

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. No.1765 OF 1995

New Delhi, this the 26th day of August, 2003

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)  
HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

Shri P.R. Seniaray  
S/o Shri R.R. Seniaray,  
5/189, Sunder Vihar,  
Delhi-110041.

....Applicant

(By Advocate : Dr. Sita Ram Sharma)

Versus

1. Union of India through  
Secretary to the Govt. of India  
Deptt. of Personnel & Training,  
North Block, New Delhi.
2. Secretary,  
Deptt. of Agriculture,  
Krishi Bhawan,  
New Delhi.
3. Director General,  
Indian Council of Agricultural Research,  
Krishi Bhawan,  
New Delhi.

.....Respondents

(By Advocate : Shri V.K. Rao)

O R D E R

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER :

This original application under Section 19 of the Administrative Tribunals Act, 1985 has been filed claiming the following reliefs:-

"i) Issue suitable directions or orders to the Respondents to appoint the applicant, by promotion, as Assistant, against one of the four vacancies available in the office of the Respondent three, with effect from 8.1.1950, on which date he had retrospectively been confirmed in the post of Third Division Clerk and thus became eligible for regular promotion to the Grade of Assistant;

ii) Further direct the Respondent to review the promotion of the applicant to the post of Section Officer, in order to ante-date the promotion suitable with reference to his revised seniority in the Grade of Assistant,

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consequent upon his promotion as Assistant on a regular basis, with effect from 8.1.1950;

iii) Issue further directions to the Respondents to consider the case of the applicant for promotion to Grade I of the Central Sectt. Service (Under Secy's post) with effect from the date, his immediate junior in the Section Officer's grade had been promoted as Under Secy;

With all the consequential benefits in regard to back wages which may accrue to the applicant as a result of ante-dating his promotion as Assistant and Section Officer, and appointment to Grade I of the C.S.S.; and to revise the retirement benefits suitably.

iv) Allow the applicant suitable costs, as he has been driven to approach the Hon'ble Tribunal due to administrative mishandling his case without proper application of mind by the authorities, in the office of Respondent one.

OR

The Hon'ble Tribunal may pass such orders or further orders as it may deem fit and appropriate in the circumstances and on the facts of the case."

2. It is stated by the applicant that he joined as 'B' Grade Clerk/3rd Division Clerk in the Ministry of Agriculture on 7.1.1947. Having been nominated for appointment as a 3rd Division Clerk, the applicant joined in the Indian Council of Agricultural Research (ICAR) on 1.8.1951. He claims that he was notionally confirmed on the post of 3rd Division Clerk in ICAR initially w.e.f. 1.8.1951 and thereafter w.e.f. 8.1.1950 vide order dated 18.2.1955 (Annexure A3). He was also given promotion as Assistant w.e.f. 15.5.1957, though given notional seniority in the grade of Assistant from 26.7.1952. It is also claimed that in view of his persistent representations, the Ministry of Home Affairs gave him promotion as Assistant on ad hoc basis retrospectively from

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29.11.1950 vide order dated 7.4.1984 (Annexure A2). According to the applicant, there were four regular vacancies in the grade of Assistants available on 8.1.1950 on which date the applicant was made permanent 3rd Division Clerk. Therefore, he should have been promoted as Assistant on regular basis w.e.f. 8.1.1950.

3. The learned counsel of the applicant stated that the grievance of the applicant regarding retrospective promotion has been redressed only partially inasmuch as by order dated 7.4.1984 (Annexure A2), he has been promoted as Assistant w.e.f. 29.11.1950 "notionally". He referred to the decision dated 16.2.1987 in TA No.667/1985 in the case of Shri Amer Singh whom he claimed to be his junior. This Tribunal by order dated 16.2.1987 had directed the payment of arrears of pay and allowances as a result of notional retrospective promotion. It was urged that similar order should be passed in the case of the applicant also.

