

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 1132/96

New Delhi this the 11th day of February, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri M.P.Singh, Member (A)

Shri Inder Pal Singh
S/O Late Shri Avtar Singh
Ex.Inspector of Works(Estates),
Divisional Railway Manager's Office,
Northern Railway, State Entry Road,
New Delhi

presently Deputy General Manager(Civil),
U.T. Division, RITES, New Delhi
House, Bara Khamba Road,
New Delhi.

.. Applicant

(By Advocate Shri B.S. Maine)

Versus

Union of India through :

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi.
3. The Chief Personnel Officer, RITES,
New Delhi House, Bara Khamba Road,
New Delhi.

.. Respondents

(None for the respondents)

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Member (J)

This case was listed as part heard as Item No.1 under Regular matters. As none has appeared for the respondents, we have heard Shri Maine, learned counsel further and perused the records.

2. A preliminary objection has been taken by the respondents that the application is belated and the reason given for condoning the delay is not sufficient. The applicant has filed an MA 1135/96 praying for condonation of delay, if any. However, Shri B.S. Maine, learned counsel has very vehemently submitted that in fact there is absolutely no delay in this OA and even if there is delay, there are sufficient reasons to condone the same.

3. The main prayer made in this OA is that the pay of the applicant should be fixed in the grade of Rs. 2000-3200 w.e.f. 7.2.89

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at par with his juniors S/Shri T.S. Ahluwalia and B.D.Khanna with all consequential benefits, including recalculation and payment of retiral benefits. Learned counsel has submitted that during the pendency of this OA, the applicant has retired from service on superannuation. Consequent on the judgement of the Tribunal in OA 617/87(R.L.Bangla Vs.UOI & Ors) decided on 21.2.1992, the respondents have passed the order dated 30.9.93. By this order, the applicant's resignation had been accepted w.e.f. 2.6.89 instead of 22.4.85. In this OA, the applicant has submitted that the action of the respondents in not giving him promotion in the pay scale of Rs.2000-3200 from the date when his juniors have been promoted in Feb., 1989 is illegal. According to him he has submitted a representation on 7.1.94 requesting the respondents to refix his salary in the grade of Rs.2000-3200 but no reply was given. He had also sent several reminders on this issue and also contacted the officers of R-2. Finally, as no reply was given, he has filed this OA on 14.5.96 together with ^{the 13/} application for condonation of delay. Sh. B.S. Maine, learned counsel has submitted that it was only on 6.1.94 when the respondents issued a cheque to the applicant ^{he} became aware that they have not taken into account the fact that his juniors have been promoted in the grade of Rs.2000-3200. His contention is that when the respondents had promoted S/Sh.T.S.Ahluwalia and B.D.Khanna by order dated 7.2.89(Ann.A.5) ^{as 13/} the order accepting his resignation dated 30.9.93 had not been issued, he could not agitate the matter earlier i.e. between 1989 to September, 1993. However, a representation has been made by the applicant on 5.10.93 requesting the respondents to fix his pay on promotion to the post as given to his juniors S/Sh.T.S.Ahluwalia and B.D.Khanna who are working now as IOW/NDLS, Paharganj(Ann.A.6). Learned counsel has submitted that the cause of action arose in this case on 6.1.94 when he was given wrong amount by cheque when he became aware that he has not been given promotion, which had been given to his juniors relying on the next below rule. He has further submitted that in any case the correct pay on the promoted post still has to be paid by the respondents, which is ^a recurring cause of action and hence the question of delay does not arise. His contention is that what

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the applicant's claims is correct fixation of pay at par with his juniors which is recurring cause of action as already held by the Hon'ble Supreme Court in the case of M.R.Gupta Vs. UOI & Ors (1995)

(5) Scale 29.

4. The respondents in their reply have controverted the averments as mentioned above, on merits. They have submitted that the representation dated 2.11.1993 does not appear to be received by them. They have also submitted that the promotion order of the colleagues of the applicant was issued on 7.2.1989 as IOW in the scale of Rs.2000-3200 on purely ad hoc basis, pending passing the prescribed selection. At that time, admittedly the applicant was on deputation in RITES and was drawing deputation allowance. They have also submitted that since the promotion of the juniors were on ad hoc basis, the next below rule does not apply. Shri B.S. Mainee, learned counsel has submitted that the reply of the respondents cannot be accepted as they have given promotion to persons not in the open line but also on construction line on ad hoc basis.

5. As mentioned above, the grievance of the applicant in this case is non-promotion to the post of IOW when his juniors S/Sh. T.S.Ahluwalia and B.D.Khanna were promoted on ad hoc basis in the grade Rs.2000-3200 w.e.f. 7.2.89. The relief in this case is to allow the application with a direction to the respondents to refix the pay of the applicant in the grade w.e.f. 7.2.89 at par with his juniors. As seen from the averments in the OA, the grievance of the applicant is issue of non-promotion to the grade of Rs.2000-3200 w.e.f. 7.2.89. Admittedly, the order dated 30.9.93 giving him the benefit of continuing with the service of the respondents till his resignation on 2.6.89 has been passed subsequently on 30.9.93. It is also clear from the representation made by the applicant on 5.10.93 (Ann.6) of the paper book, that he had made a representation for being considered for promotion when his juniors were promoted to that grade. In the facts and circumstances of the case we are unable to agree with the contentions of Shri Mainee, learned counsel that the

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cause of action in this case has arisen only on 6.1.94 i.e. when the applicant received the cheque for the wrong amount which was lower and he came to know that he has not been promoted in the grade of Rs.2000-3200. Admittedly, the difference in the pension amount will accrue to him if he had been promoted to the higher post in the grade of Rs. 2000-3200 w.e.f. 7.2.89. Therefore, the subsequent representations starting from 7.1.1994 and the reminders would not have the effect of extending the cause of action in the present case (See the observations of the Hon'ble Supreme Court in S.S.Rathore Vs. State of MP (AIR 1990 SC 10)).

6. We have also considered the grounds taken in MA 1135/96 for condonation of delay. In the facts and circumstances of the case, we are not satisfied that there are sufficient reasons in the MA to condone the delay under Section 21(3) of the Administrative Tribunals Act, 1985. We are also unable to agree with the contentions of the learned counsel for the applicant that in the circumstances of the case, the relief of the applicant is actually to revise his pensionary amounts, ^{but if} ~~which~~ relates to the issue of non-promotion from a prior date. Therefore, the judgement of the Hon'ble Supreme Court in M.R. Gupta's case (Supra) would not be applicable in the facts and circumstances of the case.

7. Apart from what has been stated above, we find that on merits also, as the promotion of the juniors to the applicants had been effected by the respondents on 7.2.1989 on ad hoc basis only, when the applicant was on deputation to RITES, he will not have an enforceable right for the higher pay in the grade of Rs.2000-3200 from that date.

8. In the result for the reasons given above, OA fails and is dismissed. No order as to costs.

m/s
(M.P.Singh)
Member (A)

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member (J)

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