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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 1709 of 1993

ALLAHABAD this the 61st day of Sep 1995

Hon'ble Dr. R.K. Saxena, Member (J)

Virendra Kumar, A/a 51 years, S/o Shri Badri Prasad, R/o 288, Sheo Katra, Harjinder Nagar, Kanpur, presently posted as Painter Highly Skilled Rade-I, C.P. Bay, No. Hanger 29 Equipment Depot, Air Force Station, Chakeri, Kanpur.

APPLICANT.

By Advocate Shri N.K. Nair
Shri M.K. Upadhyaya

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Air Officer Commanding-in-chief, Head Quarters, Maintenance Command, Nagpur.
3. Officer Commanding, 29 Equipment Depot, Air Force Station, Chakeri, Kanpur.

RESPONDENTS.

By Advocate Shri N.B. Singh

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J)

In this third round of litigation, the applicant has approached the Tribunal challenging the order (Annexure A-1) by which the arrears of the salary on his being promoted were refused.

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2. The brief facts of the case are that the applicant joined employment under the respondents as Painter on 18.12.1961. He was made quasi-permanent and subsequently confirmed vide order dated 31.12.1980. Other persons who were junior to the applicant, were given promotion and their seniority was fixed over and above the applicant. Therefore, he challenged the seniority and non-promotion of himself by filing O.A. No.239 of 1987, which was decided by this Bench on 18.12.1991. The directions were given to the respondents to correct the seniority list and place the applicant above the persons who were junior to him in the seniority list of Skilled Painter. The directions were further given that the applicant should not be deprived of the benefits of the seniority and he also be given promotion with retrospective effect. The respondents moved Review Application which was rejected on 06.7.1992. It appears that the compliance was not made and, therefore, the applicant had moved Contempt Application which was disposed of on 28.4.1993. The main contention of the applicant in the Contempt case was that his salary instead of being increased by getting promotion, was decreased. The Tribunal while disposing of the Contempt Application directed the respondents to consider his claim for increased salary and payment of arrears within a period of 2 months from the date of communication of the order. They were further

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directed to consider the representation of the applicant made in that behalf. The Contempt Application was consigned and notices were discharged.

3. It appears that the arrears of the pay were not given to the applicant and, therefore, this third round of litigation, was started. The contention of the applicant is that on promotion to the post of Painter H.S.II and thereafter in H.S.I w.e.f. 15.10.1984 and 15.10.1985 respectively, the pay & should have been fixed in higher grade. The respondents had issued orders Annexure A.13 and A-15, the pay which was fixed at Rs.362/- in the grade of Rs.330-480 for the post of H.S. Grade II and Rs.392/- in the grade of Rs.380-560/- for the post of H.S. Grade I, was subsequently reduced to Rs.354/- and Rs.380/- respectively by Annexure A-4. The said reduction in pay continued when the new scales were introduced. According to the applicant, his pay should have been equivalent to the pay of Shri P.L. Srivastava who was junior to him as Painter and also continued junior to him in H.S. Grade II and H.S. Grade I by Judgment of this Tribunal. He is, therefore, demanding correct fixation of pay and arrears of the pay on promotion.

4. The respondents contended that the pay of the applicant was correctly fixed. The matterpg.4/-

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was referred to the Department of Personnel and Training, Public Grievances which opined that this applicant was not entitled to arrears because the Tribunal had given no such directions. It is also contended that notional promotion was given to him and thus, he cannot claim arrears of pay w.e.f. 15.10.1984 of H.S. Grade II and 15.10.85 of H.S. Grade I. He was allowed to be given the higher salary from the date when he actually assumed the work of higher post. It is also contended that since the applicant had not actually worked on that post from the date as put up in the claim, therefore, he cannot get the salary on the principle of 'No Work No Pay'. The contention of the respondents is also that the application be dismissed.

5. I have heard the learned counsel for the parties and perused the record.

6. Before dealing with the present dispute, it would be proper and necessary to go through the Judgment in O.A. 239/87 in which the seniority and the promotion was claimed by the applicant. He succeeded in the O.A. and the respondents were directed to correct the seniority in the list within a period of 3 months. It was further directed that the applicant should not be deprived of the benefit of the seniority and giving him promotion with retrospective effect. Because the compliance

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was not done, the applicant has also moved Contempt Application and in disposal thereof, the Tribunal had reiterated the view taken by ^{it} ~~the~~ Tribunal in the original case that the applicant was also entitled to the increased salary. The operative portion of the order in Contempt Application is as follows;

"Accordingly, the respondents are directed to consider the claim of the applicant after his promotion for his increased salary and arrears within a period of 2 months from the date of communication of this order and they will also consider the representation of the applicant made in this behalf. With the above direction, the Contempt Application is consigned. Notices are discharged."

It is clear that the ^{intention} ~~intimation~~ of the Tribunal was, that the applicant on his being promoted, shall get increased salary and arrears. Despite this observation, the learned counsel for the respondents came with the plea that neither there was any observation of giving increased salary of the Tribunal nor was the applicant ^{however,} entitled for the same. It is, ^{also} clear that seniority of the applicant was restored. It means that he was placed over and above Shri P.L. - Srivastava. It is also clear that the promotion to the post of H.S. Grade II and H.S. Grade I was also given by the respondents. The connotation of the promotion carries higher salary also. Their Lordships of Supreme Court in 'Tarsem Singh and another Vs. State of Punjab and Others 1994(4) S.L.R. 577' had observed while elaborating

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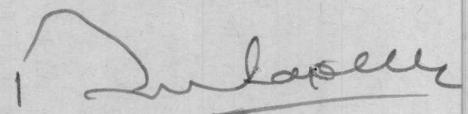
the concept of promotion. Their Lordships said that promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position, grade or honour. In view of this observation of their Lordships of Supreme Court, the respondents cannot be allowed to take shelter that, no doubt, promotion was made on the directions of the Tribunal with retrospective effect but, the salary could not be given from that date. The applicant himself was not at fault for not being promoted. It was inaction of the respondents themselves and for that he cannot be allowed to suffer for no rhyme or reason.

The result, therefore, is that the respondents will have to make ^{payment of} arrears of salary for the post of H.S. Grade II w.e.f. 15.10.1984 and of H.S. Grade I w.e.f. 15.10.1985.

7. It appears from the pleadings of the parties that the salary of the applicant was fixed erroneously vide Annexure A-13 and was corrected vide Annexure A-14. It is well settled law that even if, pay is fixed erroneously to a higher amount, it can be reduced but in such a situation the aggrieved employee should be given an opportunity of being heard. The said step has not been adopted by the respondents while issuing order Annexure A-14.

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8. The respondents are, therefore, directed to hear the applicant about fixation of salary from the period 15.10.1984 and after it is fixed, the increased salary shall be paid w.e.f. 15.10.1984. The O.A. is disposed of accordingly. No order as to costs.



Member (J)

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