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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A.NO.1026 /2003

Friday, this 17th day of October, 2003

**Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A.Singh, Member (A)**

Shri Ashok Kumar Sharma,
S/o Ram Kumar Sharma,
R/o House No.154, Kucha Ghasi Ram,
Chandni Chowk, Delhi,
working as L.D.C.in the Regional Office
of Employees Provident Fund Organisation,
8th & 9th Floor, Mayur Bhawan,
Connaught Circus, New Delhi-110001.

...Applicant

(By Advocate: Shri T.C.Aggarwal)

Versus

1. Central Provident Fund Commissioner,
Employees Provident Fund Organisation,
Bhavishya Nidhi Bhawan,
Bhikaji Cama Place, New Delhi-110066.
2. Regional Office,
Employees Provident Fund Organisation,
8th & 9th Floor, Mayur Bhawan,
Connaught Circus, New Delhi-110001.
3. Deputy Chief Producer,
Films Division, 5th Floor,
Soochna Bhawan, Lodhi Road,
New Delhi.

...Respondents

(By Advocate: Sh. V.S.R.Krishna for Respondents 1 & 2)
Sh. R.P.Aggarwal, for Respondent No.3

O R D E R (ORAL)

Shri Justice V.S.Aggarwal:

By virtue of present application, the applicant seeks a direction for grant of arrears from 15.5.2000.

2. Some of the relevant facts are that the applicant being eligible for the past services to be taken into account applied for the limited departmental examination of Lower Divisional Clerk in the limited quota of 5%. The applicant was denied the opportunity and he filed OA No. 18/2000. The said application was disposed of by this Tribunal on 25.10.2000. This Tribunal recorded

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that earlier the applicant was allowed to appear provisionally in the examination and result was kept in sealed cover. Thereupon this Tribunal disposed of the said application directing the sealed cover to be opened and result of the applicant to be declared. Operative part of the order reads:

"4. Applicant's counsel states that applicant would be satisfied if a direction is issued to respondents to open the sealed cover and take further action in accordance with rules and instructions on the subject.

5. In the circumstances, the O.A. is disposed of with a direction to respondents to open the sealed cover containing applicant's result for the LDC examination said to have been held on 8/9.2000 and thereafter take a further action in the matter, in accordance with rules and instructions."

3. ~~Further~~ The sealed cover was opened and the order was passed promoting the applicant as such from 15.5.2000.

4. The present grievance of the applicant is that he had been promoted notionally but in fact he should be so promoted and arrears should be paid from 15.5.2000.

5. On behalf of respondents two objections have been taken:

(i) the applicant has not claimed promotion from 15.5.2000 in the earlier original application filed by him; and

(ii) he had notionally been promoted from 15.5.2000, keeping in view the principle of 'no work no pay'.

6. So far as the first contention of the respondents is concerned, perusal of the record reveals that at that time the relevant claim primarily was to consider the claim of the applicant for promotion as Lower

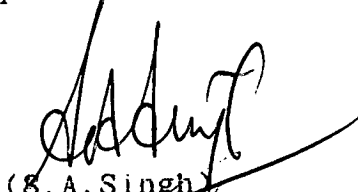
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Division Clerk from the date his juniors had been promoted. This Tribunal had permitted him to take the test and thereafter finally disposed of the application directing that the sealed cover be opened. At that time, the present relief, referred to above, could not have been claimed. Therefore, the first plea of the respondents necessarily has to be rejected.

7. As regards the claim for backwages, though we do not dispute the proposition of 'no work no pay' but where a person is not permitted to work by the act of the respondents, the said principle will not be attracted. Similar question was raised before this Tribunal in P.Narayanan Nair and Others Vs. Chief General Manager, Telecom, Kerala (1994) 26 Administrative Tribunals Cases 883 and again in the case of Shri C.N.Sahai & Others Vs. Union of India and Others 2002(3) Administrative Tribunals Cases 159. The similar argument raised on behalf of the respondents had been rejected. The same is the position herein because the respondents had not permitted the applicant to work and he is forced to file the present application. As consequences, he must be entitled to the salary from 15.5.2000. Resultantly, we allow the present application and direct that the applicant is entitled to the arrears of pay from 15.5.2000 to the date, he has been promoted. No costs.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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