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CAT/1/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1654/88  
T.A. No.

198

DATE OF DECISION 19.11.1990.

Shri O.P. Gupta, Petitioner

Shri S.S. Duggal, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri M.L. Verma, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (Administrative).

The Hon'ble Mr. J.P. Sharma, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

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

*J.P. Sharma*  
( J.P. Sharma )  
Member (Judl.)

*P.C. Jain*  
( P.C. Jain )  
Member (Admn.)

(1)

Central Administrative Tribunal  
Principal Bench: New Delhi.

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Regn.No.OA-1654/88

Date of Decision: 19.11.88

Shri O.P.Gupta

... Applicant.

Vs.

Union of India & Ors.

... Respondents.

For the applicant

... Shri S.S.Duggal,  
Advocate.

For the respondents

... Shri M.L.Verma,  
Advocate.

CORAM: Hon'ble Shri P.C.Jain, Member(Administrative)  
Hon'ble Shri J.P.Sharma, Member(Judicial)

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicant, retired Assistant Engineer(Civil), who was employed in the office of the Executive Engineer, C.P.W.D. New Delhi, moved this application under Section 19 of the Administrative Tribunals Act, 1985 against the respondents, Union of India and Director General, C.P.W.D. The applicant did not mention any specific order against which the application has been made but the applicant claims the following reliefs:

- i) to award to the applicant his confirmation on the post of Assistant Engineer(Civil) with effect from the date his next junior was so confirmed.
- ii) to make an order giving the applicant proforma promotion from the post of Assistant Engineer(Civil) to the post of Executive Engineer(Civil) with effect from the date his next junior was so promoted.
- iii) to make an order whereby confirming the applicant on the post of Executive Engineer(Civil) with effect from the date his next junior was so confirmed.
- iv) to make an order whereby giving proforma promotion to the applicant from the post of Executive Engineer(Civil) to the post of Superintending Engineer(Civil) with effect from the date his next junior was so promoted.
- v) to pay the applicant arrears of salary and other allowance with necessary interest with effect from the date the same become due.
- vi) to recompute the gratuity, leave encashment and other terminal benefits; and pay the arrears thereof alongwith

interest from the date from which such payment become due.

vii) to recompute his pension, and pay the arrears, alongwith interest from the date from which the same became due.

2. The facts in brief are that the applicant joined as Junior Engineer in C.P.W.D. on 11.4.1942. He was promoted as Assistant Engineer with effect from 31.7.1956. The applicant was suspended on 3.9.1959 and charge-sheeted under Rule 14 of the CCS(CCA) Rules, 1965 on 12th March, 1962. He was dismissed from service by a punishment order with effect from 12th March, 1964. He preferred an appeal to the President of India and the appeal was accepted by the order dated 4th October, 1966 but a fresh enquiry was ordered on the same charges. He was reinstated in service on 25.5.1970. The enquiry proceedings against the applicant could not conclude and he was compulsorily retired from service with effect from 18.7.1972 under FR-56(j). The applicant filed a writ petition No.638 of 1972 before the Hon'ble High Court of Delhi on 20.7.1972. In this writ petition the applicant had claimed the relief that the order of compulsory retirement from service be quashed and the period of suspension from 3.9.59 till 4.5.70 be treated as period spent on active duty and the departmental proceedings pending against the applicant since September, 1959 till July 1972 be quashed. The applicant reached the age of superannuation on 31.3.1978. The aforesaid writ petition was however, allowed by the Hon'ble High Court on 5th January, 1981 in terms of the following order: -

"The order of compulsory retirement dated 25.4.72 is set aside. The petitioner would be entitled to continue in service upto 31.3.1978 and consequential benefits. The continuation of suspension of the petitioner was without any justification. The petitioner would be entitled to full pay and allowances from 3.9.59 to 24.5.70 with increments and other service benefits according to the rules. The pending departmental proceedings were quashed and the counsel fee at Rs.500/-. Rule is made absolute."

