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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SMT. LAKSHMI SWAMINATHAN, MEMBER (J)
HON. SHRI R.K. AHOOJA, MEMBER (A)

OA NO.58/96

NEW DELHI, THIS 31ST DAY OF MARCH, 1997.

SHRI H.S. VERMA
S/o Lt. Shri J.N. Varma
Retd. Assistant Director (Accounts)
Ministry of Commerce
58 Lok Vihar Apartments
(Nr. Oxford Sr. Sec. School)
Vikaspuri
NEW DELHI-18

...APPLICANT

(In person)

VERSUS

UNION OF INDIA, through

1. SECRETARY
Ministry of Communications
Department of Posts
Dak Bhawan, Parliament Street
NEW DELHI-11
2. SECRETARY
D/o Personnel & Training
North Block
NEW DELHI-11
3. DIRECTOR OF ACCOUNTS
(Postal)
Civil Lines
DELHI-54
4. SECRETARY
Ministry of Commerce
Udyog Bhawan
NEW DELHI-11

..RESPONDENTS

(By Advocate - Shri B. Lal)

ORDER

R.K. AHOOJA, MEMBER (A)

The applicant was working as Junior Accounts Officer (JAO) in the scale of Rs.1640-2900 under Director of Accounts (Postal) since December 1973. In July 1986,

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he was promoted as Accounts Officer (AO) in the scale of Rs.2375-3500. From 1.12.1987 till his retirement on 31.3.1992 he worked in the ex-cadre deputation post of Assistant Director in the scale of Rs.2200-4000 in the Ministry of Commerce. The applicant submits that after he had been promoted as A.O. in 1986, an intermediary promotion post of Assistant Accounts Officer (AAO) in the scale of Rs.2000-3200 was introduced w.e.f. 1.4.1987. As a result an anomaly arose, in that the pay of one of his juniors Shri D.P. Malhotra who was first promoted as AAO became more than his pay on promotion to the post of AAO. The respondent No.1 vide their OM dated 26.11.1990 (A-8) sought to rectify similar anomalies directing the concerned Directors of Accounts to send consolidated proposals for stepping up the pay of the senior AOs latest by 21.1.1991. The grievance of the applicant is that no action in his case was taken by respondent No.3 nor the order (A-8) was circulated to him; he was at the relevant time working outside the Department in an ex-cadre post. After his retirement on 31.3.1992, the applicant came to know of the order (A-8) and thereafter he represented to the respondents for stepping up of his pay to the extent of the pay fixed of his junior Shri Malhotra. But despite repeated reminders and individual contacts, no satisfactory response was given except a letter dated 28.9.1994 (A-15) stating that there was no justification in stepping up his pay because his junior Shri Malhotra had drawn more pay on account of having passed the Revenue Audit Examination (RAE) of UDCs in 1973. The applicant submits that this was a wrong conclusion since even when Shri Malhotra passed the RAE in 1973, the applicant being senior had been placed in the selection grade of UDCs with benefit of two increments which were the same as the additional advance increments earned by Shri Malhotra. Thus, at no time did

Shri Malhotra get more pay than him. The applicant states that respondent No.1 in consultation with respondent No.2 (DOP&T) arbitrarily rejected the applicant's case on the ground that he had already retired and the question of stepping up of his pay in relation to his juniors did not arise after retirement. The applicant now seeks the relief that the impugned order dated 3.7.1995 be set aside and respondent No.1 be directed to issue orders stepping up his pay in his parent cadre and consequently in the deputation post as well along with payment of arrears.

2. The respondents in the reply reiterate that Shri Malhotra, the junior of the applicant, had drawn more pay in the lower post by virtue of his passing the RAE in 1973. They have enclosed a statement showing the pay of the applicant and that of Shri Malhotra (taking the advance increments of Shri Malhotra) at R-1. Further, they contend that on the applicant's own admission, he was promoted to the post of A.O. from the selection grade of UDC while Shri Malhotra was promoted from the post of JAO to AAO and thus there was no similarity in as much as the applicant and Shri Malhotra came from different sources to be promoted to different posts. Finally, they submit that the question of stepping up of pay in relation to the pay of a junior arises only when one is still in service since this is done to avoid embarrassment to the senior, but the situation changes after retirement of the senior and no such claim can be made.

3. The respondents have also taken a preliminary objection that while the cause of action on the basis of the OM dated 26.11.1990 arose earlier and the applicant also retired on 31.3.1992, he has filed the present O.A. only in January 1996. Thus, in their view the O.A. is not only devoid of merit but also barred by limitation.

