

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 2676 of 1997 decided on 16.10.1998.

Name of Applicant : Kanshi Ram

By Advocate : Shri G.K. Aggarwal

Versus

Name of respondent/s Union of India & another

By Advocate : Shri D.S. Mahendru

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

N. Sahu
(N. Sahu)
Member (Admnv)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2676 of 1997

New Delhi, this the 16th day of November, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A. Vedavalli, Member (J)

Kanshi Ram, Executive Engr
(Electrical), CPWD, r/o 453/IX, RK
Puram, New Delhi -110022 (Ph.616-9573) -APPLICANT

(By Advocate Shri G.K. Aggarwal)

Versus

1. Union of India through Secretary,
Ministry of Urban Affairs &
Employment, Nirman Bhawan, New
Delhi-110001.
2. The Director General (Works),
Central Public Works Deptt. Nirman
Bhawan, New Delhi-110011. - RESPONDENTS

(By Advocate Shri D.S. Mahendru)

O R D E R

By Mr. N. Sahu, Member (Admnv) -

The relief prayed for in this O.A. is as
under -

(A) Call for relevant record of 'ad-hoc'
promotions made in 1976 from JEs (E) to AEs
(E) when Applicant's junior Mr. Bahadur
Singh was promoted as 'ad-hoc' AE (E), to
see if Applicant's case was considered and
rejected on merits or otherwise,

(B) If Applicant's case for 'ad-hoc'
promotion from JE(E) to AE(E) in 1976 was
not considered alongwith or before his
junior Mr. Bahadur Singh, Direct respondents
to do so now and, if the Applicant made the
grade, order them to promote the Applicant
effective from the date Mr. Singh was
promoted and to step-up Applicant's pay as
AE(E) effective 17.11.1976 and as EE(E)
effective 18.12.95 at par with Mr. Singh,
with arrears and all other consequential
and subsequential benefits, allow any other
relief, with costs.

2. The main contention of the applicant is that
he was not aware of the adhoc promotion given to his

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junior Shri Bahadur Singh as Assistant Engineer in 1975-76. When called upon to clarify, the applicant stated in his affidavit filed on 18.11.1997 that when Shri Bahadur Singh was promoted as adhoc AEE on 17.11.1975 he was posted at Rajkot, Gujarat and did not know of Shri Bahadur Singh's adhoc promotion. Shri Bahadur Singh joined as Executive Engineer in Delhi Central Electrical Circle (V) in January, 1996 and the applicant also joined as Executive Engineer located in the same building. It was at that point of time he came to know that Shri Bahadur Singh's pay was higher than his own. When he represented in May, 1996 he was told that Shri Bahadur Singh was given adhoc promotion as AEE in 1975. The applicant's counsel, in order to meet the ground that the O.A. is barred by limitation, relied on the decision of the Hon'ble Supreme Court in the case of Kewal Singh Vs. Mt. Lajwanti, AIR 1980 SC 161. According to the learned counsel the cause of action no doubt had arisen in 1975 when Shri Bahadur Singh got adhoc promotion but he came to know about it only in 1996 and thereafter filed a representation which was turned down. While the occurrence of the event might be in 1975 but the cause of action had arisen when this came to his knowledge in 1996.

3. Shri D.S. Mahendru, learned counsel for the respondents cited the decision of S.V. Ramani Vs. E.S.I.C., 1995(2) ATJ 497. He drew our attention to paras 6 and 7 of the said decision. He argued that Articles 14 and 16 cannot be invoked in a time barred claim. The learned counsel on merits relied on a decision of the Hon'ble Supreme Court in the case of

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Union of India & others Vs. R. Swaminathan, JT 1997

(8).61. He finally contended that the applicant belonged to the same cadre of service and no one would believe that he did not know that his junior was promoted adhoc. He stated that the application is also bad in law on account of non-joinder of the affected parties. He drew our attention to the comparative service particulars of the applicant vis-a-vis Shri Bahadur Singh as Annexure -R-1. It would be seen from the said comparison that at no stage as AE or EE Shri Bahadur Singh had drawn less pay than that of the applicant. There is no anomaly in the pay fixation of the applicant. It is stated that Shri Bahadur Singh was promoted as Assistant Engineer, Electrical with effect from 17.11.1975. Shri Bahadur Singh belongs to the SC category and for this reason he was promoted earlier. It is further submitted that the applicant joined as Executive Engineer (Electrical) on adhoc basis w.e.f. 28.11.1995 and his pay was fixed at Rs.3625/- whereas Shri Bahadur Singh was promoted as Executive Engineer (Electrical) on regular basis w.e.f. 17.1.1996 and as such his pay was rightly fixed.

4. This case is hopelessly barred by limitation. The applicant now wants to raise a matter for stepping up his pay with that of his junior Shri Bahadur Singh when the difference in the pay was on account of Shri Bahadur Singh's adhoc promotion on 17.11.1975. The adhoc promotion order was a public order. He cannot claim ignorance of the same. We cannot unsettle the matter after 23 years. Stepping up is possible only when that adhoc

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promotion was challenged as bad in law. Since that was not done and 23 years have passed thereafter, the applicant cannot be heard to have his pay stepped up with that of Shri Bahadur Singh. It is now settled law by several decisions of the Hon'ble Supreme Court that (i) it is expected to a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period; assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set up after it has been functioning on a certain basis for years. (ii) Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the applicant irrespective of merit of his claim.

5. We are not satisfied with the explanation that because he came to know of the difference in pay in 1996 he claimed parity as Executive Engineer now. In order to grant him this parity, we have to examine the claim of Shri Bahadur Singh, who got an adhoc promotion and, therefore, rise in pay on 17.11.1975. That was also explained by the respondents, as due to the benefit of reservation. If we cannot disturb that order, we cannot direct parity as Executive Engineer at this stage.

6. Besides the case of R. Swaminathan (supra) cited by the learned counsel for the respondents, there are other decisions also which say that where the anomaly arises not as a result of operation of FR 22-C but as a result of separate rules, relating to reservation for SC/ST, there should be no stepping up of pay. CAT Mumbai Bench Swamy's Case Law Digest 1996/2 - OA 1204/95 decided on 12.9.1996. The

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applicant's case is also not tenable in view of the Hon'ble Supreme Court's decision in Chief Commissioner of Income Tax (Administration), Bangalore Vs. V.K.Gururaj and others, 1996 SCC (L&S) 579 wherein their Lordships set aside the order of the CAT Bangalore Bench stepping up the pay of the seniors on par with that of junior. Certain officers were allowed special pay and, therefore, on promotion they got higher pay than their seniors. This would not justify stepping up of pay of the seniors as per the Supreme Court's decision. Finally, the Supreme Court in D.G. Employees State Insurance Corporation of India and another Vs. B.Raghava Shetty and others, (1995) 30 ATC 313 held that where juniors had been promoted on adhoc basis for whatever reasons and derive the benefits of higher pay fixation, the seniors cannot claim that their pay should be stepped up. The decision in the case of Raghava Shetty's (supra) seals the fate of the applicant's claim.

7. In the result, the O.A. is dismissed both on ground of limitation as well as on merits. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

rkv.

N. Sahu

(N. Sahu)
Member (Admnv)

16/11/98