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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No.207 of 1989

This 12th day of August, 1994

Hon'ble Mr. Justice D.L. Mehta, Vice Chairman (J)

Hon'ble Mr. B.K. Singh, Member (A)

S.C. Anand,
Dy. Director, DGS&D,
A-1, Greater Kailash Enclave-II
New Delhi-48

..... Applicant

By: Applicant in person

VERSUS

Union of India, through:

1. The Secretary,
Department of Supply,
Nirman Bhavan,
Maulana Azad Road,
New Delhi-01

2. The Director General,
Supplies & Disposal,
5, Parliament Street,
New Delhi - 01

..... Respondents

By Advocate: Shri M.K. Gupta

O R D E R

(By Hon'ble Mr. B.K. Singh, Member (A))

The applicant, at the time of filing this application, was working as Deputy Director, DGS&D. His application came up for admission on 25.10.89 when a Bench comprising Hon'ble Mr. P.K. Kartha, VC and Hon'ble Mr. I.K. Rasgotra, M(A), went through the records and heard him in person and the learned counsel for the respondents. The grievance of the applicant relates to the wrong fixation of his pay w.e.f. 1.1.1973 by the impugned order dated



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10.7.1985 (annexure A-1). The respondents at the time of admission had raised vital grounds for non-maintainability of the application. The grounds taken were, constructed res judicata, res sub-judice and bar of limitation. It is admitted that the applicant had filed a Writ Petition in the Delhi High Court regarding his grievance pertaining to confirmation, promotion etc. This writ petition was numbered as 1776/84 and was still pending in the Delhi High Court when this application was filed before this Tribunal. After the fixation of his pay vide order dated 10.7.85, the applicant filed a Civil Misc. Petition No.2604/85 in Writ Petition No. 1776/84 challenging the validity of such refixation. By its order dated 10.10.85 the High Court granted him liberty to agitate the matter at the time of final hearing.

2. The Central Administrative Tribunal Act 1985 came into being w.e.f. 1.11.1985 and the High Courts ceased to have jurisdiction regarding service matters and the powers to adjudicate all service matters were vested in the CAT. Section 29 of the AT Act 1985 also provided that matters pending in the High Courts will stand transferred to the Administrative Tribunal. In view of this legal issue, the Writ Petition No.1776/84 automatically stood transferred to this Tribunal. In the aforesaid WP the applicant prayed for the following reliefs:-

- (a) That the order dated 14th May 1981 in LPA No.212/79 granting all consequential benefits of deemed date of promotion may be further clarified and by a writ of mandamus, respondents may be directed to pay the petitioner his due salary in Grade-II of the subject service based on his deemed date of promotion prior to 16th September 1974;
- (b) That in the peculiar circumstances of the case, the respondents may also be directed to pay interest at a rate to be decided by the Hon'ble Court in the context of the Supreme Court decision cited as 1979 (Vol.I) SLR 767;

(c) That in the context of past history of litigation, exemplary costs may kindly be awarded; and

(d) That any other relief considered fit may also kindly be granted.

3. From a perusal of the reliefs, the Tribunal came to the conclusion that these were meant to seek certain clarification pertaining to the orders passed by the High Court in LPA No.212/79. The Tribunal observed that such clarifications would be given only by the Appellate Court alone. It was felt that sub-section 1 of Section 29 of the AT Act also envisaged that the transfer of cases to the Tribunal from High Court shall not apply to any appeal pending before any High Court. It was felt that the Tribunal was not competent to consider or adjudicate upon the reliefs sought by the applicant and accordingly, orders were passed to return the file to the Registry of the High Court and the concerned parties were directed to approach the Registry of High Court for further directions.

4. In the averments made in the OA, the applicant has stated that on the basis of the legal advice he filed the application before this Tribunal. Before filing the application, to comply with the provision of Section 20 of CAT Act, he ^{had} submitted a representation to the respondents on 8.7.1988 and after waiting for six months for the reply, the present OA was preferred in this Tribunal.

