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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1947/88

New Delhi this the 9th Day of December, 1993.

The Hon'ble Mr. J.P. Sharma, Member (J)
The Hon'ble Mr. P.T. Thiruvengadam, Member(A)

Shri Kuldip Singh
son of late Shri Gurbachan Singh,
permanent resident of C-2-B/60-A,
Janak Puri, New Delhi-110058 ...Applicant

(By Advocate: None)

Versus

1. Union of India, Ministry of
Urban Development (Service
to be effected through its
Secretary) Nirman Bhawan,
New Delhi.
2. The Director General of Works,
Central Public Works Department,
Nirman Bhawan, New Delhi ...Respondents

(By Advocate Shri M.L. Verma)

O R D E R (ORAL)

(Hon'ble Mr. J.P. Sharma)

The grievance of the applicant is that on the retirement of Shri S.L. Gupta, a Senior Sanitary Inspector (SSI for short) w.e.f. 1.7.1977. The applicant was directed by the respondents to look after the work of SSI in addition to his own duties w.e.f. 1.7.77 (Annexure-J). He has made representations time and again that since he has officiated on the post of SSI w.e.f. 1.7.77, his ultimate recommendation by the DPC for appointment and promotion to the post of SSI by the order dated 22.12.79 and in fact given actual promotion w.e.f. 2.1.1980, he should be deemed to have been recommended for promotion by DPC w.e.f. 1.7.77. He has prayed for the grant of the relief that the rejection of his representation by the order dated 3.9.87/

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16.9.87 be quashed and he be accorded promotion w.e.f. 1.7.1977 with all consequential benefits of pay etc.

2. A notice was issued to the respondents to file the reply and took the preliminary objection that the application is barred by limitation, as laid down in Section 21 of the Administrative Tribunals Act, 1985. On merits, it is averred that the Superintending Engineer notified for filling up the post of SSI which remained vacant till 22.9.78 by the order dated 16.1.79 and thereafter a DPC was convened according to the recruitment rules and met on 22.12.79 and recommended the applicant for appointment as SSI and thereafter on 31.12.1979 the letter was issued in his name and he joined on 2.1.1980. The matter was, however, reconsidered by DPC who again met on 19.9.1980 whether the applicant can be given promotion w.e.f. 1.7.1977. So promotion was not granted/ ^{earlier} to the meeting of the DPC, while in fact the DPC has recommended his promotion w.e.f. 1.7.77. The Government did not accept the recommendation of the DPC in absence of clear principles and the rules on the subject that ad hoc promotion would not have been given from a retrospective date. When the applicant made representations, he was finally informed in November, 1981 that he cannot be granted antedated promotion w.e.f. 1.7.1977. The applicant pursued in writing again and again and the respondents as usual re-considered the matter by rejecting the representation by the impugned order but that will not extend the period of limitation.

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3. This is an old matter which is on Board since November, 1993. None is present on behalf of the applicant. We, therefore, decide to dispose of the matter on the basis of pleadings after getting assistance from Shri M.L. Verma, learned counsel representing the respondents.

4. It is undisputed that for promotion to the post of SSI the case of the applicant had to be considered by the DPC. The DPC met on 22.12.1979 when the recommendation had been made by the DPC than the earlier date from which the applicant could be promoted is the date of the meeting of the DPC. The applicant has been conveyed the order on 31.12.1979. In view of this the claim of the applicant that as he has worked from 1.7.1977 in addition to his duties as SSI, his promotion in fact to that post should have been from that date. We are unable to appreciate this contention, as there is no order giving ad hoc appointment to the applicant on the post of SSI from that ~~date~~ date. Under F.R. 49, a person may be asked to look after the duties of the other post also, but, that would not entitle him to claim for the pay scale or promotion to the post for which he has been asked to discharge his duties in addition to his own to which he is substantively appointed. We are handicapped by the assistance from the applicant or his counsel to take other view on the matter. In any case, we find that the present application is barred by limitation, yet on merit also it cannot be considered favourably on the various averments raised in the application.

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5. A case is made out regarding recommendation of the DPC in its supplementary meeting in August, 1980 that the applicant's promotion be considered from 1.7.77. The recommendations of the DPC are not of a binding nature on the Government though in normal course the Government is expected not to differ with the same. The DPC in fact, according to the recruitment rules, judges the suitability for promotion to the higher post, but the function of the DPC is not to recommend a promotion from a particular date. They can only consider the fitness for promotion and it is for the authorities, i.e., the appointing authority to consider from which date the recommendation of the DPC has to be given effect to. The applicant, ofcourse, would have been in a disadvantageous position, had the recommendation of the DPC not accepted from the date if had recommended the case of the applicant. But, he cannot have any grievance that his promotion should have been antedated w.e.f. 1.7.77.

6. From another angle also a person cannot be a member of two cadres at one time. He has to vacate the earlier post in order to join the promotional post. He cannot, simultaneously, ride on both the horses and claim that the higher post is the post on which he has worked and he is entitled to the benefit of the promotional post. His promotion has not been considered on 1.7.77. On this account also, we do not find any merit in this contention of giving him antedated promotion to the post of SSI w.e.f. 1.7.77.

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7. Normally the applicant should approach the Tribunal within limitation provided under Section 21 of the Administrative Tribunals Act, 1985 and when the order was conveyed to him, rejecting his representation in November, 1981 the applicant has sought for judicial remedy and the Tribunal cannot extend its jurisdiction to a cause of action which has arisen three years prior to the enforcement of the Administrative Tribunals Act, 1985. On this account also though the matter was reconsidered by the respondents, but the cause of action remains, the only jurisdiction of the Tribunal of a period to which the jurisdiction is not extended by the said Act.

8. In view of the above facts and circumstances we do not find any merit in this application and the same is disposed.

9. Parties to bear their own costs.

P. T. Thiruvengadam

(P.T. THIRUVENGADAM)
MEMBER(A)

J. P. Sharma

(J.P. SHARMA)
MEMBER(J)

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