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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1063/89

New Delhi, this the 17th day of March, 1994.

SHRI J.P.SHARMA, MEMBER(J).
SHRI B.K. SINGH, MEMBER(A).

Jamna Dass, U.D.C.,
Transport Section, Delhi Milk Scheme,
West Patel Nagar, New Delhi. ...Applicant
By advocate Shri V.P.Sharma.

Versus

1. Union of India, through The Secretary,
Ministry of Agriculture & Irrigation,
Govt. of India, Krishi Bhawan, New Delhi.
2. The Under Secretary,
Dept. of Personnel & Training,
Govt. of India, New Delhi.
3. The General Manager,
Delhi Milk Scheme, Govt. of India,
West Patel Nagar, New Delhi. ...Respondents

By advocate Shri K.C.Mittal.

O R D E R (ORAL)

SHRI J.P.SHARMA:

The applicant was earlier serving in Indian Air Force and he was ultimately discharged while working as Corporal w.e.f. 30-9-1971. His service tenure did not entitle him to the grant of any pension but on account of length of service, he was granted gratuity amounting to Rs.2,719-50 p. As ex-serviceman, he was employed in Delhi Milk Scheme as a L.D.C. w.e.f. 17-4-72 and his salary was fixed on the minimum of the scale at that time in the scale of Rs.110-180. His grievance has been that inspite of the recommendation made by the Dy. General Manager in a memo submitted to the Dy. Secretary, Ministry of Agriculture on 17-5-84, the subsequent reminder on 20-7-84, he was not given any benefit in the fixation of pay scale of the service he rendered as Corporal in the Indian Air Force. He, therefore, filed this application on 18-5-89 and prayed for the grant of the

reliefs that the respondents be directed to re-fix the pay of the applicant after taking into account his service rendered in the Indian Air Force and be granted increments on the same basis and parity as has been done in the case of one Shri Bacchan Singh after quashing the order communicated to him in 1986 and 1989, annexure A-2 and A-1, respectively. The applicant has since been promoted as U.D.C.

2. A notice was issued to the respondents who contested the application and stated that the O.M. referred to in the letter of Dy. Manager, Delhi Milk Scheme (DMS) O.M.No.8(47)Estt.III/60 dated 25-11-58 is applicable to the pensioners only. The applicant was not a pensioner and his services were terminated/discharged. It is also contended that the pay scale in which the applicant was working when he was last discharged from the Indian Air Force was a scale lesser than the scale of pay of LDC to which the applicant was employed in DMS and, therefore, the benefit of FR 27 of granting pre-mature increment could not be granted. As regards the case cited as an exemplary of Shri Bacchan Singh, it is stated that he was Combatant Clerk and he was working in higher pay scale than the scale of pay in which he joined as LDC. So, benefit of earlier service was given to him. The case of the applicant is not similar to Bacchan Singh.

3. We have heard the learned counsel for the applicant as well as for the respondents. The first contention of the learned counsel is that the case is covered under FR 27. The provisions of FR 27 prescribe a mode of fixation of pay by grant of pre-mature increments. In fact, pre-mature increments are granted when the earlier pay drawn by re-employed

employee was more than what he has been paid on pre-employment and this pre-mature increments are regulated in due course of service. Though Dy. Manager, DMS has recommended the case of the applicant taking into account the ^{badges} back pay of the applicant observing that his total emoluments was Rs.110 per month and so his pay should be fixed as LDC at the stage of Rs.123. This contention has not been accepted by the Ministry of Personnel and thereby the impugned orders in 1986 giving the reasons that the applicant was not in grant of pension from the military service and otherwise also the applicant served on a lower pay of scale in the defence as compared to the pay scale on his re-employed post. The same has been repeated in the memo dated 1989 impugned in this case. The letter written by Dy. Manager, DMS does not give a right to the applicant to agitate the matter only on that basis. The applicant has to show definitely by citing rule, instruction or any Govt. of India order that the pay scale in which the applicant was working may be less, yet he is to be given pre-mature increments considering his past service rendered in Indian Air Force. During the course of the arguments also, no such rule has been shown to us except FR 27 which does not apply to the case of the applicant.

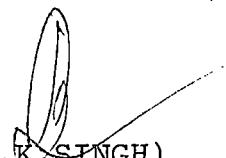
4. The learned counsel has also referred to the seniority list and that Bacchan Singh who has joined subsequently is junior to him and getting more pay. In fact, Bacchan Singh has protection of his pay which he earned during his military service and since that pay before re-employment was higher, he has been rightly granted pre-mature increments in fixation of

pay. The applicant was getting lesser pay in Indian Air Force and, therefore, cannot seek equation with Shri Bacchan Singh.

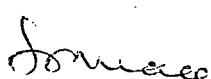
5. Nothing else has been pointed out by the counsel for the applicant.

6. The learned counsel for the respondents, however, argued that this application is also hit by limitation inasmuch as the application was filed in May, 1989, while the request of the applicant was rejected by the memo of 1986, duly communicated to the applicant. It was on the second representation that the applicant was informed in 1989 that his request has not been acceded to and the same has been turned down by the memo of 11-3-1986. The application is also barred by limitation. There is no application of prayer for condonation of delay, but we have also considered the application on merit.

7. Considering all these facts, we find that the present application is barred by limitation as well as devoid of merit and is dismissed. Parties are left to bear their own costs.


(B.K. SINGH)

MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

/KALRA/