

Central Administrative Tribunal  
Principal Bench  
.....

O.A.No.1126/95

New Delhi, this the 24th day of December, 1995

Hon'ble Shri B.K. Singh, Member (A)

Shri Harish Chander  
s/o Shri Sita Ram  
R/o B-97, Motibagh,  
New Delhi-21

Employed as Junior Accounts Officer  
in the Delhi Milk Scheme, New Delhi.

...Applicant

(Shri C.B.Pillai, Advocate)

Versus

1. Union of India through  
Secretary to the Govt. of India,  
Deptt. of Animal Husbandary & Dairying  
Ministry of Agriculture,  
Krishi Bhavan, New Delhi.

2. General Manager,  
Delhi Milk Scheme,  
West Patel Nagar,  
New Delhi.

..Respondents

(By Shri M.K.Gupta, Advocate)

ORDER

delivered by Hon'ble Shri B.K.Singh, Member (A):

This O.A No. 1126/95 has been filed against the  
Memorandum No.2-283/60-Estt.I dated 10th June, 1994

rejecting the prayer of the applicant for stepping up of  
his pay at par with that of Shri Sher Singh who was  
junior to the applicant.

It is an admitted fact that Shri Sher Singh was junior  
to the applicant. It is also admitted that the applicant  
filed his first representation in the year 1973 but the  
junior employee i.e. Shri Sher Singh started drawing  
a higher pay including the special pay of Rs. 15/- w.s.f.

18.8.1965. The applicant was given personal pay to compensate him and to treat him at par with his junior. It may be pointed out that special pay is always treated as a part of pay and counts for pension but personal pay cannot be treated as a part of pay. It is purely personal to a person to whom it is given and this pay cannot be carried forward to the date of superannuation. The first application was filed sometimes in 1973 when the cause of action arose to the applicant on 18.8.1965. The applicant should have approached the competent forum for redressal of his grievance when actually the cause of action arose to him. He was not granted any special pay but only a personal pay was given which is not equivalent to special pay. The benefit of special pay is counted towards pension but the benefit of personal pay is never counted for that purpose.

The reliefs prayed for in the O.A are as follows:-

- "(i) to direct the respondents to step up the pay of the applicant to the level of pay of his junior Shri Sher Singh in the post of UDC w.e.f. the date with which the pay of the latter was fixed at a higher rate than the applicant under the provisions of Ministry of Finance O.M. dated 6.1.1968;
- (ii) to allow the arrears of pay and allowances on account of such stepping up to the applicant."

On notice, the respondents filed their reply contesting the application and grant of relief prayed for.

Heard the learned counsel for the parties and perused the record of this case.

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A bare perusal of the record itself shows that the first representation was filed in 1973 followed by several other representations on the same subject which were also rejected vide office Memos dated 5.1.1975, 17.10.1988, 3.1.1989, 26.7.1990, 18.6.1991 and 28.10.1991. The ratio of the judgement of S.S.Rathore V/s. State of M.P. reported in AIR 1990 SC page 10 is attracted <sup>in this case.</sup> This judgement of the Hon'ble Supreme Court specifically lays down the law that a person has to approach the Central Administrative Tribunal within six months if an appeal/representation has been filed otherwise within one year from the date the cause of action arises. Admittedly, in this case the cause of action arose in 1965 and this application has been filed on 8.6.1995 and as such this application is hit by delay and laches and is beyond the statutory period prescribed under Section 21 of the C.A.T. Act, 1985. A larger Bench of Hon'ble Supreme Court presided over by the Hon'ble Chief Justice of India has held in case of Secretary to the Govt. of India V/s. Shivaram Mahadu Gaikwad (1995) ATC 635, that the Administrative Tribunal does not have unlimited power of condonation of delay. The power is vested under Section 21 and the question of condonation/can be considered by the Tribunal only when a petition for condonation of delay has been filed. In the instant case, not even an application for condonation of delay has been filed on the ground that it is a

recurring cause of action. It is difficult to treat this as a recurring cause of action because there are two circulars of 1991 and 1993 issued by Deptt. of Personnel & Training which supplement the rules on the subject. The 1968's O.M. has been clearly modified and superseded by the circulars issued in 1991 and on 4.11.1993. The clarificatory O.M. dated 4.11.1993 bearing No.4/7/92-Estt.(Pay-I) of DoP&T is on the subject of stepping up of pay. These two O.Ms are not under challenge before us and these are crucial to decide the merits of the case. In the reply also the learned counsel for the respondents, while rejecting the representations, have consistently held the view that he is not entitled to the stepping up of his pay at par with his junior. They have also contested that it is a recurring cause of action. The junior continued to draw special pay as a Cash Clerk whereas the applicant, though promoted earlier, was not allowed the benefit of that special pay even when shifted to this post and also he had not completed <sup>three years</sup> continuous service as Cash Clerk with the result that benefit of special pay of Rs. 15/- could not be added to his pay. The addition of Rs. 15/- after completion of three years is regulated by the OM No. 6(1)E.iii/B/65 dated 25.2.1965 and OM No. 6(i)E.iii/B/68 dt. 8.1.1968, the copy of which have been enclosed with the counter reply as Annexures R'A' and R'B'. Initially, however,

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it is admitted that they were appointed as L.D.Cs but subsequently Sher Singh was shifted as Cash Clerk w.e.f. 1.3.1960 prior to the shifting of Shri Harish Chander i.e. the applicant to that Section. Shri Sher Singh's pay was fixed at Rs. 145/- in the pay scale of Rs. 130-5-160-8-200-EB-8-256-EB-8-280-10-300/- by allowing him the benefit of special pay of Rs. 15/- as he had drawn the special pay of Rs. 15/- in the lower grade of Cash Clerk for more than a period of three years. The drawal of special pay of Rs. 15/- for a minimum period of three years was the essential pre-condition for giving the benefit of the same in fixation of pay on promotion to the higher grade as per the Min. of Expenditure's O.M. cited above.

Firstly the application is barred by delay and laches and secondly it cannot be treated as a recurring cause of action since the entire contention of the applicant has been demolished even on merits since he had not completed three years as a Cash Clerk before promotion to the higher rank. The circular of the DoP&T is very clear on the subject. The O.M. dated 4.11.1993 clarifies the position as follows:-

"(c) Even if in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increment or on any other account the above provisions of FR22-C for stepping up of pay cannot be invoked to step up the pay of the senior officer". It is not an anomaly as defined in 22-C.



This is the rule position and it is true that the junior was drawing a special pay which is an integral part of payment and counts for pension. The applicant had not drawn special pay as Cash Clerk for three years and as such he could not have been given that benefit. The essential pre-condition is that one should have drawn the special pay for three years vide O.M.s annexed as Annexure R'A' & R'B' with the counter reply. Admittedly the applicant had not drawn it for three years and as such it could not be treated as part of his pay and accordingly it can also not be treated as a recurring loss to him. He was not entitled to this at all as would be evident from the clarificatory OM quoted above. In this case the applicant was drawing the personal pay when the junior employee i.e. Shri Sher Singh was drawing the special pay and he drew it for continuously three years which entitled him to carry the same even on promotion. This being so, the application fails on account of delay and laches and also on merits. The two circulars of 1991 and 1993 have not been challenged and as such no relief can be granted and unless these are proved ultra-vires, they will hold good. The OMs of 1991/1993 do not entitle the applicant for the benefit of stepping up since it is not an anomaly but a benefit given to the junior for having worked as Cash Clerk for three years. No stepping up as a following of 22-C is involved. The application fails and is dismissed on merits leaving the parties to bear their own costs.

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(B. S. SINGH)  
Member (A)