5. During the course of hearing before the Tribunal, the applicant had argued that the principles of res judicata and res sub-judice will not apply to the present case since he tried to seek redress from a wrong legal forum and therefore this period has to be excluded from the purview of limitation. Along with his rejoinder, the applicant also enclosed a copy of the Tribunal's order dated 25.8.1986 directing the return of the file pertaining to the Writ Petition No.1776/84 to the Registry of Delhi



High Court. A perusal of the file goes to indicate that the applicant never brought to the notice of the Tribunal about the pendency of the CMP No.2604/85 which he had filed in the said WP No.1776/84 challenging the validity of the impugned order dated 10.7.1985 and the order of the Delhi High Court dated 10.10.1985 on the said CMP to the effect that he had been given liberty to agitate the point at the time of final hearing of the Writ Petition. He made no request to the Tribunal when the order dated 25.8.1986 was passed that the CMP No.2604/85 should not be returned to the Delhi High Court on the ground that after the promulgation of the CAT Act w.e.f. 1.11.1985, the Delhi High Court was not competent to pass any order in service matters raised in the said MP, that the said CMP may be delinked from the main file while returning the papers to the Registry of Delhi High Court, and that the same may be treated and numbered as an Original Application for adjudication by this Tribunal. No satisfactory explanation is available on record as to why he did not make any prayer at the time of passing of the order dated 25.8.1986. The present application was filed on 11.1.1989 after the expiry of two years and 4 months from the date of the Tribunal's order dated 25.8.1986.

6. The Tribunal can condone delay under Section 21 of the CAT Act only when substantial and reasonable grounds are given for not approaching the Tribunal in time. The only reply that the applicant has given is that it was only after taking legal advice that he filed this application before the Tribunal. Ignorance of law cannot be an excuse. Therefore, strictly speaking, the principles of constructed res adjudicata and the bar of limitation will certainly apply to this case.



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7. Of late, the Hon'ble Supreme Court has set aside several orders of the Tribunal only on grounds of limitation, the latest being that of Ratan Chandra Samanta vs. Union of India, JT 1993 (C) SC 418. The same principle has been enunciated in the case of State of Punjab vs. Gurdev Singh, (1991) 17 ATC 287, which lays down that:-

"The party aggrieved by an order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him within the prescribed period of limitation since after the expiry of statutory time-limit the court cannot give the declaration sought for."

In the case of SS Rathore Vs. State of M.P., AIR 1990 SC 10, it has been clearly stipulated that the cause of action shall be taken to arise on the date of the order passed by the higher authority disposing of the appeal or the representation. Where no such order is made within six months after making such appeal or representation, the cause of action will arise from the date of expiry of six months. Repeated unsuccessful representations not provided by law do not enlarge the period of limitation. It was further held that the repeated representations and memorials to the President etc. cannot and do not extend the period of limitation. Delay and laches close the remedies and if the remedies are closed, rights also get defeated.

8. A perusal of the record indicates that the reliefs sought in the OA are practically the same as were agitated before the Delhi High Court and the grounds taken were also practically the same. There is nothing new in the OA and the point that is now being agitated is also in the form of clarification sought by the applicant, i.e. the expression

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year
"6th or under" has to be interpreted. This could have been as well agitated before the High Court. Unfortunately, this was not done. Thus, technically, this is also barred by constructive res judicata. While admitting the application on 31.10.1989, the question of limitation had been kept open and this matter was argued by the learned counsel for the applicant, Shri M.K. Gupta during the course of arguments.

9. Coming to the merits of the case, the interpretation of "6th year or under" implies that if a person is allowed senior scale earlier than 6th year, i.e. if he gets it in 4th year, he will get no increment in the 5th year or 6th year. He will have to wait for two years and it will be only in the 7th year that he will be eligible for getting increment. This interpretation holds good for all Central Services and All India Services. The various ministries which control the various services and the various State Governments which are the parent cadres of All India Services promote officers on different dates -- somewhere the officers get senior scale in 4th year, somewhere in the 5th year and somewhere in the 6th year, but the increments are regulated by the Pay & Accounts Officer or by the Accountant Generals of the States under the guidelines and regulations framed by the Department of Personnel & Training in consultation with the Ministry of Finance, Department of Expenditure.

