

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1861/97
New Delhi this the 26th day of November 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mrs. Shanta Shastry, Member (A)

Shri P.S. Purba,
S/o late Shri S. Lal Singh,
R/o 13-B, New Sena Apartments,
West Enclave, Pitampura,
Delhi-110 034.

...Applicant

(By Advocate: Shri Surinder Singh)

Versus

Union of India through

1. The Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Chief Administrative Officer &
Joint Secretary, Office of CAO
DHQ P.O[ANew Delhi-110 001.

..Respondents

(By Advocate: Shri Rajeev Bansal)

ORDER (Oral)

By Hon'ble Mrs. Shanta Shastry, Member (A)

The applicant is seeking relief against the decision of the respondents, denying the stepping up of his pay by bringing it at par with his juniors and to refix his pay on promotion to the post of UDC as well as refix his pension on that basis with all consequential arrears.

2. The applicant was initially appointed as LDC on 30.1.1956 in the office of the respondents thereafter he kept getting his promotions. He was promoted as UDC w.e.f. 20.6.1964, as Assistant w.e.f. 3.6.1978 and as Assistant Civilian Staff Officer w.e.f. 9.4.1984. Finally he superannuated as Civilian Staff Officer on 31.5.91.

3. The applicant, after his appointment, was required to undergo a typing test as he was recruited through the Employment Exchange. Thereafter he was confirmed on 1.4.1960. A junior officer to him, one Shri J.L. Goela was, however, confirmed earlier to him on 1.1.58 though he was appointed later than the applicant on 12.3.1957. The applicant aggrieved by this had made enquiries but without result.

4. When the applicant was appointed as per the prevalent rules of service, for promotion of the employees the date of joining was the basis for consideration. Prior to 1.3.1968 when the clerical service rules came into force the seniority was counted on the basis of the date of confirmation and promotions were made accordingly. However, after the coming into force of the 1968 rules the seniority in service was to be determined on the basis of the date of appointment. Some employees who were aggrieved by this had approached the Delhi High Court and thereafter the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the basis for promotion prior to 1968 should be the length of service and not the date of confirmation, in the case of D.P. Sharma Vs. U.O.I. in Civil Appeals 4133-34/84. Some employees who were not party to D.P. Sharma's case but were similarly placed knocked the doors of the Hon'ble Tribunal in OA-315/90 in the case of Hans Raj Gaba & Ors. Vs. U.O.I. for extending the benefits of the Supreme Court judgment. The Tribunal ruled that the applicant and

those similarly situated would be entitled to all consequential benefits including pay and allowances as in the case of D.P. Sharma (supra). Thereafter the applicant represented to the competent authorities to grant him stepping up of pay at par with his juniors. The applicant makes several representations to the competent authority. In reply to one representation the applicant was asked vide letter dated 2.9.93 to mention the specific name of the junior with whom he would like to step up his pay. Learned counsel for the applicant states that immediately thereafter he conveyed the name of the junior i.e. J.L. Goela. Thereafter his application was rejected on 6.10.93. He kept making further representations till final reply was given to him in April 1997. All the representations were rejected.

5. Learned counsel for the applicant in his rejoinder has tried to explain that the Ministry of Defence did not consider his representation properly. In the light of the orders passed by this Tribunal in the case of Hans Raj Gaba & Ors. Vs. U.O.I. in OA No. 115/90 applicant is claiming the stepping up of pay. The applicant is not satisfied with the rejection of his request as he felt that his case was different than those of ^{Shri} Mr. Makhan Lal or ^{Shri} M.G. Balasubramanium.

6. Learned counsel for respondents submits that the case of the applicant was considered in great depth, in detail and every point of his was replied to. The applicant's case does not fit in

the various judgments of the Tribunal as well as the judgment of the Hon'ble Supreme Court cited earlier. Also the respondents pointed out that Shri J.L. Goela who was appointed later than the applicant was appointed directly through the UPSC and when he joined service he had already passed the typing test. Therefore, he was confirmed earlier. Further the respondents averred that it was found that since the applicant's juniors have not been promoted on the original date of promotion, the petitioner could also not be promoted on that date. It is seen from a chart showing the changes in seniority in different grades after carrying out the review DPCs in pursuance of the different courts cases delivered in seniority disputes in respect of the applicant vis a vis his junior Shri Goela. According to this ^{that} statement the applicant has been granted promotion dates earlier than those granted to his junior Shri J.L. Goela. For example, he has been given the date of 7.5.65 for promotion to UDC as against the date of 8.6.65 given to Shri J.L. Goela. Similarly in promotion to ACSO the applicant was given the date of 9.4.84 as against 20.11.84 given to his junior Shri Goela. Respondents, therefore, contend that the applicant cannot be granted the stepping up of pay at par with his junior.

7. We find that the cause of action in this case has arisen when Shri J.L. Goela junior to the applicant was confirmed and promoted as UDC on 24.11.62. The applicant was promoted two years later in 1964. The applicant should have challenged this at that very time. It appears the applicant

did raise the point, however, inspite of replies having been given he kept on representing. The case is hopelessly barred by limitation. Learned counsel for applicant tried to explain the delay in approaching the Tribunal. The Tribunal's earlier judgment was delivered on 8.11.1991. The applicant has filed the OA on 1.8.97. The application is thus barred by limitation. There are several judgments on limitation. In the case of S.S. Rathore Vs. State of M.P. (AIR 1990 SC 10) it has been ruled that the cause of action shall be taken to arise on the date of the order of the higher authority disposing of the appeal or representation where no such order is made within six months after making such appeal or representation the cause of action would arise from the date of expiry of six months. Repeated unsuccessful representations not provided by law do not enlarge the period of limitation. Hence the applicant's contention that he kept on making representations and he received finaly reply only on 1997 does not hold good. It suffers from laches and delay.

8. Learned counsel for applicant is relying upon the judgment of the Hon'ble Supreme Court in the case of M.R. Gupta Vs. U.O.I. 1995 (5) SCC 628 where it has been held that in the matters of pay fixation the cause of action arises every month and period of limitation is not attracted in such cases. The applicant's case is not one of pay fixation but of stepping up of the pay at par with his junior. He should have questioned it at the

time when the junior got promoted in 1962. We are, therefore, of the view that this case is not covered by the ratio in M.R.Gupta's case.

9. Even considering the case on merits we find that the applicant has been given deemed dates of promotion earlier than those given to his junior. We find that there is no valid reason\$ to accede to the request of the applicant.

10. In the result the OA fails and is accordingly dismissed. No costs.

Shanta
(Mrs. Shanta Shastry)
Member (A)

Om Sundar
(V. Rajagopala Reddy)
Vice-Chairman (J)

cc.