

Central Administrative Tribunal

Principal Bench, New Delhi.

O.A.1011/95

New Delhi this the 6th day of December, 1995.

Hon'ble Sh. A.V. Haridasan, Vice-Chairman(J)  
Hon'ble Sh. B.K. Singh, Member(A)

Shri V.N. Topa,  
S/o late Sh. Jagmohan Lal,  
R/o G-18, Mir Dard Road,  
New Delhi-2.

Applicant

(through Sh. Ramesh Pathak, proxy counsel for  
Sh. M. Chinnaswamy, advocate)

versus

1. Govt. of N.C.T.,  
through Secretary(Services),  
5, Alipur Road,  
Delhi.

2. Director of Education,  
Directorate of Education,  
5, Alipur Road,  
Delhi.

Respondents

(through Mrs. Avnish Ahlawat, advocate)

ORDER(ORAL)

delivered by Hon'ble Sh. A.V. Haridasan, V.C.(J)

The applicant Sh. V.N. Topa who retired from service from the Directorate of Education, 5, Alipur Road, Delhi on 30.04.1990 has filed this application for a direction to the respondents to refix the pensionary benefits of the applicant by treating him as Asstt. Commissioner (Sales Tax) or belonging to the same grade by refixing his seniority and granting him notional promotions, as and when, the same accrued to him like Sh. B.K. Kaul who was his junior in the grade of L.D.C.

The applicant was appointed as L.D.C. on 15.7.1948 and by length of service he rose to the level of Section Officer, when he retired from service on 30.04.1990. In 1989 he came across a seniority list

from which he understood that one Sh. B.K. Kaul who was appointed as L.D.C. on 03.11.1948, was promoted to the higher grade on a wrong notion of seniority and the said Sh. Kaul retired in July, 1985 as an Asstt. Commissioner (Sales Tax). The applicant made a representation on 2.6.89 for refixation of his pension reckoning his seniority on par with his junior Sh. B.K. Kaul. The applicant has received no reply to this representation. This original application has been filed on 26.05.95.

The respondents have in their reply inter alia contended that the application is barred by limitation. On merits, they have contended that Sh. B.K. Kaul was promoted as Upper Division Clerk in the year 1949 while the applicant was so promoted only in the year 1956. The applicant having not raised any objection about his non-promotion in 1949 and, therefore, he has no subsisting cause of action.

The applicant has filed rejoinder reiterating the contentions placed in his application and refuting the stand taken by the respondents.

We have heard Sh. Ramesh Pathak for the applicant and Mrs. Avnish Ahlawat for the respondents.

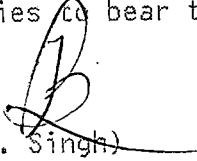
The learned counsel for the applicant is laying stress on the allegation of the applicant that the main thrust in the seniority rules was the date of entry in service. The applicant's seniority has been

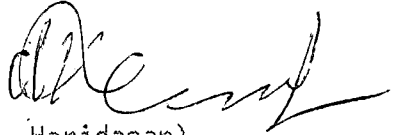
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wrongly fixed and, therefore, the respondents are bound to rectify the mistake by considering the applicant's promotion with effect from the date Shri Kaul was promoted he argued. The first supersession in the matter of promotion to U.D.C. happened in the year 1949. It is an admitted case that Sh. B.K. Kaul retired from service way back in 1985, even thereafter it took 4 years for the applicant to make a representation to give him promotion on par with Shri Kaul who was promoted as UDC ahead of the applicant in 1949. This Tribunal has no jurisdiction to entertain an application in regard to the grievance which arose three years before the enforcement of Administrative Tribunals Act, 1985. In regard to the question of supersession of the applicant in matter of promotion to the cadre of U.D.C. which accrued in 1949 this Tribunal has no jurisdiction to entertain this application. From 1949 onwards Shri Kaul has become senior to the applicant in the hierarchy of service.

Seeking support from the ruling of the Hon'ble Supreme Court in the case of M.R. Gupta Vs. Union of India & Ors. reported in 1995(5)Scale P.29, the learned counsel argued that the present claim of the applicant being one in regard to pensionary benefits, the delay will not deprive him of his legitimate rights. The facts of the case under citation are entirely different from the facts of the present application. Under these circumstances, we find practically no case for the applicant to be considered. We have gone through the misc. application for condonation of delay. Under these

circumstances, we reject the M.A. for condonation of delay and also the original application, leaving the parties to bear their own costs.

  
(B.K. Singh)  
Member(A)

  
(A.V. Haridasan)  
Vice-Chairman(J)

/vv/