10. It is admitted that the Delhi High Court by its judgment in 1985 gave the applicant the seniority from 2.4.1970 and his pay at that time was Rs.700/- in the pay scale of Rs.700-1250 (pre-revised). Thus his pay was fixed at Rs.700/- on 2.4.70 in the pay-scale of Rs.700-1250. This was the minimum of the scale. On 26.12.71 one increment was granted to him fixing his pay at Rs.740/-

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after excluding the non-qualifying service from 8.6.70 to 6.8.70 on account of his suspension and from 3.11.70 to 27.5.71 on account of extraordinary leave. On 24.12.72 his pay was fixed at Rs.780/- after giving him one increment of Rs.40/-. In the meanwhile the recommendations of the Third Pay Commission were received and his pay was fixed on the basis of the O.M. No:F.12/2/74-IC dated 14th November, 1975 issued by the Ministry of Finance, Department of Expenditure (Implementation Cell). So far as the applicant is concerned, his pay shall be fixed in accordance with the following rule based on the Appendix 6 of the Recommendations of the 3rd Central Pay Commission:-

"Directly recruited officers appointed to a Service prior to 1.1.73, who have not completed four years of service in the pre-revised junior scale or both in the pre-revised and revised junior scales shall also, on their promotion to senior charges after 1.1.73, be allowed only a special pay of Rs.150/- over their pay in the revised junior scale till they have completed four years of service and shall be allowed the minimum of the senior scale in the 5th and 6th years. Officers who have completed four years service in the pre-revised or both the pre-revised and revised junior scales but have not completed six years of service therein shall also on their promotion to the senior scale after 1.1.73, be placed in the minimum of the senior scale."

The Memo. is very clear that if an officer is promoted earlier than 6th year, he will not be entitled to any increment till he completes the 6th year. This is the clear implication of the rules. The averments made by the respondents are also to the same effect and on that basis they have fixed the pay of the applicant vide letter dated 16th March 1982 which is under challenge in this Court. The applicant argued that if there is delay in promotion and a person gets promoted in the 10th year, he will be eligible to get increments from the 7th year onwards. Nowhere in

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therefore

the rules this has been mentioned and/ this argument is fallacious. Firstly, the delay in promotion may be for want of vacancies in senior scale or due to certain unforeseen reasons of not holding meeting of the DPC on time. In most of the cases the primary reason is non-availability of vacancies. This means that either there has been an excess recruitment or there has been excess promotions or there has been emergency recruitment in a particular Class-I Service. On account of these reasons the promotion gets delayed. Since a person has not worked against a senior scale post nor has he performed the duties and responsibilities attached ~~with~~ to that post, there is no question of giving any increment for the period he was not promoted in the senior scale. A man can get promotion earlier but will not be entitled to increment as per rule indicated in the foregoing paragraph. But the converse is not true. The delay in promotion will not entitle to any increment. It is, however, true that if on account of the increments in the junior scale a person has exceeded the minimum of the senior scale pay, in that case he will be allowed to draw a personal pay when he is promoted to the senior scale. These are the various principles governing the promotion of Class-I officers in Government of India.

11. There is yet another provision in the rules ~~which~~ ~~corresponds to~~ ~~the~~ that if a junior in the seniority list is drawing higher pay than the senior, the latter's pay would be stepped up under Rule 22(c) of the

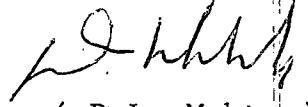
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FR/SR: This is not the case here. Nothing is on record to show that the junior is drawing higher pay than the applicant and therefore he does not fall within the purview of FRSR 22(c).

12. It is also a fact that the pay fixation orders were issued on 16th March 1982 and the applicant at no stage challenged it before the Delhi High Court in CWP403/85 and therefore the principle of promissory estoppel will also apply to this case.

12. Apart from there being no merit in the application, it is barred by delay and laches, constructive res judicata and promissory estoppel and, therefore, the application is dismissed, but without any order as to costs.


(B.K. Singh)
Member (A)


(D.L. Mehta)
Vice Chairman (J)

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