

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 2406/95

New Delhi this the 6th day of August, 96.

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

J.K. Sharma,
Civilian Staff Officer,
S/o Shri Ram Lal Sharma,
18-A, Central Govt. Housing Complex,
Vasant Vihar,
New Delhi.

...Applicant.

By Advocate Shri K.B.S. Rajan.

Versus

Union of India,
through the Joint Secretary (Trg.),
and Chief Administrative Officer,
Ministry of Defence,
C-II, Hutments, Dalhousie Road,
DHQ PO, New Delhi-110011.

..Respondent.

By Shri J.S. Joshi, Director, Departmental
representative.

ORDER

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

The applicant joined the Armed Forces Headquarters as an Assistant in 1975 on the basis of Assistant Grade Examination conducted by the UPSC in June, 1973. Although he had stood first in rank in the competitive examination, there was some delay in the issue of offer of appointment to him which resulted in delay in his joining the department. Consequently, when in 1980 his juniors were considered for promotion as Assistant Civilian Staff Officer (for short 'ACSO'), the applicant was omitted from consideration since at that point of time he had not put in the requisite qualifying service of five years. He was, however, promoted

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as ACSO w.e.f. 13.10.1981. Subsequently, on 5.10.87 he was further promoted on an ad hoc basis as Civilian Staff Officer (for short 'CSO'). The seniority of direct recruits and that of the promotee Assistants had been the subject matter of a series of litigation and finally on the basis of the judgements given by the Delhi High Court in 1985, Central Administrative Tribunal in 1986 and the Supreme Court in February, 1987, a conclusive decision was arrived at that the inter se seniority of the direct recruits would be on the basis of the ranks secured by the individuals in the competitive examination. It was also held that in the case of interpolation of seniority of direct recruits with the promotee Assistants, the earliest entrant of the direct recruits, irrespective of his rank, will decide the date of entry into service for the direct recruits and the inter se seniority would be fixed accordingly. This resulted in revamping of the entire seniority list. The draft seniority list of ACSOs was prepared by the respondent and circulated and the name of the applicant was placed at Serial No. 35 and that of one J.A. Ramamurthy at Serial No. 43. The revision in the select list of ACSO resulted in the revision of the select list of officers in the grade of CSO as well which was effected in October, 1992 with retrospective effect from 1989-90. The applicant's name in the CSO list appeared at Serial No. 22

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and that of Shri J.A. Ramamurthy at Serial No. 28. The applicant contends that one Shri S.K. Jasra who joined the service as an Assistant on the basis of the 1974 examination, was junior to him as he belonged to the next batch. In the seniority list of ACSO, he was placed at Serial No. 68 and in the list of CSO at Serial No. 51. The grievance of the applicant is that the pay drawn by his juniors, namely, Shri J.A. Ramamurthy and Shri S.K. Jasra on the date of promotion as ACSO and CSO was more than the applicant's pay on the corresponding dates. This was on account of their promotion earlier to that of the applicant. Since the revised seniority list and the review of promotions established the applicant as senior to both of them in the list of ACSO and CSO, the earlier promotions of S/Shri Ramamurthy and Jasra are clearly to be regarded as promotion on fortuitous circumstances. The applicant's case is that if the senior does not get the benefit of fortuitous ad hoc promotion, he should not be at a disadvantage in the pay fixation, as stated by the Tribunal in the case of N. Lalitha & Ors. Vs. Union of India & Ors., 1992(19) ATC (Hyderabad) 569. The applicant points out that Shri Jasra's promotion to the grade of ACSO was delayed for reasons similar to that of the applicant and his juniors in the same batch having been promoted earlier, Shri Jasra was drawing less pay. However, the anomaly was set right when

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Shri Jasra approached this Tribunal in O.A. 548/93. The applicant seeks similar relief and refixation of pay with reference to that of his immediate junior w.e.f. 5.10.1987 when he was actually promoted as CSO. He is aggrieved that his representation made to the respondents in 1994 has been summarily rejected by the impugned order dated 20.11.1995 without assigning any reason whatsoever.

