

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 26th day of Nov.2001.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. RAFIQUDDIN, J.M.

O.A. NO.1121 of 2000.

1. Sri Surendra Nath s/o Late Jagdish Ram r/o Q.No.226/4,
Juhi Lal Colony, Kanpur... ... Applicant.

Counsel for applicant : Sri R.K. Shukla.

Versus

1. Union of India through the Secretary, Ministry of Defence,
Department of Defence Production, Govt. of India, New Delhi.
2. The Addl. Director General of Ordnance Factories, O.E.F.
Group Factories Headquarters, G.T. Road, Kanpur.
3. The General Manager, Ordnance Equipment Factory,
Kanpur... ... Respondents.

Counsel for respondents : Sri R.C. Joshi.

O R D E R (ORAL)

BY HON. MR. S. DAYAL, A.M.

This application has been filed for setting aside the order of respondents dated 19.3.00 and direction to the respondents ^{to grant} ~~of~~ financial benefits of promotion to the ^{grade} ~~post~~ of Fitter Auto A grade ^{w.e.f. 16.6.75} and fitter Auto Highly Skilled Grade I w.e.f. 10.3.83 respectively. A prayer has been made that the pay of the applicant be ~~refixed~~ ^{fixed} on reinstatement ~~to~~ ⁱⁿ service and thereafter on promotion to Fitter Auto A Grade and Fitter Auto Highly Skilled Grade I and ~~revised~~ ^{fixed} the pensionary benefits accordingly fixing the pay equal to his juniors and pay the difference of pensionary benefits.

2. We have heard the arguments of Sri R.K. Shukla for the applicant and Sri R.C. Joshi for respondents.

3. By order dated 19.3.00, the applicant has been ^{informed} ~~informed~~ that in pursuance of the order by the Tribunal dated 2.11.95, the applicant has been paid salary and allowances including arrears amount to Rs.1,00,632/= and that he has

been promoted from the date his juniors were promoted on notional basis. It has also been mentioned that the applicant had not worked on the higher post during the period of his service and, therefore, his promotion was on notional basis and he was entitled to the benefits of notional promotion in his pensionary benefits.

4. We find from the counter reply of the respondents that although it has been claimed that arrears of pay and allowances of productivity linked bonus from 20.2.80 to 31.8.87 have already been paid to the applicant, ^{it} is also stated that the action was in hand for notional pay fixation and grant of pensionary benefits. Counsel for the applicant states that the said benefits have still not been given to the applicant.

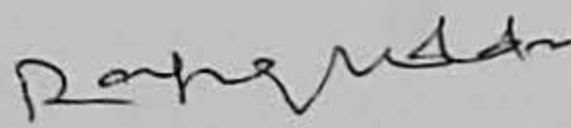
5. Counsel for applicant has raised two issues. The first of this is that the applicant should be paid his consequential benefits, actual pay and allowances of the higher post which the applicant should have been promoted while he was in service as he was completely exonerated in disciplinary proceedings. The Counsel for the applicant have sought to rely upon the judgement of the Apex Court in Union of India Vs. K.V. Janki Raman AIR 1991 S.C. 2010. The Counsel for applicant has drawn the attention to the following part of the judgement :-

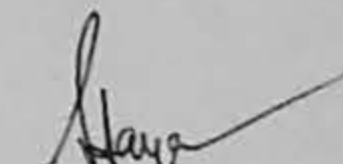
"We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings."

6. We, however, find in the case before us that the order of compulsory retirement of the applicant was set aside by order dated 2.11.95 on the ground that the said order was passed without holding any enquiry and, therefore, was not sustainable in law. It appears that

the applicant has provisionally worked in one B.R.Q. Air Force Station, Kanpur, and was removed from there on a disciplinary action. He subsequently joined ordnance equipment Factory, Kanpur and the respondents on finding that the applicant has concealed his real name and the facts of his service being terminated, passed the impugned order without holding any enquiry. Under such circumstances we ^{do} not consider ^{the} applicant ^{to be} ~~is~~ entitled to anything ^{other} than notional ^{benefit} ~~promotion~~ for the promotions, which were due to him and which have been given by the respondents on the basis of date of promotion of his juniors.

7. However, the respondents have delayed the fixation of pay on notional basis and payment of retirement benefits on the basis of the pay so amended. Paragraphs 7 and 10 of the counter reply clearly indicate this fact. The respondents are directed to fix the pay of the applicant on notional basis and pay the arrears to the applicant within a period of two months along with interest at bank rate prevailing now. There shall be no order as to cost.


J.M.


A.M.

Asthana/