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4. We have heard the applicant who was present in person and Shri B. Lall, ld. counsel for the respondents, and have also gone through the pleadings on record. The first hurdle, which the applicant has to cross is the bar of limitation. The applicant states that when the O.M. of 1990 was issued, he was on deputation to an ex-cadre post in the Ministry of Commerce and therefore he was not in a position to agitate the matter. Further he contends that since he was entitled to the higher pay as per rules, the loss of pay both while he was in service and pension after retirement constituted a recurring cause of action. We have perused the Ministry of Communication, Department of Posts, letter dated 26.11.1990 (A-8). In this O.M. a direction was issued to the addressees to review the cases in their offices which fell within the parameters outlined in para 2 of the O.M. and to send them by 21.1.1991 in a consolidated form. In other words, there was no requirement that the initiative should be taken by the affected officials and the responsibility was entirely on the concerned heads of offices. During the relevant period, the applicant was working on deputation and nothing has been shown by the respondents to establish that he was also informed of the aforesaid order of 1990. Therefore, no delay can be attributed on the part of the applicant till April 1993 when he submitted a representation (A-10) to the Deputy Director General (Postal Accounts & Finance. However, a reply was given to him on 28.9.1994 (A-15) in which it was stated that Shri Malhotra, the junior, had drawn more pay as he had passed RAE of UDC in 1973. The applicant, if he had any grievance, had to approach this Tribunal within one year of this order, i.e., by 27.9.1995. However, he filed this O.A. only in January 1996. The applicant has sought to overcome this gap by impugning the letter dated 3.7.1995 from the Minister of State for Communications to the Minister of State for Surface Transport. This is not an order but a communication

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between two Ministers which was not addressed to the applicant and this internal communication cannot be made the subject of attack since its quashing would have no meaning in order to provide any relief to the applicant.

5. The applicant has also taken the ground that the rejection of his representation constitutes a recurring loss to him. We consider that in this respect the applicant is on strong grounds and we can consider the application subject to the condition that the relief, if any, would have to be moulded keeping in view the delay in approaching the Tribunal.

6. The Ministry of Communication's letter dated 26.11.1990 (A-8) allowed the stepping up of pay subject to certain conditions, one of which is reproduced below:-

(iii) The junior person should not have drawn more pay than the senior by virtue of fixation of pay under normal rules or any advance increments granted to him in the lower post and the anomaly should be directly as a result of the junior person holding the intermediary post at the time of his promotion to the higher grade"

The above stipulation requires two conditions to be met, viz., that the junior should not have drawn more pay by virtue of fixation of pay under normal rules or any advance increments granted to him in the lower post. Secondly that the anomaly should be directly as a result of the junior person holding the intermediary post at the time of his promotion to the higher grade. It is the first part which the respondents say is relevant. They have annexed a statement of the pay drawn by the applicant as well as the junior as UDC (R-1). According to that, the applicant on 2.9.1973 was drawing a pay of Rs.500/- as UDC while the junior was drawing pay of Rs.488/-. The claim is that Shri Malhotra having

passed the RAE got two increments and therefore his pay went beyond that of the applicant. Though it is not clearly mentioned in the table furnished by the respondents, it appears that on 7.12.1973 the pay of the applicant was Rs.560/- while that of the junior was Rs.520/-. Clearly, therefore, whatever the effect of the advance increments to Shri Malhotra, the pay of the applicant maintained an edge. The applicant was promoted as A.O. on 15.7.1986 when his pay was Rs.2525/- while that of Shri Malhotra was Rs.2360/-. Thus, an edge was maintained throughout. Therefore, it is incorrect on the part of the respondents, on their own statement, that Shri Malhotra had at any point higher pay than the applicant. Consequently, if the pay of Shri Malhotra became higher on appointment as A.O. then the applicant was entitled to the same level. Neither the applicant nor the respondents have stated as to what was the differential between the pay of the two and whether Shri Malhotra was in fact drawing more pay than the applicant on his promotion as A.O. We however find that in case the pay of Shri Malhotra was fixed at a higher level than that of the applicant as A.O. (and not as Assistant Director on deputation), then clearly the applicant was entitled to the stepping up.

7. We now come to the question of what relief can be afforded to the applicant. Since he has approached this Tribunal only in 1996, we do not consider that he is entitled to payment of any arrears on any refixation prior to that date. We accordingly dispose of this O.A. with the following directions.

- (i) The respondents will notionally refix the pay of the applicant w.e.f. the date his junior Shri


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Malhotra was promoted as A.O. ^{or} such that it is not less than the pay of Shri Malhotra. Further notional stepping up of his pay against the deputation post ^{will} be carried out and his pension will be revised accordingly.

- (ii) The applicant, if there is any stepping up of pension on that account after compliance of the above direction, will be entitled to the arrears thereof from 9.1.1996, the date of filing of the O.A.

The O.A. is disposed of accordingly. No costs.


(R.K. ARORA)
MEMBER (A)


(LAKSHMI SWAMINATHAN)
MEMBER (J)

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