

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1320/88.
T.A. No.

198

DATE OF DECISION 9.12.1988.

Shri Amar Chand

Petitioner

Shri Sant Lal

Advocate for the Petitioner(s)

Versus

UOI & Ors.

Respondent

Shri K.C. Mittal.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? w
3. Whether their Lordships wish to see the fair copy of the Judgement? —
4. Whether it needs to be circulated to other Benches of the Tribunal? w

MGIPRRND-12 CAT/86-3-12-86-15,000

B.C. Mathur
(B.C. Mathur)
Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

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DATE OF DECISION: 9.12.1988.

Regn. No. O.A. 1320/88

Shri Amar Chand ... Applicant

Vs.

UOI & Ors. ... Respondents.

CORAM:

Hon'ble Shri B.C. Mathur, Vice-Chairman.

For the applicant: Shri Sant Lal, counsel.

For the respondents: Shri K.C. Mittal, counsel.

JUDGMENT.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against the impugned Memo. No. Staff/E-2/VIII/Pt dated 15.3.1985 and letter No. 6-32/80 SPB II dated 23.7.1984 issued by the P.M.G. Delhi Circle and DG, P&T respectively, regarding rejection of his claim for arrears of pay and allowances on account of promotion with retrospective effect.

2. The brief facts of the case are that the applicant was appointed as a Sorting Assistant (Sorter) R.M.S. in Delhi Circle in September 1957 and was on deputation to the Army Postal Service from 1968 keeping his lien in the parent Circle. The Senior Superintendent Delhi Sorting and Air Mail Division, Delhi passed an order on 30.9.1968 promoting 19 officials (time scale sorters) to the posts of Lower Selection Grade Supervisors against newly created posts. Some officials promoted under the

above orders were junior to the applicant. The applicant being on deputation to the Army Postal Service was not considered for such promotion in his parent Circle. One Shri Kulwant Singh, one of the deputationists to the Army Postal Service, filed a writ petition in the High Court of Delhi and the Court directed the respondents to consider the case of Shri Kulwant Singh for promotion to L.S.G. as on 30.9.1968 and grant adequate relief in accordance with law. Accordingly, Shri Kulwant Singh was promoted to L.S.G. with effect from 1.10.1968, the date from which his junior was promoted and also granted consequential benefits of pay and arrears which became due as a result of retrospective promotion from the said date. The applicant alongwith other deputationists pursued their case for similar benefits with the respondents for several years. In the meantime, the applicant was promoted to the next higher scale of L.S.G. with effect from 30.11.1983 under the 'Time Bound One Promotion Scheme' (Annexure A-3 to the application). The Director-General, P&T conceded the claim of the applicant and the PMG, Delhi Circle, in pursuance of the orders of the DGP&T dated 23.7.1984 issued orders on 15.3.1985 (Annex. A-1 to the application) granting notional promotion to the applicant and some others to the L.S.G. with effect from 1.10.1968 with benefits of notional fixation of pay from the said date. The arrears of pay and allowances on account of fixation of pay have, however, been ordered to be paid when the official actually discharged the duties of the higher post instead of with retrospective

effect from 1.10.1968. The applicant made a representation to the Secretary, Department of Posts in 1986 but no reply has been received so far. The Directorate of Posts, however, vide their order dated 2.5.1988 directed payment of arrears of pay and allowances to S/Shri Madan Mohan Sharma, Sat Pal Munjal, Radhey Shyam Sharma and Ramesh Chander Khurana with retrospective effect from 1.10.1968 to implement the orders of this Tribunal in the case of Shri M.M. Sharma Vs. Union of India (O.A. No. 1019/87 decided on 11.1.1988). The case of the applicant is similar to the above case. The applicant has quoted the case of P.P.S. Gumber Vs. Union of India & Ors., 1984 (2) SLJ 631 where it has been held by Delhi High Court that where a Government officer is entitled to promotion and that is denied to him for no fault of his, he would be entitled to the arrears of salary and other allowances from the date the promotion was actually due to him. The Delhi High Court judgment itself has quoted a number of judgments on the same point. The same principle has been reiterated in the following cases:

- (i) 1977(2) SLR 656 - Allappat Narayana Menon Vs. State of Kerala.
- (ii) 1980 (3) SLR 702 - Charan Dass Chadha Vs. State of Punjab and Haryana.
- (iii) 1983(3) SLR 398 Rajappan Nayer Vs. State of Kerala & Ors.
- (iv) 1983(3) SLR 598 J.S. Arora Vs. UOI & Ors.

The case of the applicant is that he is senior to Shri M.M. Sharma and three others, who have already been given arrears of pay from 1.10.1968 and the same cannot be

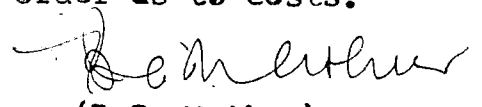
denied to him.

3. In their reply, the respondents have stated that there was a general strike in the Postal Department on 19th September, 1968 and a large number of employees participated in the strike. Some were even arrested by the Police. In order to manage the work in the R.M.S. office, a number of outsiders were recruited from open market and they needed supervision and training. As such, 19 Sorters, who had not participated in the strike and remained loyal at the risk of their life, were promoted vide orders dated 30.9.1968 as a purely temporary measure. Later on, keeping in view their services at that crucial juncture, it was decided not to revert these officials and to adjust them against regular posts. The respondents have admitted that Shri Kulwant Singh, who was on deputation to the Army Postal Service at that time and was holding his lien in the RMS Division, Delhi, got the benefit of promotion and arrears of salary with effect from 1.10.1968 in pursuance to the directions of the High Court of Delhi. The respondents have stated that legally, the applicant had no claim but in order to mitigate grievances of similarly placed persons like Shri Kulwant Singh, the Department decided to give the benefit of notional promotion to the applicant as well as others. But it was decided that arrears of salary would be permissible only where the official has discharged the duties of the higher post and as the applicant did not discharge the duties of the post, the arrears of pay and allowances were not admissible to him under the provisions contained in F.R. 17. It has also been

claimed that the applicant failed to agitate against the order of promotion dated 30.9.1968 and, therefore, his claim for arrears of salary with effect from 1.10.1968 is not maintainable being barred by limitation.

4. I have heard the arguments on both sides and carefully gone through the documents on record.

As far as F.R. 17 is concerned, it does provide that where preforma promotion is given, the arrears can be paid from the date a person actually started working but it is quite clear that the applicant cannot be faulted for not getting promotion with effect from 1.10.1968. He had not gone on strike and he was not given an opportunity to come back to the Department and on merits, therefore, he cannot be denied same consideration as given to Shri Kulwant Singh and four others similarly placed, who were actually junior to the applicant. As far as the question of limitation is concerned, the impugned orders were issued in 1985 and, therefore, the Tribunal could admit such an application on merits. There is no doubt that this case is on all fours with the case of Shri Madan Mohan Sharma and others Vs. Union of India & Anr. (O.A. No. 1019/87) decided on 11.1.1988. As such, the application is allowed and the respondents are directed to pay arrears of pay and allowances to the applicant as if he had been regularly promoted on 1.10.1968. The payment should be made to the applicant within three months from the date of receipt of this order. There will, however, be no order as to costs.



(B.C. Mathur)
Vice-Chairman.
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