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THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH-ALLAHABAD.

T.A. NO. 1252 of 1987.

(W.P. No. 13799/83.)

Lal Bahadur Singh..... Applicant.

Versus

Union of India & others. Opp. Parties.

Hon'ble Mr. Justice U.C. Srivastava- V.C.

Hon'ble Mr. A.B. Gorthi Member (A).

(By Hon'ble Mr. Justice U.C. Srivastava- V.C.)

The applicant has filed a Writ Petition in the High Court at Allahabad and by an operation of law it has been transferred to this Tribunal, prayed that a writ of order or ^{be issued} direction in the nature of writ of mandamus/directing the respondents to decide the case of the applicant within a period two months and pay the entire salary due to him including increment, promotion and all other emoluments which are due to him as they were on 7.7.69 and any other ~~xxx~~ appropriate writ may also be issued.

2. The applicant was employee of Small Arms Factory Kanpur. He was placed under suspension on 7.7.69. An inquiry was started against him in respect of a theft of certain minor items and the applicant was found guilty and an order removing him from service was passed on 1.12.69. The applicant filed a suit in the court of Munsif challenging the said order. The suit was decreed by the trial court in the following tense. "The suit is hereby decreed. Order dated 1.12.69 removing the applicant from service is set-aside. The defendants are directed to reinstate the plaintiff with continuity of service, the costs is made easy on the parties." The respondent filed an appeal which was allowed by the appellate court and the judgment and decree passed by the trial court was set-aside. The applicant filed the second appeal which was allowed by the High Court and the judgment and decree passed by the Munsif was restored.

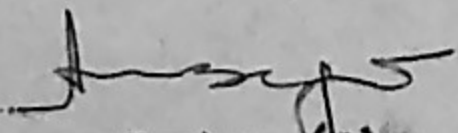
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- 2 -

whereafter the applicant made applications from time to time for the reinstatement and to pay the salary for the intervening period and he was reinstated on 15.2.83. In the reinstatement letter it was mentioned that the applicant will be paid Rs. 89/- as salary in the old scale of Rs. 85 to 128. He made representation against the same pointing out that the juniors have been kept in pay scale of Rs. 380 to 560 and he should also be paid to the same scale of salary and accordingly all other benefits be also given to him as he was to be deemed continuous in service. The applicant went upto the Prime-Minister and ultimately he received a reply, but the applicant did not get any relief and standing in the field and asserting his rights and a letter was sent to him on behalf of the General Manager asking him to give an undertaking that the minimum salary should be accepted Rs. 1010/- provisionally and he should agree to refund the over payment. The applicant refused to give this undertaking. When could not get the relief from the department he filed the Writ petition. The respondents in their counter affidavit apart from justifying the action, they have stated that the judgment of the trial court does not speak about the payment, as such, in these circumstances the matter was referred to the Director General Ordnance Factory Ministry of defence for advised. The applicant was reinstated in compliance of the judgment dated 1.10.82 on 15.2.83. As the advise was pending he was being paid at the rate to which he was entitled to. The applicant's removal order was set-aside, and the applicant was deemed to be continue in service. The position could be as if there was no break in service and the Govt. servant is entitled to get salary ~~for the period during which he was out of service~~ for which there are ample provisions in the Financial Hand Book. It may be that the applicant's suit was decreed on technical grounds that is denial of principle of natural justice. It was for the respondent to take any action in accordance with law. But once it has been held in the judgment and decree passed by the trial court, so affirmed by the High Court. The applicant detained anxiety to the salary as

4/17/92

it cannot be said that he was at fault. The applicant being continue in service, he was entitled to all the benefit including pay scale and grade and other benefits and the respondents have no right to deny the same. After the reference, no reference is needed and in case any reference is needed, he should have been transferred, but that was not done and accordingly this application is allowed and the respondents are directed to pay full salary to the applicant and automatically he was to be reinstated back in service in view of the — declaration in his favour and the date for which they are not to couple from the date of actual reinstatement, is entitled to salary at the same pay scale to which he could have been entitled ^{too,} had there been no proceedings against him. The applicant will also be entitled to other intervening period benefit as if continued in service. Where there was a declaration that the applicant will be deemed to be ⁱⁿ continue service, it was not very necessary to make an observation with effect that he will entitled for salary and accordingly the respondents are directed to pay arrears of salary for the said period at the rate to which the applicant would have been entitled to, in case he continued in service and the pay scale which was given to juniors. The applicant will also be entitled to promotion which could have been given to him without selection. Let all this be done within a period of three months from the date of communication of this order. No order as to the costs.


Member (A).


Vice Chairman.

Dt: May 11, 1992.

(DPS)