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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.294 of 1989

Date of decision : January 11, 1990.

Shri Binod Behari Sahu,
Assistant Foreman, Proof &
Experimental Establishment,
Chandipur, Balasore.

... Applicant.

Versus

1. Union of India, represented through
the Director, Armament Research &
Development Estt. Armament Post Pashan,
Pune.

2. Commandant, Proof Experimental
Establishment, Chandipur, Balasore.

... Respondents.

For the applicant ... Mr. B. K. Sahu, Advocate.

For the respondents ... Mr. Ganeswar Rath,
Sr. Standing Counsel (Central)

C O R A M:

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to
see the judgment ? Yes.
2. To be referred to the Reporters or not ? *74*.
3. Whether His Lordship wishes to see the fair copy
of the judgment ? Yes.

JUDGMENT

N.SENGUPTA, MEMBER (J) In this application the reliefs prayed for are a direction to the respondents to give him the monetary benefits due to him (the applicant) with effect from the date of his promotion to the grade of Assistant Foreman including the subsequent increments and the seniority in consequence of such promotion.

2. The material facts, shorn of unnecessary details, may be stated thus. The applicant entered into service under the Proof & Experimental Establishment, Balasore on 26.12.1959 as a Supervisor Grade III and then he was promoted to the next higher grade. There was mistake in fixation of his seniority and for this he made representations which did not bear any fruit but however in 1987 the Director General of Research and Development issued a direction to the concerned authorities to amend the seniority list prepared and give the applicant proper place in that seniority list whereafter to convene a review Departmental Promotion Committee to consider his (applicant's) case for promotion to the next higher grade. Thereafter, a review D.P.C. was infact convened and an order promoting the applicant as Chargeman Grade I was passed on 20.7.1988 in which it was mentioned that the applicant was notionally promoted with effect from 15.3.1983 as Assistant Foreman in the scale of pay of Rs.700-900/-P.M. (Re-revised scale). Copy of this promotion order is at Annexure-I. In that order it was mentioned that the antedated promotion would be notional and pay on such promotion would be fixed notionally. The monetary benefits would be admissible to the

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applicant with effect from the actual date of assumption of charge of the higher post and notional with effect from 25.5.1988 i.e. the date of issue of promotion order. In accordance with this Annexure-I, an order dated 22.3.1989 (Annexure-2) was passed fixing the pay of the applicant. Against this order the applicant made a representation on 10.4.1989 but the said representation remained undisposed of. On these allegations, the reliefs above said have been prayed for.

3. The respondents in their counter have not disputed the mistake in fixing the seniority of the applicant in the gradation list of Chargeman Grade II nor about the instructions subsequently given to restore the seniority of the applicant in that grade. They have also not controverted the other allegations of the applicant about the convening of the review the meeting of the Departmental Promotion Committee and the passing of the promotion order to Assistant Foreman with effect from 15.3.1983 but however they have taken the stand that in view of the Government of India's decision in Ministry of Home Affairs, Office Memorandum No.20011/1/77-Estt(D) dt.19.4.1978 the applicant is not entitled to claim any monetary relief or benefit anterior to the date when he actually joined in the grade to which he was promoted.

4. I have heard Mr. B.K. Sahu, learned counsel for the applicant and Mr. Ganeswar Rath, learned Senior Standing Counsel (Central) for the respondents. From the pleadings it would be manifest that the short question for consideration is whether the Department can deny the applicant the benefit of drawing salary in the promotional grade with effect from 15.3.1983

*Mr. Sahu
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till he actually joined in the post of Assistant Foreman.

Annexure-R-1 is the letter of the Ministry of Defence, Research & Development Organisation and from it, it can be found that direction was given for restoring the seniority of the applicant as reflected in the seniority roll of 1980. From Annexure-R/2 it would be found that the applicant joined the post of Assistant Foreman reserving to himself the right to claim arrears and other service benefits with effect from 1969. A copy of the rule has been made Annexure-R/3 to the counter. The applicant, as has been stated above, has claimed the relief basing on his promotion to the grade of Assistant Foreman with effect from 15.3.1983. Therefore, it is not permissible to go anterior to that date to examine if the applicant is entitled to any arrears prior to that date. From Annexure-R-1 it would be manifest that the applicant could not get his promotion due to the fault in fixing his seniority. To put it in other words, the applicant was deprived of the benefit of earlier promotion for no fault of his. Learned counsel for the applicant has cited some decisions on the question at issue to which reference is being made a little below. First, the implications of the Government of India's letter referred to by the respondents may be examined.

