

Supreme Court of India

Kedar Nath vs Union Of India (Uoi) And Anr. on 15 July, 1994

Equivalent citations: 1995 (1) SCALE 521, 1995 Supp (1) SCC 529

Bench: A Ahmadi, S Bharucha

ORDER

1. Special leave granted.

2. Heard counsel on both sides.

3. The appellant moved an application before the Principal Bench of the Central Administrative Tribunal complaining that the Tribunal's judgment in O.A. No. 1095 of 1987 dated 6.9.91 has not been complied with. The Tribunal in the aforesaid matter had given the following direction:

He shall also be considered for promotion as Assistant Sub-Inspector and Sub-Inspector from the date, his next junior was promoted.

Thus, according to the aforesaid direction of the appellant was found fit for promotion to the post of Assistant Sub-Inspector and Sub-Inspector he had to be promoted from the date his next junior was promoted. If so promoted, he would also be entitled to arrears of pay and allowances as well as pensionary benefits. Therefore, if the appellant was confirmed as head constable, the authorities had to consider whether or not he was fit for promotion to the next higher post and if yes he was to be promoted from the date his junior was promoted. Now according to the Union of India while it considered the case of the appellant for promotion it did not give him the deemed date on the ground that if that was done the appellant would fly over his senior Chandra Bhan. If that was going to be the effect of the implementation of the Tribunal's judgment in O.A. No. 1095 of 1987 the proper course for the Union of India was to seek a modification of the judgment rather than refuse promotion from the date his junior was promoted as directed by the Tribunal. It is another thing that in a given situation the Tribunal may not deem it necessary to punish the concerned authority in contempt for non-compliance but if the Tribunal's order has to be implemented in letter and spirit it would not be permissible for the respondent to place its own interpretation and say that it has not given a deemed date promotion because it will result in the appellant flying over the head of his senior. We are, therefore, of the opinion that the Tribunal's judgment in contempt proceedings virtually modifies the judgment in O.A. No. 1095 of 1987 which was not permissible. The proper course for the Union of India was to move the Tribunal in review pointing out its difficulty and seek modification of the order.

4. Mr. Lahiri the learned Senior Counsel for the Union of India then pointed out that all that the Union of India was required to do was to 'consider' the case of the appellant for promotion as Assistant Sub-Inspector and Sub-Inspector from the date his next junior was promoted. He tried to point out that his case was considered but he was not found fit for promotion. No such averments or argument seems to have been made before the Tribunal as we do not find mention thereof in the impugned order. If that was so it would have been specifically averred in the pleadings in which case the Tribunal would have dealt with it. If the Tribunal omitted to deal with it despite the prayer

having been made, the proper course would be to request the Tribunal to reconsider his case. In the circumstances, we deem it more appropriate to set aside the impugned order of the Tribunal and to remit the matter to the Tribunal for proper consideration keeping in view the original order passed in O.A. No. 1095 of 1987. If an application is moved for modification of the order in the said matter the Tribunal may deal with it on merits. The appeal will stand allowed accordingly with no order as to costs.