3. The Union of India went in appeal against this order before the Division Bench which was dismissed on 24.3.1982. The enquiry proceedings were dropped against the applicant by the order dated 5th September, 1981 (Annexure-6). The applicant was informed on 17.9.1982 by the O.M. (Annexure-7) that the case of crossing of the Efficiency Bar (E.B.) in the pre-revised scale of pay was considered by the competent authority who found him unfit to cross E.B. with effect from 5.10.1966 or from any subsequent date upto 5.10.1971. The applicant filed a CCP 89/82 and C.M.P. 307 of 1982 before the High Court of Delhi aggrieved by the non-implementation of the order dated 5.1.1981 passed in the writ petition 638 of 1972. However, the CCP was dismissed on 2.2.1983. The applicant preferred a review petition which was also dismissed on 30.11.1983. The applicant filed C.C.A. No. 2/84 before the Division Bench which was again dismissed by the order dated 30.4.1984. In this, it was observed that the petitioner should file a writ petition. The applicant filed a writ petition No. 2213 of 1984 before the Hon'ble High Court of Delhi but this petition was dismissed in limine on 30.10.1984 but while dismissing the petition in limine, it was suggested that the petitioner should move a representation on this matter and the authorities concerned should review the representation as sympathetically as possible. The applicant who had also earlier moved a representation in July, 1984 again moved a representation in December, 1984 but the same was rejected by the order dated 9.4.1985 (Annexure-1). The applicant had again filed a writ petition No. 435/85 before the Hon'ble High Court of Delhi which was decided on 24th July, 1985 at the stage of first hearing after notice to the respondents. It was observed by the Delhi High Court that the relief cannot be granted to the petitioner as no order was passed under FR-25 which should have been passed by the officer concerned and in such a

situation the Court has no jurisdiction to interfere under the writ jurisdiction. The applicant filed S.L.P. before the Hon'ble Supreme Court 3582 of 1986 which was treated as a Civil Appeal and this appeal was allowed by order dated 3.9.1987.

The following is the operative portion of the order:

"The result therefore is that the appeal succeeds and allowed with costs. The judgement and order passed by the High Court are set aside and the writ petition is allowed. The impugned orders passed by the Director General of Works, Central Public Works Department dated September 17, 1982 and April 9, 1985 declining to permit the appellant to cross the efficiency bar at the stage of Rs.590 in the pre-revised scale of Rs.350-900 w.e.f. October 5, 1966 as also from October 5, 1972, and also at the stage of Rs.810 in the revised scale of Rs.650-1200 w.e.f. October 5, 1973 or from any subsequent date upto March 31, 1978, the date of his superannuation, are quashed. We direct the Director General of Works to make an order in terms of FR 25 allowing the appellant to cross the efficiency bar at the stage of Rs.590 w.e.f. October 5, 1966 and at the stage of Rs.810 w.e.f. October 5, 1973 and subsequent dates, according to the decision of the Government of India, Ministry of Finance dated September 21, 1967 as later clarified by the Ministry of Home Affairs Memorandum dated April 6, 1979 and to re-fix his salary upon that basis and pay the difference, as also re-fix his pension accordingly. The appellant would be entitled to interest at 12% per annum on the difference in salary as well as in pension. We further direct that the Government of India will make the payment to the appellant within four months from today."

4. The applicant made a representation on 29.2.1988 to the respondents for getting promotion from the post of Assistant Engineer (Civil) to the post of Executive Engineer (Civil) w.e.f. the date when his next junior diploma holder in Civil Engineering was so promoted. As no reply had been received by the applicant, the present OA was filed on 29.8.1988.

5. The respondents contested the application and took a preliminary objection that the application is not maintainable

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under law. Further, it is stated that the relief claimed by the applicant is belated and <sup>the</sup> application ex-facie is liable to be dismissed with costs under Sections 20 and 21 of the Administrative Tribunals Act, 1985 with costs. In this connection the learned counsel for the respondents referred to certain authorities\* in the reply itself. It is said that the post of Executive Engineer is a selection post and not filled on seniority-cum-merit basis. As per the seniority list prevailing at that time, the applicant became eligible for consideration in the panel prepared in 1968 and July, 1971. The applicant was actually considered by a duly constituted D.P.C. held in November, 1968. The D.P.C. graded only 131 officers from the list of officers who were being considered for promotion. The Committee did not assign any specific grading to these officers as none of them was found to be outstanding, ~~and no other than outstanding could make his name in the panel otherwise.~~ The applicant was one of the remaining officers who was not graded as outstanding. No junior officer to the applicant was promoted. The D.P.C. held in July, 1971 also considered the applicant but <sup>he</sup> was not included in the panel on the basis of the record of his service. As the applicant stood compulsorily retired with effect from 28.7.1972, ~~therefore~~, the question of considering his name for promotion in the panel prepared in 1973, 1975 and 1976 did not arise. The applicant <sup>was not</sup> entitled to proforma promotion as <sup>he</sup> ~~the applicant~~ was not in service. It has been further stated that the question of considering the applicant for promotion after a lapse of about 8 years since the judgement of the High Court, does not arise. The contention of the applicant that his case stands decided in 1987 is not correct, as the crossing of E.B. has no relevancy with the promotion case.