5. On reading the aforesaid letter it would be found that one Office Memorandum was issued on 22.7.1972 with regard to determination of the seniority on the length of service instead of ~~on the basis~~ the date of confirmation in respect of those who were appointed prior to 22.12.1959. That being the subject matter of that Office Memorandum relied on by the respondents and as the applicant was appointed first, after

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that date, the Office memorandum cannot really apply to the case of the applicant. That apart, it would also be apparent on reading the letter that it covered cases of those persons who were promoted after revision of their seniority between 4.1.1972 and the date of issue of that office memorandum i.e. 19.4.1978. In the first paragraph of that office memorandum it would be found that the pay of the person concerned would be notionally fixed with effect from 4.1.1972 if he was found fit to be promoted on that date. The second paragraph clarifies that in respect of such of the employees as had been promoted after 1.1.1973 the pay on the actual date of promotion shall be determined as if they had been promoted from 4.1.1972 and by further applying the Central Civil Services (Revised Pay) Rules, 1973 with effect from 1.1.1973. On reading these two paragraphs it would be found that the Office memorandum really meant to cover cases of promotions between 4.1.1972 till the date of issue of that memorandum i.e. 19.4.1978. Therefore, this Office memorandum cannot cover the case of a promotion after 19.4.1978. Apart from that, it is to be noted that the applicant was entitled to promotion with effect from 15.3.1983 and had not the Department committed a mistake, he would have been promoted on that date and would have ~~become~~ begun to draw the pay attached to that grade. After the coming into force of the Administrative Tribunals Act, 1985, all claims relating to service matters are cognizable only by the concerned Administrative Tribunal and not by any other Court or Tribunal except of course, the Industrial Tribunal and the Labour Court. In common law a person has a right to claim ~~for~~ compensation for the injury sustained by him by the act of the defendants, therefore, even taking the case

*Mani Sehgal
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to be one for compensation for the injury caused to the applicant, this Tribunal has jurisdiction to grant appropriate relief. Learned counsel for the respondents has drawn my attention to F.R.17 and has contended that there being a specific rule with regard to drawal of pay only on the assumption of duties, of a particular post the claim of the applicant for the period from 15.3.1983 till the actual date of his joining cannot be entertained. Fundamental Rule 17 is a general provision and, in my opinion, it cannot cover the cases of the nature as the present one. What F.R.17 really provides for is that a person unless he assumes charge of a post, he cannot draw pay and allowance attached to that post, F.R.17 really covers cases where the Government servant concerned has an option and possibly cannot cover the case where the Government or its Officers by their act delayed or debarred the concerned Government servant from assuming the Office. The word 'allowance' used in F.R.17 is really of some significance because there are posts to which special pays or allowances are attached and unless a particular person holds that post, he cannot be entitled to such special pay or allowance.

6. Now a reference to the cases cited by learned counsel for the applicant may be made. In the case of Alappat Narayana Memon v. State of Kerana reported in 1977(2)SIR 656 it was ruled that when a person was ignored earlier for promotion because of mistake committed by the Government and subsequently he was given notional promotion with retrospective effect without material benefits, he cannot be denied the arrears of salary. No doubt, that case was not one governed by Fundamental Rules but the underlying principle decided therein would apply

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even to a case of a person governed by the Fundamental Rules and Supplementary Rules. The decision of the Punjab & Haryana High Court in the case of D.S.Grewal versus The Union of India and another reported in 1980 (1)SIR 390 really covers a case of the present nature. In that case, the applicant was an officer of the Indian Police Service cadre, though the officer was eligible for promotion he was not promoted. There the Punjab & Haryana High Court observed that the incumbent could be adjusted against a supernumerary post and he was entitled to all the consequential benefits even though he might not have actually performed the duties of the higher post. I am in respectful agreement with the decision of that High Court.

7. In view of what has been stated above, the applicant is entitled to the amount that he would have got had he actually been promoted on 15.3.1983 and held charge of the post of Assistant Foreman. Since the applicant's claim could be made only after the issue of the order of his promotion in 1988, there could be no question of any limitation, even though the period for which the arrears are claimed spreads over more than three years. This application stands allowed and as the applicant has been driven to seek his redress in this Tribunal he is entitled to costs which I assess at Rs.200/-. The payment of the amount calculated as indicated above be made within four months from the date of receipt of a copy of this judgment.

Alka Singh
11-1-90
Member (Judicial)

Central Admn.Tribunal,
Cuttack Bench, Cuttack.
January 11, 1990/Sarangi.