4. The respondents have contested the claim of the applicant and have filed a counter reply in which it has been stated that this application is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. The respondents have also taken a ground that all affected persons whose seniority on account of retrospective claim of promotion of the applicant is likely to be affected have not been made

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party in this application. Therefore, the respondents have requested that the application be rejected on preliminary grounds alone.

5. According to the respondents, "Sh. Seniaray requested for retrospective promotion against vacancies of Assistants in ICAR w.e.f. 8.1.50 or 29.11.50. As he joined ICAR only 1.8.51, and was not available when the vacancy in Assistants' Grade arose from 8.1.50 or 29.11.50, he could not be considered for promotion during that period." The respondents have further stated that "After his joining in the ICAR, first set of promotion to the Assistants' Grade was issued on 26.7.52. No junior official to Sh. Seniaray had been promoted before him." However, the respondents have also submitted that the promotion of the applicant as ad hoc Assistant has been ante-dated to 29.11.1950 from 26.7.1952 by order dated 7.4.1984. Therefore, no grievance of the applicant survives.

6. In the rejoinder reply filed by the applicant, it has been contended that he has always been prosecuting his grievances. The Government had assured redressal of his grievances before the Commission for Scheduled Caste and Scheduled Tribe. Therefore, the applicant was waiting for 'final reply'. The learned counsel of the applicant invited attention to the order dated 15.10.1999 in OA No. 1765/1995 wherein this Tribunal had dismissed the original application as barred by limitation.

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Aggrieved by that order of the Tribunal, the applicant had approached the Hon'ble Delhi High Court in CWP No.7527/2000. The Hon'ble Delhi High Court by their order dated 20.3.2003 allowed the Writ Petition and directed this Tribunal to reconsider the issue of limitation afresh, keeping in view the fact that the applicant was informed vide communication dated 16.12.1992 that his case was under consideration of the department and final reply in the case was to be sent shortly. The Hon'ble High Court has also taken into account the fact that the applicant had filed a complaint with National Commission for Scheduled Caste and Scheduled Tribe and the Commission vide order dated 14.11.1994 had informed the applicant that the Ministry of Personnel Public Grievances and Pension, New Delhi had reported that some relief had already been granted to him. The applicant was also advised by the Commission to follow up the matter directly with the department. However, since the applicant's grievance was not fully redressed, the present OA was filed on 12.9.1995. The Hon'ble Delhi High Court had observed that the Tribunal should have taken into account these developments and limitation with reference to the order dated 7.4.1984 should not have been the basis for rejecting the OA as barred by limitation. We have re-considered the facts of this case and the application for condonation of delay of delay of the applicant in the light of the observations of the Hon'ble Delhi High Court and have also heard the parties in this regard. After

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considering the facts of the case and their contentions, we condone the delay and proceed to hear the O.A. on merits.

7. The applicant had "requested for retrospective promotion against vacancies of Assistant in ICAR w.e.f. 8.1.50 or 29.11.50". Accordingly, the respondents by their order dated 7.4.1984 promoted the applicant to officiate as Assistant in the grade IV of the Central Secretariat Service w.e.f. 29.11.1950. However, his promotion was with the following stipulation :-

"His pay on such promotion will be notionally fixed with reference to that date but no arrears of pay arising therefrom respect of the period prior to the date of actual promotion as Assistant in 1957, would be admissible."

8. At the time of hearing, the learned counsel of the applicant confined his claim regarding arrears of pay etc. w.e.f. 29.11.1950 (not w.e.f. 8.1.1950). He invited attention to the orders dated 16.2.1987 in TA No.677/1985 of this Tribunal in the case of Shri Amer Singh Vs. Union of India and etc. wherein arrears for the period of notional promotion were allowed. The learned counsel of the applicant stated that similar benefit be allowed to the applicant, as there was no justification to refuse the monetary benefits arising out of antedating of promotion of the applicant as Assistant.

