter is as to whether the applicant is entitled to arrears of salary and consequential refixation of his pension during the retrospective notional promotion.

6. Learned counsel for the applicant has relied on Sulekh Chand and Salekh Chand Vs. Commissioner of Police J.T.1995(1)S.C. page 23, wherein it has been

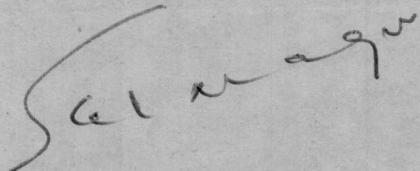
held that "the material on the basis of which his promotion was denied, was the sole ground of the prosecution under Section 5(2) and ^{when} the ground ^{when} did not subsist, same would not furnish the basis for D.P.C. to overlook his promotion. We are informed that the departmental inquiry itself was dropped by the respondents. Under these circumstances, the very foundation on which D.P.C. had proceeded is clearly illegal. The appellant is entitled to the promotion w.e.f. the date immediate junior was promoted with all consequential benefits." With reference to this ratio, the learned counsel for the applicant emphasised that in the present matter also when removal of the applicant, in consequence of disciplinary proceedings, was held illegal and ^{beyond the} ~~out~~ of jurisdiction and the removal order was quashed with provision to proceed afresh as per law, the departmental authorities took a decision not to proceed afresh and allowed the applicant to join and also promoted him as per his claim, the applicant becomes entitled to all consequential benefits including the pay during the period when he remained removed from service. Shri Sinha also invited attention towards the observation made in Union of India Vs. K.V. Jankiraman A.I.R. (1991) S.C. page 2010, wherein F.R. 17(i) of the Fundamental Rules and Supplementary Rules were taken into consideration and the last sentence in first sub paragraph after clause (III) of paragraph 3 of the said memorandum viz. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion" was disapproved and it was directed that in place of said

:: 6 ::

sentence, the following sentence be read in memorandum;

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

7. With the above position in view, , I find the law favours the applicant and he is entitled to salary and other allowances for the period he remained removed, and for which he was allowed notional promotion, and also for consequential benefit in re-fixation of his pension, if not already done. Therefore, the respondents are directed to pass order in the light of above observation within four weeks from the date of communication of this order and make payment of arrears as per entitlement of the applicant, within three months thereafter. The O.A. stands disposed of accordingly. No order as to costs.



Member (J)

/M. M./