2. The respondents controvert the claim of the applicant. They submit that the case of the applicant is on a different footing than that of Shri Jasra. The applicant could not be considered by the DPC of 1979-80 because at that stage he had not completed five years of approved service. His case was, however, taken up for the panel 1980-81, but he could not be included in the Select List due to comparative lower grading assigned to him by the DPC vis-a-vis others. Finally, he made the grade of CSO on the basis of panel of 1981-82. Because of certain litigations regarding typewriting test, the promotions of those who had made the grade in 1979-80 and 1980-81 were post-dated to 1981-82. Consequently, the applicant got his seniority in the grade of ACSO. On the other hand, Shri Jasra had missed his promotion initially because there were certain adverse remarks in his ACR and also because disciplinary proceedings had been initiated against him. Subsequently, he was exonerated and the adverse remarks were also expunged.

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Therefore, his promotion was antedated and his ~~Rank~~ was brought on par with his junior batchmates by the order of the Tribunal dated 15.11.1993. The applicant, therefore, cannot claim the relief on the ratio of the case of Shri Jasra. A plea has also been taken regarding delay and laches since his juniors have been drawing higher pay from October, 1987 although the applicant had been declared senior to them. The cause of action also arose in 1987 when the applicant was made senior to Shri J.A. Ramamurthy and ^{he} cannot overcome this difficulty on the basis that he had filed a representation in 1994.

3. I have heard the learned counsel for the applicant as well as the departmental official appearing for the respondents. The contention of the learned counsel for the applicant that the case of the applicant is covered by the judgement in the matter of Shri S.K. Jasra in O.A. No. 548/93, is not tenable. In the case of Shri Jasra, the recommendations had been kept in a sealed cover and he was under suspension and disciplinary proceedings had been initiated. Later, he was exonerated of the charges and he was promoted giving him notional seniority from the previous date. In the case of the applicant there is a difference inasmuch as he was not considered in the panel of 1979-80 on account of deficiency of qualifying service, in the 1980-81 DPC, he was not found suitable in terms of comparative grading vis-a-vis others. In the case of the applicant, therefore, clearly there was a supersession. If the applicant was aggrieved by that supersession,

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he should have agitated the matter at the appropriate time. It is true that the seniority of his juniors who superseded him in 1979-80, 1980-81 got post-dated to 1981-82 and the applicant retained his original seniority, but it cannot be on that basis held that the promotion of the juniors over the applicant was in fortuitous circumstances since in 1979-80 the applicant did not have the requisite qualifying service and in 1980-81 he was superseded in a selection process. The applicant, therefore, cannot claim parity with his juniors, if he later regains seniority over them. The learned counsel for the applicant states that a fortuitous promotion of the junior can be pleaded when a junior is promoted on an ad hoc basis while the senior for some administrative reason is not given such ad hoc promotion. In any case, as rightly pointed out by the learned counsel for the respondents, the revised seniority list in the grade of ACSO and CSO was notified in 1987. The applicant did not take any steps to represent against the higher pay of his juniors and made his representation to the respondents only in 1994 possibly because of the relief obtained by Shri Jasra in O.A. 548/93, decided in 1993. As decided in JT 1992(3) SC 322, the judgement and orders of the court in other cases did not give cause of action and the cause of action will reckon from the actual date which in the present case was 1987. Hence, the applicant having slept over his claim for over 7 years, has virtually acquiesced in the higher pay of his juniors. Even

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otherwise, as has been discussed above, the facts and circumstances of the case are different than those of Shri Jasra and the ratio of that case is not directly applicable to the applicant.

4. In the facts and circumstances of the case, the application is dismissed. There will be no order as to costs.

R. K. Ahooja
(R.K. Ahooja)
Member(A)

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