Central Administrative Tribunal, Principal Bench

Original Application No.2408 of 2000

New Delhi, this the day of 3rd July,2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)
Hon'ble Mr.Shanker Raju, Member(J)

Kewal Kumar Luthra,
R-Block 70-D
Dilsad Garden,
Delhi-110095. -- Applicant

(By Advocate Shri S.N.Anand)

Versus

1. Union of India through Secretary, Department of Telecom, Ministry of Communications, Sanchar Bhawan, 20, Ashoka Road, New Delhi-110001

2. Chief General Manager, Mahanagar Telephone Nigam Limited, Khurshid Lal Bhawan, Janpath, New Delhi. - Respondents

(By Advocate Shri V.K.Rao)

O R D E R

By V.K.Majotra, Member(Admnv) -

The applicant was granted Selection Grade on 3.5.1984 (effective from 1.6.1981) in the cadre of Junior Engineer. He superannuated on 30.5.1994. According to applicant, respondents deliberately did not fix his pay in the Selection Grade initially on the ground that his Service Book was not traceable and subsequently that he was on deputation with TCIL. The applicant made representations but to no avail. He has sought directions to respondents to fix his pay in the Selection Grade in the pay scale of Rs.500-25-750-EB-30-900 w.e.f. 1.6.1981 with consequential retiral benefits and arrears.

2. In order dated 20.11.2000 passed in present OA, it was observed that applicant will restrict his claim for interest on delayed payment in the earlier OA 441/2000 filed by him.

3. In their short reply, the respondents have contended that the OA is badly barred by limitation. The applicant had slept over his claim since 1984. The

10

applicant was on deputation with TCIL between 24.8.1980 and 23.8.1982. He did not submit the original LPC from TCIL with respondents till 20.5.1995. According to respondents, applicant canno~~t take benefit of his own wrong for pay fixation.

4. The applicant has filed rejoinder as well.

5. We have heard learned counsel of both sides and considered the material available on record.

6. On the point of limitation, learned counsel of applicant, Shri S.N.Anand, contended that applicant was promoted vide an order dated 3.5.1984 w.e.f.1.6.1981 and that though the applicant has been making representations respondents have never denied the claim of the applicant. Even as per Annexure-H dated 16.9.1999 respondents were making enquiries whether arrears were drawn by Pay Bill or not and that there was no entry in the Service Book and G.M.(North) desired the early settlement of the case.

7. It is admitted by the respondents that applicant had been promoted in the Selection Grade w.e.f.01.06.1981 and that his pay was not refixed on account of delayed receipt of LPC and that certain entry had not been made in the Service Book. The Hon'ble Supreme Court in the case of **M.R.Gupta** Vs. **Union of India and others**,(1995) 5 SCC 628 has held that where the fixation of pay was not in accordance with rules, it is a continuing wrong against the concerned employee giving rise to a recurring cause of action each time he was paid salary. Therefore, objection of respondents to the claim made by the applicant on account of limitation cannot sustain.

8. The learned counsel of applicant referred to instructions issued by Government of India, Annexure-D regarding maintenance of Service Book. Para 10 of these instructions is as follows:-

> "10. Procedure for making entries of foreign service.-If a Government servant is transferred on foreign service, the Head of his Office, or Department must send his Service Book to the Accounts Officer concerned. The Accounts Officer(now Pay and Accounts Officer) will return it to the Head of the Office after noting in it, under his signature, the order sanctioning the transfer, the effect of the transfer in regard to leave admissible during foreign service and any other particulars which he may consider to be necessary. On the Government servant's re-transfer to Government service, his Service Book must again be sent to the Accounts Officer, who will then note in it, over his signature, all necessary particulars connected with the foreign service including the fact of recovery of leave and pension contributions. No entry relating to the time spent in foreign service may be attested by any authority other than the Accounts Officer."

According to aforesaid instructions, Service Book is maintained in parent Department and entries relating to deputation and other particulars are made by Pay and Accounts Officer attached with the parent Department.

9. In the instant case LPC was admittedly received by the parent department from the Department of TCIL belatedly and a copy of the LPC was also sent to the concerned official also. We made a specific query to learned counsel of respondents as to what was the reason for delayed receipt of LPC on 20th May, 1995. The learned counsel of respondents could not supply any satisfactory reply to this. Obviously, the LPC had been received by the respondents themselves from TCIL belatedly on 20.5.1995. In view of afore-quoted instructions of making entries in Service Book and provision of LPC, the applicant cannot be held

responsible for absence of relevant entries in the Service Book and delayed receipt of LPC in the respondents' office.

10. Having regard to the facts and circumstances of the case and the discussions made above, the OA succeeds and the respondents are directed to fix the applicant's pay in the selection grade in the pay scale of Rs.500-25-750-EB-30-900 w.e.f. 1.6.1981 pursuant to orders dated 3.5.1984 (Annexure-B) and pay arrears accruing therefrom to the applicant. Respondents are also directed to revise retiral benefits pursuant to such pay fixation and pay arrears accordingly.

11. In view of harassment and inconvenience caused to the applicant, the respondents shall pay Rs.2000/- as cost of this litigation.

12. Respondents are further directed to implement above orders within a period of three months from the date of receipt of a copy of this order.

S. Raju

(Shanker Raju)
Member (J)

V.K.Majotra

(V.K.Majotra)
Member (Admnv)

Kedar.