

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1381/98

New Delhi this the 6<sup>th</sup> Day of August 1998

Hon'ble Mr. Justice K.M. Agarwal, Chairman  
Hon'ble Mr. R.K. Ahooja, Member (A)

Shri A.P. Singhal,  
S/o Late Shri M.S. Singhal,  
R/o 24, Palam Marg,  
Vasant Vihar,  
New Delhi

Applicant

(By Advocate: Shri D.S. Mahendru)

-Versus-

1. Secretary,  
Ministry of Defence,  
Govt. of India,  
South Block, New Delhi.

2. Dy. Director General (Military Farms),  
Quartermaster's General Branch,  
Army Headquarters, West Block III,  
R.K. Puram,  
New Delhi.

Respondents

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant after obtaining a degree in Agriculture and Farm Engineering from USA was, on return to India, offered the post of Agricultural Engineer (AE) in the Department of Military Farm, Ministry of Defence on a purely adhoc basis in the Senior Class I in the pay scale of Rs. 700 -1250/-! In 1962, he appeared for an interview before the UPSC for regular appointment to the said post but did not succeed. He was, however, considered for the post of Assistant Agriculture Engineer (AAE) and with the approval of UPSC his pay was fixed at Rs. 600/- in the pay scale of Rs. 400-950/-. The applicant thereafter sought protection of his pay drawn in the post of AE but the same was rejected on

Dr

the ground that he had not been approved by the UPSC for that post and his appointment to the post of AEE was on the basis of special consideration. In the following years the applicant agitated at various levels for merger of the junior pay scale of AAE with the senior pay scale of AE as per the recommendations of the Third Pay Commission. Despite favourable recommendations of the Departmental head the Government did not agree. In 1984, the applicant was awarded a major penalty of reduction of pay at four stages. He retired in 1985 while officiating in the post of AE and in 1987 he came before this Tribunal in OA No. 1511/87 against his order of punishment and seeking a direction on merger of junior and senior class pay scale. The prayer for quashing the penalty was granted but his plea in respect of merger of pay scale was declined. The applicant thereafter went before the Supreme Court in a SLP which was also disposed off in the following terms:

"The special leave petition is dismissed. However, it is made clear that the petitioner will have a right to make the representation to the Government for his alleged monetary claim on the basis of the merger of junior and senior grade as per the purported recommendations of the Third Pay Commission. As and when the representation is made, the Government may consider it on merit. We do not think that the observations made by the Tribunal would come in the way of the petitioner on this question."

2. The applicant submits that in pursuance of the observations of the Hon'ble Supreme Court, he filed further representations which were rejected

On

without assigning any reason. He finally made a representation to the Defence Minister which was also rejected by the impugned order dated 1.6.1998, Annexure A-1. He has therefore come before the Tribunal once again seeking a direction to merge the Junior Class I pay scale with Senior Class I pay scale w.e.f. 1974, granting him the consequential benefit with 18% interest and to treat him as having retired as AE on regular basis in 1985 with all the consequential benefits.

3. We have heard Shri J.S. Mahendru, learned counsel for the applicant. He argued that since Hon'ble Supreme Court in its order quoted above, had given the liberty to the applicant to make further representations which have been finally rejected by the impugned order of 1.6.1998, the prayer of the applicant is not barred by limitation. We are, however, unable to agree with the learned counsel. The claim of the applicant regarding merger of the pay scale dates back to 1962 even if the relief sought for is for 1974 after the recommendations of the Third Pay Commission. When the applicant came before this Tribunal in O.A. No. 1511/87, he had also, as noted in the final order, filed an MP No. 2590/98 under Section 5 of the Limitation Act, 1963 for condonation of delay. The same was allowed and thereafter the O.A. was heard on merits. In respect of merger of junior and senior pay scales, the Tribunal observed as follows:

"The non-confirmation of the applicant in due turn or non-merger of the junior class-I scale to the senior class-I scale and not allowing any allowance to the applicant, can not be considered after his retirement on reaching the age of

Dr

(5)

superannuation. Regarding this grievance, the applicant had to come at the relevant time with limitation. Though the present application has been admitted after condonation of delay but as held in P.I.Shah Vs. UOI, 1982(2) SLJ Page 49 by the Hon'ble Supreme Court that the applicant can be given benefit of that case within three years or after from coming into force of A.T.Act, 1985."


The prayer was time barred admittedly in 1988, it would be certainly so in 1998.

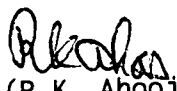
4. We also find that the claim of the applicant is barred by res judicata as well. The same claim was made in O.A. No. 1511/87 but was rejected on the ground of limitation. The SLP was also dismissed by the Hon'ble Supreme Court. Shri P.S. Mahendru, would have us believe that the observations of the Hon'ble Supreme Court which have been reproduced above gave liberty to the applicant to reagitate the matter before the authorities which also carried out with it the liberty to come again before the Tribunal if he was not satisfied with the decision of the Respondents. We, however, do not find the observations of the Hon'ble Supreme Court to be so. In dismissing the SLP, the order of the Tribunal was confirmed by the Hon'ble Supreme Court. The observations regarding petitioner's right to make a representation to the Government did not carry with it a liberty to come again before the Tribunal on the same issue; otherwise the same would have been specifically mentioned if it had been so intended. Of course the authorities were enjoined not to be affected by the observations of the Tribunal. That did not imply that in the light of this observation the matter was sopen to a fresh challenge before the Tribunal.

~

5. We may also note that even if a Government servant fails to obtain relief from a Court of Law after the same has been rejected by the Government, there is no estoppel against the Government in reviewing its own decision and stepping over its own earlier decision. Thus, it would have been open to the Government despite the decision of the Tribunal, confirmed by the Hon'ble Supreme Court, to take a fresh view of the case of the applicant. In our opinion, the observations and directions of the Hon'ble Supreme Court are only confined to this aspect.

6. We therefore find that the present application is ~~both~~<sup>but</sup> barred by limitation as well as res judicata. It is accordingly dismissed at the admission stage itself.

  
(K.M. Agarwal)  
Chairman

  
(R.K. Ahooja)  
Member(A)

\*Mittal\*