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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.2368/2003

New Delhi this the 27th October, 2004

HON'BLE SHRI JUSTICE M.A.KHAN, VICE-CHAIRMAN (J)
HON'BLE SHRI S.A.SINGH, MEMBER(A)

Shri A.Rajasekharan Nair,
Compute Incharge,
Air Force Canteen, Air Force Station,
Race Court, New Delhi-110 011.
(By Advocate: Shri V.S.R.Krishna)

...Applicant

Versus

Union of India through:

1. The Secretary,
Ministry of Defence,
Government of India,
South Block, New Delhi-110011.
2. The Air Officer-in-charge (Admn.),
Air Headquarters, Vayu Bhawan,
New Delhi-110 011.
3. The Air Officer Commanding,
Air Force Station, Race Course,
New Delhi-110003.
4. The Chief Administrative Officer,
Air Force Station, Race Course,
New Delhi-110003.

...Respondents.

(By Advocate: Shri R.N.Singh)

ORDER (ORAL)

By Shri M.A.Khan, Vice-Chairman(J)

This application has been filed for a direction to the respondents to grant him increments which he had earned between 10.12.1996, when his service was terminated and 9.8.2001 on which date he was reinstated in service. He is also seeking a direction to the respondents for granting him promotion to the next higher grade from the date when his immediate junior was promoted with all consequential benefits on account of pay fixation and award of increments in the higher scale etc.

2. The applicant, A. Rajsekharan Nair, was working as Salesman-cum-Account Clerk-cum-LDC in the Air Force Canteen in Delhi and was drawing salary in the scale of pay of Rs.3050-4590/-. A disciplinary enquiry was initiated against him in 1996 wherein his service was terminated w.e.f. 10.12.1996. He challenged this order by filing OA No.

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614/1998 which was allowed by this Tribunal vide order dated 08.08.2001. The relevant portion of the order reads:

"The applicant will be entitled for all benefits connected with service between the date of his dismissal and that of his reinstatement but without any back wages for the said period. The respondents can if they are so advised go a head with the proceedings from the stage of the enquiry proceedings, supply a copy of the report of the inquiry officer to the applicant and take the appropriate decision, after considering his repose thereon. We also direct that as the applicant was originally appointed by the commanding officer, Air Force Station, New Delhi. The disciplinary authority shall also be an officer of the level."

3. As a result, the respondents vide order dated 12.9.2001 reinstated the applicant in service w.e.f. 9.8.2001. His grievance is that after his reinstatement in service, he is still being paid same basic pay of Rs.4250/- which he was drawing at the time of termination of service on 10.12.1996. Moreover, he has not been granted any increments which he would have earned between the date of termination and reinstatement. His further grievance is that some persons, who are junior to him, have been granted promotion to the post of UDC but after reinstatement his case has not been considered for similar promotion to the next higher post from the date when his immediate junior was promoted.

4. This application was resisted by on the ground that in accordance with the direction given by the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. M. Aslam & Ors. decided on 4.1.2001 the Government had issued new Terms and Conditions of service for canteen employees in September, 2001 which are effective from 01.06.2001. It is submitted that in accordance with those terms and conditions, the pay, increments and promotions for all canteen employees were frozen since all of them were drawing pay more than the maximum of their respective scales. It was further contended in the counter that no promotions have been granted to the juniors of the applicant after receipt of the new terms and conditions in September, 2001 and the applicant has already been intimated about it vide letter dated 14.8.2003.

5. We have heard and considered the arguments of the learned counsel for the parties and have carefully perused the record.

6. The applicant was working as Salesman-cum-Accounts Clerk-UDC in the Air Force Canteen. On 10.12.1996 his service was terminated as a result of the disciplinary

enquiry initiated against him. This Tribunal quashed the order of the termination in OA 614/1998 by order dated 08.08.2001. In compliance with the said order, the applicant has been reinstated in service on 9.8.2001. It is not in dispute that in accordance with the judgement of the Supreme Court in the case of Union of India & Ors. Vs. M.Asiam & Ors (supra) decided on 4.1.2001, the Government framed a new Scheme in September, 2001 providing terms and conditions of the services of canteen employees which came into force from 1.6.2001. A copy of the terms and conditions of service of the canteen employees filed by the respondents is annexure R-1. Para 25 of the this Scheme provides that "the initial pay of an employee (inclusive of all allowances) shall be the pay as specified in Appendix 'A' to these rules." This Appendix annexed to the Scheme reveals that the pay scale of LDC/Salesman-cum-Accounts Clerk prescribed is Rs.3050-75-3950-80-4590 and for UDC/Cashier/Accounts Assistant/Store Keeper if is Rs.4000-100-6000. It is an admitted case that after the reinstatement in service, the applicant is being paid the same basic pay of Rs. 4225/- which he was receiving on 10.12.1996 when his service was terminated. In accordance with the order of this Tribunal dated 8.8.2001 in OA 614/1998 (Annexure-A to the original application), after the reinstatement in service, the applicant was entitled to all benefits, counting of the service between the date of termination of the service and that date of his reinstatement in service though he was not entitled to the back-wages for the said period. In other words, the applicant was entitled to be granted notional increments admissible under the rules or service conditions between the date of dismissal from service and date of reinstatement, i.e., between 10.9.1996 to 9.8.2001. Yet he was not entitled to receive the arrears calculated on the basis of the revised pay which was to be re-fixed after the reinstatement. In fact, under the new Scheme prepared by the Government for U.R.C. employees from 01.06.2001, the notional pay of the applicant was required to be re-fixed as on 31.5.2001 which was not done in the case of the applicant.