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- \* 1. 1988(2)ATLT 124, Dr. K. Padmavati Vs. U.O.I.  
 2. 1988(6)ATC (Bombay) 24, J. Guru Swami Vs. Council DS&IR  
 3. 1987(1)ATR 292, Vimla Mukerjee Vs. U.O.I.  
 4. AIR 1982 SC 101, R.S. Minakashi Vs. I.J. Menon.  
 5. 1987(1)ATLT (SC) 129, K.R. Mudgal Vs. R.P. Singh

6. We have heard the learned counsel for both the parties at length and perused the records.

7. As regards the point of limitation, it is argued by the <sup>counsel</sup> applicant that there is no delay ~~on merits~~ and there is no limitation for the case like the present one as it is only for the implementation of the judgement of the High Court of Delhi dated 5.1.1981. However, the applicant has moved an application for condonation of delay also. MP-158 of 1989 was decided by the order dated 17.3.1989 and the question of limitation was left open at the time of admission of the present application. The learned counsel for the applicant has placed reliance on AIR 1979 SC 1144, wherein the Hon'ble Supreme Court observed as follows: -

"..... The plea of 'Limitation' based on this Section is one, which the Court always looks upon with disfavour, and it is unfortunate that a Public Authority like the Port Trust should in all morality and justice take up such a plea to defeat the just claim of the citizen. It is high time that Govt. and Public Authorities adopt practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens; and do what is fair and just, to the citizens....."

The authorities referred to by the learned counsel for the respondents in their reply are not applicable to the present case because of the following reasons:

A) The applicant has been litigating since 1972 and in the Writ Petition 638 of 1972 (Annexure-5), the applicant claimed the following reliefs:

- a)        xxxxx                                xxxxx                                xxxxx
- b) Issue appropriate writs, directions or orders
- (i) quashing the impugned order of compulsory retirement of the petitioner dated 25th April, 1972; and the order of the respondents dated 3rd July, 1972 rejecting the representations of the petitioner against the aforesaid order of compulsory retirement.
- (ii) quashing the order of the respondents dated 20th January, 1971 declining to pass an order under F.R.54 and refusing to pay to the petitioner full pay and allowances for the period of suspension and refusing to treat the same as spent on duty for all purposes; and the order dated 14th July, 1972 rejecting the representation of the petitioner dated 26th April, 1972 against the aforesaid order of the respondents dated 20th January, 1971; and

- iii) declaring the compulsory retirement of the petitioner as illegal and arbitrary and directing the respondents to allow the petitioner to continue in service with all benefits upto the age of 58 years; and
- iv) further directing the respondents to pay full pay and allowances for the period of suspension and treat the suspension period as spent on duty for all purposes and also to pay to the petitioner all increments which he would have earned had he not been suspended and also to allow him to cross efficiency-bar which fell due to him on 1st July, 1967.

These reliefs were allowed to the applicant by the order dated 5.1.1981 but the respondents did not carry out that order which included the consequential benefits also and for the same the applicant approached the Hon'ble High Court of Delhi time and again.

B) The applicant after decision of the writ petition in his favour on 5.1.1981 contested the appeal before the Division Bench filed by the Union of India, which was dismissed on 24.3.1982. The applicant filed a CCP 89 of 1982 and Civil Misc. Petition 3070 of 1982 which were dismissed on 2.2.1983. A review filed by the applicant was also dismissed on 30.11.1983. A CCA against this was filed which was dismissed on 30.4.1984 with the direction that a writ petition be filed. The writ petition was filed on 22.3.1984, which was dismissed on 30.10.84. The applicant was directed to make a representation which he made to the respondents in December, 1984 and the said representation was rejected by the respondents in April, 1985. The applicant again filed Civil Writ Petition 435 of 1985 before the Hon'ble High Court of Delhi which was dismissed on 24.7.1985. The applicant filed the S.L.P. before the Hon'ble Supreme Court No. 3582 of 1986 which was allowed on 3.9.1987 and time was allowed to the respondents to allow the applicant to cross the E.B. by February, 1988.



C) The learned counsel for the respondents has placed reliance on a number of authorities but these have no application to the present case. <sup>In</sup> K.R. Mudgal Vs. R.P. Singh, 1987 (1) ATLT (SC) 129, ~~In order to make it clear~~ at page 133, the observation attention was drawn to <sup>be</sup> "those matters which have been settled earlier should not/unsettled by a belated litigation." Reliance has also been placed on R.S. Minakashi Vs. I.J. Menon, AIR 1982 SC 101 and R.N. Singhal Vs. Union of India, 1986 (1) ATR page 20, Dr. K. Padmanabhan Vs. Union of India, 1988 Vol. II ATLT 124. In all these authorities, the applicant had taken up the matter <sup>when the same was</sup> pretty old and there was no nexus in the relief claimed before the Tribunal and the cause of action, <sup>was</sup> between the cause of action and proceeding inasmuch as, there <sup>was</sup> a time gap <sup>which</sup> could not be bridged. <sup>/</sup> taken However, in the present case, the applicant was compulsorily retired in 1972 and since then till 1987 the applicant was pursuing his remedy when ultimately the Hon'ble Supreme Court directed the respondents to pass order under FR-25 and also the matter of the E.B. at both the stages in the scale be favourably passed in favour of the applicant and the respondents were allowed time till February, 1988. In February, 1988, the cause of action in favour of the applicant arose when the order for crossing his E.B. was passed. Only then he made a representation in August, 1988 for giving proforma promotion and fixing his pay and allowing him monetary benefits. The department did not pass any order on his representation and as such, the applicant came before this Tribunal. There is, therefore, no delay in coming to the Tribunal.