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9. The respondents in their reply have stated that the promotion of the applicant as ad hoc Assistant has been antedated to 29.11.1950 from 26.7.1952 and no junior official to the applicant has been promoted before him. The learned counsel stated that since the applicant has not discharged the duties of the promoted post, he should not be given monetary benefits. On the other hand, notional promotion given by the respondents was in conformity with the existing law.

10. We have heard the learned counsel of the parties and have perused the material available on record.

11. Since the applicant has placed heavy reliance on the orders of this Tribunal dated 16.2.1987 in the case of Amar Singh (supra), we may briefly refer to the facts of that case. It appears that the applicant - Amar Singh was earlier an employee under the Agent of the Governor General in the then centrally administered area of Baluchistan and after independence of India, he was treated as a temporary employee. He was given notional promotion as Assistant w.e.f. 7.1.1948. While granting him notional promotion, he had given an undertaking to the effect that he will not claim arrears of pay on such notional promotion. However, this Tribunal held that the employees cannot be denied the arrears of pay. The promotion with retrospective effect entitled the

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Govt. servant to arrears of pay and if the Govt. issued the order of promotion long after the promotion had actually become due, the employee cannot be denied the arrears for no fault of his. The Tribunal issued the following directions:-

"6. In the facts and circumstances discussed above we allow the petition and set aside the impugned order dated 14.10.77 (Annexure XIII to the petition), Notification dated 1.11.77 (Annexure XIV to the petition), order dated 28.12.77 (Annexure XV to the petition) and order dated 21.9.79 (Annexure XIX to the petition) in so far as they disallow or restrict the payment of arrears of pay and allowances as a result of notional retrospective promotion. We further direct that the arrears of pay and allowances from the dates of notional promotions as also the arrears resulting from refixation of pay as the case may be, in the relevant admissible grades of Assistant, Assistant Superintendent, Petitions Officer and Section Officer should be paid to the petitioner within a period of next three months. Since no unconscionable lapse or malafide is involved on the part of the respondents, the question of payment of interest on the arrears does not arise. The undertaking dated 10.7.1968 (Annexure-IV to the petition) given by the petitioner is declared inoperative. There will be no order as to costs."

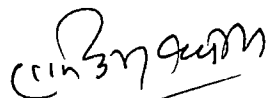
12. From the perusal of the fact of the case of Amar Singh (supra), we do not find any material to justify the claim of the applicant that the applicant was senior to Shri Amar Singh as alleged by the applicant. However, the applicant's seniority has no relevance so far as the reliefs claimed in this OA are concerned. The order dated 7.4.1984 (Annexure A2) does not give any basis for denial of arrears of pay arising from the antedating of his promotion w.e.f. 29.11.1950.

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The respondents have already acceded to the consequential benefits to the applicant in the order dated 7.4.1984 where it has been observed that "he will be eligible for notional pay fixation with reference to his junior after he is found fit for such inclusion in the Selection List of Section Officer Length of Service Quota after screening his C.R. by the Selection Committee." Here again, the consequential promotion is merely notional pay fixation without any reasons given therefor. It appears that respondents have taken a decision half-heartedly. Whereas the request for promotion as Assistant in Grade IV of Central Secretariat Service w.e.f. 29.11.1950 has been granted and even consequential benefit has been allowed but the monetary benefit arising from such promotions has been rejected. In our opinion, rejection of such monetary benefits to the applicant was uncalled for. Therefore, the respondents are directed to allow arrears of pay arising from promotion of the applicant as Assistant Grade IV of Central Secretariat Service w.e.f. 29.11.1950. He will be eligible for consequential subsequent promotion and pay fixation, if any. However, it is clarified that the applicant will not be entitled to any interest on such arrears.

13. In the result, this OA is partly allowed without any order as to costs.



(R.K. UPADHYAYA)  
MEMBER (A)



(SMT. LAKSHMI SWAMINATHAN)  
VICE CHAIRMAN (J)

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