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O.A.NO.260 OF 2000.

Dolagovinda Prusti.

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Applicant.

-Versus-

Union of India & Others.

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Respondents.

12. ORDER DATED 05-09-2001.

Heard Shri P.K.Chand, learned Counsel for the Applicant and Shri S.Ray, learned Additional Standing Counsel appearing for the Respondents and have also perused the records.

2. In this Original Application, the Applicant has prayed for fixing his pay in the post of Engineering Black Smith (in short EBS) Gr.III w.e.f. 10-11-1993 till the next date of promotion and pay the benefit according to the Estt. Sl.No.135/99. His second prayer is that on promotion to the post of EBS Gr.II w.e.f. 2.7.99, his pay should be fixed in the scale of EBS Gr.II i.e. Rs.4000-6000/- and his third prayer is for getting the arrears alongwith interest.

3. Respondents have filed counter opposing the prayers of the Applicant. Applicant has filed rejoinder and Respondents have filed reply to the rejoinder. Learned counsel for the applicant wanted time to obtain instruction with regard to the averments made in the reply to the rejoinder. As we have indicated that any new facts urged in the rejoinder and reply to the rejoinder, will not be taken into consideration the prayer for adjournment made by learned counsel for the Applicant is rejected and the matter is taken up for hearing.

J. Nam.

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4. For the present purpose, it is not necessary to go into too many facts of this case.

5. So far as the first prayer of the applicant for fixing his pay in the scale of EBS Gr.III from 10.11.1993, Respondents have stated that the pay of the applicant has actually been fixed and payments made on 22-8-2000. It is also submitted by learned counsel for the Applicant that he has received the payment. The only point to be noted in this connection is that fixation of pay in the grade of EBS Gr.III which is admittedly due to the applicant was done 7 years after the amount became due. Applicant was promoted in 1993 and pay fixation was done only in 2000 presumably after getting the notice of the present O.A. but as in the instant case this prayer has already been met, it is not necessary to deal further with the matter. Jjm.

6. Second prayer of the applicant regarding payment of his salary in EBS Gr.II. Applicant. For being promoted to the post of EBS Gr.II, he is required to pass a Trade Test. He has passed the said Trade test as it appears from the result of the Trade Test published at Annexure-2. It is submitted by learned Additional Standing Counsel that in Annexure-2 it has been mentioned that the above passing of the trade test is subject to the clearance of pending vigilance case, disciplinary and appeal cases, if any. We do not see any relevance between pendency of a vigilance case and disciplinary and appeal cases with regard to passing of the applicant in the Trade test. Trade Test is

Jjm.

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conducted for judging the technical suitability of a person for promotion to higher post. After a person appears in a Trade test, he either passes or fails. His passing of Trade Test can not be stopped due to pendency of disciplinary Proceedings against him. In view of this, it must be held that the fact that the applicant has passed the Trade test and the result ^{as} ~~has~~ notified in the order at Annexure-2, ^{as per} ~~is~~ independent of pendency of any disciplinary proceedings against him. We declare accordingly.

7. Applicant's case is that in order dated 2-7-99 at Annexure-3, he was promoted from the grade of EBS Gr.III in the scale of Rs.3050-4590/- to the post of EBS Gr.II in the scale of Rs.4000-6000/- and he was posted in the same place in an existing vacancy. Applicant accordingly gave his joining report on 7.7.1999 which is at Annexure-4. Applicant's grievance is that even though he had joined in the promotional post his pay has not been fixed in the higher scale. Respondents have stated that as departmental proceedings are pending against him even though he was ordered to be promoted his promotion ~~was~~ was not given effect to, and even after the applicant joined ^{ed} in the higher post, no higher responsibility has been allotted to him. We are not prepared to accept this proposition because if disciplinary proceedings are pending against him the appropriate course of action

S.S.M.

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would have been not to promote the applicant and await the result of the disciplinary proceedings. We are also not prepared to accept the proposition that even after the promotional order has been issued and after the petitioner joined the promotional post and worked there he was not entrusted with responsibility of the higher post. Even if it is taken for argument sake that the applicant after his joining as EBS Gr.II was not entrusted with the responsibility of EBS Gr.II, even then

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with any it must be held that the decision not to entrust ~~any~~ *the applicant*
even higher responsibility, though he was appointed to higher

post, ~~and for this on that ground~~ the pay of the promotional post can not be withheld from him. Respondents have stated that in February, ²⁰⁰⁰ ~~1992~~ they issued a corrigendum to the order dated 2.7.1999 stating that persons who have been promoted to higher grade will not get the salary of higher grades till disposal of the disciplinary proceedings against them. They have also stated that the Disciplinary Proceedings were pending against the applicant at that time, *on* the conclusion of which he was visited with punishment of stoppage of increment. As the applicant has been given promotion notwithstanding ~~with~~ the pendency of the disciplinary proceedings and as the applicant has joined the higher post, the pay of the promotional post can not be denied to him. In view of this, we direct that the applicant should be allowed the scale of pay of the post of EBS Gr.II from the date of his joining on 7.7.1999. This prayer of the applicant is disposed of accordingly.

S. S. Sharma

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3. The third prayer of the applicant is for payment of interest. Learned counsel for the applicant has prayed for payment of interest on both items for payment of his salary and arrear as EBS Gr. III and payment of interest on arrears in respect of his salary in EBS Gr. II. So far as arrears of salary in the grade of EBS Gr. II ^{are concerned} we note that the Respondents ^{were} under a general misconception with regard to implementation of the order dt. 2.7.1999 and in view of this the prayer for interest in respect of arrears of payment of salary in the rank of EBS Gr. II is held to be without any merit and is rejected. But so far as payment of interest in respect of arrear salary in the grade of EBS Gr. III is concerned, from the counter of the Respondents it is absolutely clear that the applicant was entitled to the fixation of salary under FR 22(c) and on the filing of the application he has been allowed the arrears. Respondents have not indicated any reason why the salary was not fixed and paid earlier in accordance with Rules when he was given promotion to EBS Gr. III. In view of this, because of the delay, we direct that the Respondents should pay ~~to~~ the applicant interest at the rate of 12% per annum w.e.f. passing of six months from the date of his joining as EBS Gr. III till the date of actual payment. This exercise should be done within a period of 90 days from the date of receipt of a copy of this order.

J. Jom.

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9. In the result, therefore, the Original Application is partly allowed. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.

Free copies of final
order dt. 5.9.01
issued to counsel
for both sides.

28/9/01

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S.O.C.T)