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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 250/89

Transfer Application No:

DATE OF DECISION: 18.10.1994

Dr. P.C. Ahluwalia

Petitioner

Shri G.S. Walia

Advocate for the Petitioner

Versus

Union of India & Ors.

Respondent

Shri S.C. Dhawan

Advocate for the Respondent(s)

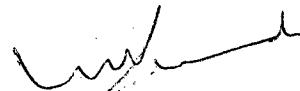
CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(P.P. SRIVASTAVA)  
MEMBER (A)

  
(M.S. DESHPANDE)  
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

OA.NO. 250/89

Dr.P.C.Ahluwalia

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande  
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri G.S.Walia  
Advocate  
for the Applicant

Shri S.C.Dhawan  
Advocate  
for the Respondents

ORAL JUDGEMENT

Dated: 18.10.1994

(PER: M.S.Deshpande, Vice Chairman)

By this application, ~~applicant~~ seeks restoration of his seniority vis-a-vis his junior Dr.Kundu and monetary benefits including stepping up of pay and pension on that basis.

2. The applicant had joined Railway service on 16.8.1963 as a Divisional Medical Officer and was working from 1974 to 1979 as Medical Superintendent. A departmental enquiry came to be conducted against him and as a result thereof a penalty of reduction in the pay from Rs.2,000/- to Rs.1800/- in the pay scale of Rs.1500-2000 for a period of two years without cumulative effect was imposed on the applicant. When the question of promotion to Level II ~~arose~~ the applicant's immediate junior Dr.Kundu came to be promoted on 27.8.1981 while the applicant who was undergoing the punishment from 28.12.1982 to 1.1.1985 came to be promoted on 7.6.1985. When the question of promotion from Level II to Level I came up Dr.Kundu came to be promoted w.e.f. 12.11.1984

while the applicant came to be promoted w.e.f. 1.10.1986.

The applicant's contention is that since the punishment of reduction was to be without cumulative effect, he will be entitled to the same benefits as Dr.Kundu.

3. Shri Walia, learned counsel for the applicant drew our attention to the decision of this Bench in OA.NO. 262/88 Pratapsingh Chaudhary vs. Union of India & Ors. decided on 29.3.1994, where it was held relying on earlier decision of Principal Bench in Prem Singh Verma vs. Union of India (1993) 24 ATC 222 that ~~when~~ the penalty was reduction for a period without cumulative effect, the employee will be entitled to be fixed ~~notionally~~ at the stage which would have been reached had the penalty ~~not been imposed and the benefit of fixation~~ of pay and emoluments came to be granted to the applicant therein. Reference was also made to the decision of the Supreme Court in Md.Habibul Haque vs. Union of India & Ors. Judgements Today 1994 (5) S.C. 356 where a similar view was taken and it was held that reduction of scale of pay shall not have the effect of reducing seniority nor it would mean a punishment of reduction of seniority of any placement to which the applicant was entitled.

4. The contention on behalf of the respondents was that the applicant would not be entitled to the same treatment as Dr.Kundu at the stage of Level-I. Shri Walia, learned counsel for the applicant, however, stated very fairly before us that the applicant ~~could~~ <sup>does</sup> not press for equivalence with Dr.Kundu at the stage of Level-I and <sup>he</sup> would be content to have the pecuniary benefits as would accrue to the applicant on the basis of his placement in the seniority of Level-II.

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5. In view of the decisions to which we have referred, there is no difficulty in granting to the applicant the same benefits which came to be granted to Dr.Kundu at the Level-II and on the basis of ~~same~~ <sup>those</sup> benefits granting him notional fixation in Level-I. We are making it clear that the applicant would not be entitled to equation of pay with Dr.Kundu at the stage of Level-I but only to an initial higher pay if he would be entitled to the same on the basis of increase in the pay in Level-II when he come over to Level-I. Since the applicant has retired on 28.2.1987 and the present application was filed on 3.4.1989, though the applicant would be entitled to notional fixation of his pension, he would not be entitled to any arrears of either pension or pay for the period earlier than 3.4.1988. We direct the respondents to work out the applicant's benefits on ~~this basis~~ and pay him the arrears ~~within~~ within four months from the date of communication of this order. Needless to say that the pension of the applicant will be revised on the basis of observations we have made above.

  
(P.P.SRIVASTAVA)  
MEMBER (A)

  
(M.S.DESHPANDE)  
VICE CHAIRMAN

mrj.