

A2
X

Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.882 of 1988

Badruddin Applicant

Versus

General Manager, Ordnance Parachute Factory
and Another Opposite Parties.

Hon. Justice K. Nath, V.C.

Hon. Ajay Johri, A.M.

(By Hon. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for issue of a direction to the respondents to pay the same basic salary to the applicant as his juniors were paid, with a further direction to pay arrears of difference of pay.

2. It appears that the applicant while in employment of the opposite parties as a Tailor was involved in a criminal case under various provisions of the Indian Penal Code e.g. 147, 148, 336, 337, 323, 324, 307, 332, 353 and 397 I.P.C. The criminal case ended in the acquittal of the applicant. Consequently the order of his suspension was revoked on 1.1.86.

3. It appears that during the period of his suspension, some other Tailors who were junior to the applicant, were permitted to appear at the trade test and, having passed the same, were promoted to the post of Tailor 'A' Line Mistry H.S. Grade II (Tailor) in the scale of Rs.1200-30-1440-EB-30-1800. The applicant however was not permitted to appear at the trade test during the period of his suspension. However, after the revocation of his suspension he was allowed to appear at the trade test in which he was successful. He was then promoted as Tailor 'A', Line Mistry H.S. Grade II (Tailor) w.e.f. 1.7.86.

PV

Later on the applicant was given notional seniority w.e.f. 27.9.85 as Line Mistry H.S. Grade II (Tailor) but he was not given salary or arrears for that post w.e.f. that date because of Article 196 of Rule 14 of C.S.R. Vol.I. This Rule inter alia provides that while the incumbent may be given promotion to the first available vacancy with his seniority in the higher grade, it would not affect the pay of the officer which could be fixed under the normal rules as from the date of actual promotion. Since the applicant's actual promotion date was 1.7.86 he was not given salary of fixation of pay at the higher rate w.e.f. 27.9.85.

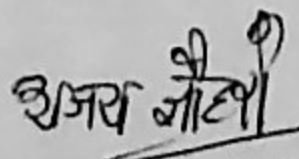
4. The case of the applicant is that the applicant was entitled to the fixation of his salary in the Line Mistry H.S. Grade II in the scale of Rs. 1200 - 1800 w.e.f. 27.9.85.

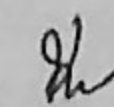
5. ^{the learned counsel} We have heard ~~this~~ at length ~~and after exchange~~ ^{have been exchanged in} of Affidavits between the parties, and since the point involved is a short one we decide the case on the merit as agreed by the counsel for both the parties. The learned counsel for the applicant refers to a decision of a Full Bench of this Tribunal, Hyderabad Bench in the case of K.Ch.Venkata Reddy and Others Vs Union of India and Others reported in 1987 (4) SLR 46 where a similar provision contained in instructions issued by the Govt. of India ⁱⁿ to the Ministry of Home Affairs, Department of Personnel & Administrative Reforms on 30.1.82 and reproduced in para 24 of the report came in question. The provision mentioned that on promotion the officer would get the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course, but no ^{arrears} ~~orders~~ were to be allowed in respect of the period prior to the date of actual promotion. Para 39 of the report says that ^{The} Full Bench struck down such portion of the

instructions dated 30.1.82 which said that no ^{arrear} orders were to be allowed in respect of the period prior to the date of actual promotion. In the operative portion, orders were passed for payment of salary for the period during which promotion was withheld with all consequential benefits in case the officer was completely exonerated in the disciplinary or criminal proceedings.

6. We think that the present case should fairly follow the same line of decision. After all, the applicant was prevented from appearing in the trade test during the period of suspension for no fault except ^{that} he was involved in a criminal case and was under suspension. He was successfully in the trade test when it was held next immediately after the revocation of the suspension order. It appears to us therefore that the applicant was deprived of his rightful promotion for no fault of his and therefore he should have been given not only the notional seniority w.e.f. 27.9.85 but also the fixation of his salary in the promotion post w.e.f. that date and arrears of salary for the subsequent period.

7. The petition is allowed and it is directed that the salary of the applicant in the post of Line Mistry H.S. Grade II in the scale of Rs.1200-30-1440-EB-30-1800 shall be fixed at the same rate at which the person next junior to him in the same grade was drawing salary as on 27.9.85. We further direct that the opposite parties shall give the arrears of salary on these lines w.e.f. 27.9.85. The opposite parties will implement this direction within a period of three months from the date of the receipt of ^a the copy of the judgement.


Member (A)


Vice Chairman

Dated the 25th April, 1989.

RKM