8. The other point taken by the respondents is that the applicant had not taken any point in his writ petition filed before the Hon'ble High Court regarding his promotion and so <sup>at this stage.</sup> now that cannot be agitated. The judgement passed by the Hon'ble High Court Delhi in writ petition 638 of 1972 is the final judgement between the parties as the Union of India

could not succeed in appeal before a <sup>Division</sup> Bench which was dismissed ~~the appeal~~ on 24.3.1982. The applicant moved ~~xxx~~ the authorities for implementation of this judgement so as to be allowed all monetary benefits which he would have earned had he been in continuous service from the date of his suspension i.e. 3.9.1959 to the date of his premature retirement i.e. 20.7.1972. The department <sup>neither</sup> did ~~allow him~~ /all the monetary benefits nor the promotion as he was not found fit to cross the E.B. The matter of E.B. itself remained in litigation since 1982 to 1987 and <sup>the</sup> ultimately/Hon'ble Supreme Court held that the applicant was entitled to cross- E.B. on both the stages in the scale of pay and directed the respondents that necessary orders under FR-25 be passed. In view of this it was now for the department to give all benefits which could be given to the applicant and the applicant cannot go again to file proceedings except for the implementation of the judgement of the High Court in writ petition No.638 of 1972. The applicant did not have an opportunity to agitate the matter of his promotion as the same stood decided by the judgement of the Delhi High Court in writ petition 638 of 1972 by the order dated 5.1.1982. In view of this, the present application cannot be said to be barred under order 2 Rule 2 CPC or by any other provision of law or on account of laches on the part of the applicant.

9. The applicant has sought the relief of proforma promotion with all consequential benefits from the post of Assistant Engineer(Civil) to the post of Executive Engineer(Civil) and thereafter from the post of Executive Engineer(Civil) to the post of Superintending Engineer with effect from the respective dates from which his juniors were so promoted. What the applicant can get out of the judgement of the Delhi High Court passed in Writ Petition 638 of 1972 is the monetary benefits treating the applicant

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to be in continuous service upto the age of 58 years.

The relevant operative portion of the judgement of the Hon'ble High Court is reproduced above in para 2 of the judgement and is also at page 76 of the paper-book in para 19 of the judgement. For the sake of supplying emphasis it is again reproduced "the petitioner would be entitled to continuation in service upto 31.3.1978 and consequential benefits.

10. It has also been argued by the learned counsel for the respondents that the applicant was considered by the D.P.C. for promotion in the year 1968 and 1971 but he could not be empanelled because only outstanding graded incumbents could be empanelled. It has been further argued that in 1973, 1975 and 1976, the applicant could not be considered by the D.P.C. as he had already been retired prematurely in 1972 with effect from 28.4.1972. The learned counsel for the applicant argued that since by the judgement of the Hon'ble High Court in Writ Petition 638 of 1972 dated 6.5.81, the applicant was treated to be in service, so he has to be considered by the D.P.C. which has not been done because of his premature retirement which now stands quashed. In view of this fact the applicant has to be considered for promotion as Executive Engineer.

11. In view of the above discussion, the application is allowed in the manner that the respondents shall consider the case of the applicant for promotion by having a review D.P.C. and in case the review D.P.C. finds the applicant fit for promotion on the basis of the service records of the applicant, then he shall be given promotion from the date his junior had been promoted. The applicant, if found fit for promotion shall also be entitled to enhanced pay from the date of promotion and arrears of pay and will also be entitled to revised retirement benefits. In case the applicant

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is not found fit for promotion by the Review D.P.C. which shall be convened by the respondents within a period of six months then the applicant shall not be entitled to any relief. The application stands disposed of accordingly.

12. In the circumstances of the case, the parties are left to bear their own costs.

*J. P. Sharma*  
( J.P. Sharma ) 19.11.70  
Member(Judl.)

*P. C. Jain*  
( P.C. Jain ) 19/11/70  
Member(Admn.)