7. Learned counsel has drawn our attention to an additional affidavit Annexure AA-4 filed on behalf of the respondents. In accordance with it Shri S.P.Gupta, LDC and Shri A.K.Mahajan, LDC, who were junior to the applicant, have been granted promotion to the next higher post of UDC w.e.f. 16.8.1998 and 01.9.1997 respectively. The learned counsel for the respondents submitted that those promotions were not in the knowledge of respondents at the time of filing of counter, therefore, it could not be mentioned therein. Since two persons, who are junior to the applicant, had been given promotion to

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the next higher grade of UDC during the period when the applicant remained out of service, on reinstatement, he also becomes entitled to be considered for promotion from the date when his immediate junior Shri S.K. Mahajan was promoted on 01.09.1997 and again when Shri S.P. Gupta, the next junior person was promoted on 16.8.1998. But his name has not been considered for promotion as yet. Learned counsel for the applicant has fairly submitted that the applicant does not claim any right of promotion but he has right to be considered for promotion to the next higher grade since his juniors have already been promoted. Counsel for respondents does not controvert this contention. In case, the applicant is considered for promotion to the post of UDC from the date when his junior was promoted in 1997 or in 1998, the pay of the applicant is required to be re-fixed in the higher scale of UDC. The increment earned in the higher scale after such promotions were also to be counted. Since the new Scheme prepared by the Government came into force in on 01.6.2001, the pay of the applicant was also to be re-fixed in the higher scale of UDC on 31.5.2001 notionally. Though the applicant was not entitled to any back-wages as a result of the fixation of pay in the scale of LDC or UDC in view of the order of this Tribunal dated 8.8.2001 but notional fixation of his pay as on 31.5.2001 will entitle him to have his salary re-fixed in the new scale of pay which has been prescribed in the Schedule annexed to the new Scheme and he would have received in his pay accordingly from 09.08.2001 when he rejoined the service.

8. As a result of the above discussion, we dispose of the OA with the following directions:

1) The respondents shall count all the increments as per rules which the applicant had earned in the scale of LDC between 10.12.96 and 31.5.99 and then shall notionally re-fix his pay in the scale of LDC as on 31.5.2001. Thereafter, his pay shall be re-fixed as on 09.08.2001 in accordance with the new Scheme which has been framed by the Government and the applicant will be paid his salary accordingly w.e.f. 09.08.2001.

2 (i) The respondent are directed to consider the applicant for promotion from the post of LDC, which he held at the time of termination of his service, to the post of UDC from the date his juniors have been promoted in the year 1997-98. The immediate junior Shri A.K. Mahajan has been promoted on 1.9.1997 and in case the applicant is promoted from that date, his pay shall be re-fixed

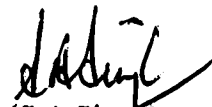
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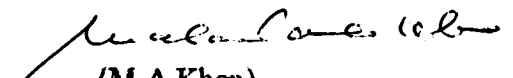
by the respondents notionally in higher scale of pay of UDC in accordance with the rules applicable on the date of promotion.

(ii) The applicant shall be granted increments in higher grade which he would have earned between the date of promotion and 31.5.2001 and the pay of the applicant shall then be re-fixed as on 31.5.2001 notionally. The applicant will not be paid arrears of pay and allowances in accordance with the salary which has been so re-fixed in higher grade as on 31.5.2001. His pay shall again be re-fixed as on 09.8.2001 under the new Scheme and he shall be paid his salary accordingly w.e.f. 09.9.2001. The applicant, however, shall not be entitled to draw any back-wages during the period he remained out of service, i.e. before 9.8.2001.

3. This order shall be implemented within a period of three months from the date of receipt of a copy of this order. The application is disposed of in terms of above-order.


(S.A. Singh)
Member (A)

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(M.A. Khan)
Vice-Chairman(J)