

Ar  
12

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 143 of 1994

This 24th The Day of November, 1994

Dr. Vishwabir S/O Shri Mahabir  
R/O 105/36 Prem Nagar, Kanpur

.... .... Applicant.

By Advocate Shri B.N.Rai

Versus

Union of India & Ors.

.... .... Respondents.

By Advocate Shri

Coram:

Hon'ble Mr. T.L.Verma, Member-J  
Hon'ble Mr. S.Dayal, Member-A

O R D E R

By Hon'ble Mr. T.L.Verma, Member-J

This application has been filed for issuing a direction to the respondents to disburse regular pay to the applicant w.e.f. the date of his reinstatement and also accord scale of Senior Medical Officer to him after giving him time bound promotion w.e.f. 8.5.1977 with all consequential benefits.

2. The case of the applicant in short is that he was appointed as Assistant Medical Officer w.e.f. 11.7.1969. He was confirmed on the said post w.e.f. 8.5.1977. His services, however, were terminated w.e.f. 5.4.1982. The applicant filed Civil Suit No. 561/82 in the Court of Munsif Kanpur city challenging the validity of the order whereby his services

Ar  
3

::2::

have been terminated. The suit filed by the applicant was decreed. The respondents went in appeal against the said judgement before the District Judge, Kanpur. The decree passed by the Munsif in favour of the applicant was upheld by the Appellate Court vide order dated 3.9.1985 vide Annexure-2. Second appeal filed against the decree passed by the District Judge is pending in the High Court. The applicant moved a petition in the High Court for staying the operation of the order of judgement in decree passed by the Appellate Court was rejected against which SLP No. 14390/88 was filed in the Supreme Court and the same was dismissed by order dated 10.1.1989.

3. It is stated that inspite of dismissal of the petition of the applicant to stay the operation of the judgement and decree passed in the Civil Suit filed by the applicant, the respondents/neither allowed the increments to the applicant nor paid arrears and also did not promote him to the post to which promotion had become due and also did not pay graduate allowance and other fringe benefits, such as Leave Encashment, LTC also not allowed. The applicant, therefore, filed O.A. No. 600/89 for directing the respondents to give effect to the judgement and decree passed in his favour by the Civil Court. The said O.A. was disposed of on 22.1.1992 with the following directions;

124  
::3::

An application has been filed on behalf of the applicant in which it has been stated that the decree has been executed and the applicant has been reinstated back in service. The learned counsel for the respondents has admitted that he has been instructed to state that the applicant has been reinstated in service and the amount which has been deposited in the Court, may be available to him, in case he moves an application on withdrawal of the same. The respondents are directed to consider his place in the seniority list and let the seniority list may be provisionally within a period of 2 months, the respondents will consider the applicant for provisional post without any prejudice. A copy of the order may be issued within a period of one week.

4. It is stated that the respondents have neither given the benefit of increment to the applicant nor has been given time bound promotion despite the direction of this Tribunal in O.A. No. 600/86 and repeated representations filed by the applicant in that behalf. Hence, this application for the reliefs mentioned above.

5. The second appeal filed against the judgement and decree passed in the Civil Suit filed by the applicant is pending in the High Court. That being so, the judgement and decree passed in favour of the applicant has not yet become final. The reinstatement of the applicant on the post of Assistant Medical Officer therefore, shall/subject to the final outcome of the second appeal that is pending before the High Court.

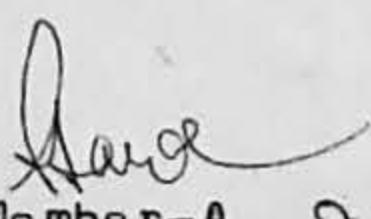
SK

AR  
K  
::4::

6. This Tribunal by its order dated 22.1.1992 passed in O.A. 600/86 directed the respondents to assign seniority to the applicant in the seniority list provisionally and also consider him for provisional post. The above directions to assign provisional seniority and give promotion provisionally/obviously given <sup>was</sup> because second appeal against the judgement and decree in favour of the applicant is pending in the High Court.

7. In view of the fact that the case of the applicant on the same cause of action for almost similar benefits has already been finally disposed of with the direction as quoted above, in our opinion, no fresh case for the same cause of action is ~~not~~ maintainable. The grievance of the applicant is that the respondents have failed to comply with the direction given by this Tribunal in O.A. No. 600/86 despite repeated representations made by him. In the facts and circumstances of the case, the proper course open to the applicant was to have moved this Tribunal for proceeding against the respondents for contempt of Court for alleged breach of the directions given.

8. In view of the above, we find that this application is not maintainable and is accordingly dismissed. It is expected that the respondents will consider and dispose of the representations filed by the applicant if not already disposed of.

  
Member-A

24.11.94

  
Member-J

/jw/