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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI.

New Delhi, this the 3rd day of January, 1994.

HON'BLE MR. J.P.SHARMA, MEMBER(J).  
HON'BLE MR. B.K.SINGH, MEMBER(A).

O.A.1948 of 1988.

P.O. Kalra  
son of Late Shri Tahala  
Ram Kalra,  
Sr. Store Keeper,  
Delhi Milk Scheme,  
West Patel Nagar,  
New Delhi-110008,  
resident of B-18/377,  
Lodhi Colony, New Delhi. ...Applicant

(By Advocate: S/Shri R.Doiraswamy  
and Sant Singh)

Vs.

1. Union of India, through  
The Secretary,  
Deptt. of Agriculture &  
Cooperation, Krishi Bhawan,  
New Delhi-110001.
2. The General Manager,  
Delhi Milk Scheme,  
West Patel Nagar,  
New Delhi-110008.
3. Shri T.C.Bakshi,  
Stores Supervisor,  
Delhi Milk Scheme,  
New Delhi-110008. ...Respondents

(By Advocate: Ms. Jasvinder Kaur,  
proxy counsel for Shri K.C.Mittal)

ORDER (ORAL)

Hon'ble Mr. J.P.Sharma, Member(J) :-

The applicant has since superannuated wef 31.8.89 while working as Sr. Store Keeper in Delhi Milk Scheme. In October, 1988, he filed the present application being aggrieved by not being given regular appointment to the post of Sr. Store Keeper to which post he was promoted on ad hoc basis by the order dated 22-2-1973. He has also the grievance that the recruitment rules of

15-7-1964 (hereinafter called 1964 rules) which were in force in Delhi Milk Scheme for Class III and IV posts, have not been strictly followed and have not been applied to the case of the applicant.

2. The applicant has approached for the grant of the following reliefs :-

i) the applicant be deemed to have been in the post of Sr, Store Keeper on regular basis w.e.f.

20.2.1973;

ii) that the appointment of the applicant may be deemed to have been w.e.f. 19.9.1971 when a regular vacancy was available;

iii) declaration to the effect that the applicant be deemed to be promoted to the post of Sr. Store Keeper w.e.f. 1-7-69 when a permanent post had fallen vacant;

iv) applicant be declared to be placed in the pay scale of Rs.330-485 wef 1-7-69 as against the pay scale of Rs.210-425 allowed to the applicant w.e.f. 21-2-73;

v) applicant be placed upper-most in the seniority list of Sr. Store Keeper cadre; and

vi) the irregular illegal ad hoc promotion of Shri T.C. Bakshi, respondent no.3 to the post of Store/Supervisor on 6.2.78 be quashed.

3. A notice was issued to the respondents and

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the official respondents as well as Shri T.C.Bakshi, respondent no.3, contested the application and took the preliminary objection that the application is belated, and barred by limitation. They also contested the application that the applicant was a Jr. Store Keeper in Delhi Milk Scheme in the pay scale of Rs.205-280. The applicant was rejected in D.P.C. held in 1971 while Shri T.C.Bakshi, respondent no.3 and S/Shri Sharma and S.N. Jha were recommended for promotion. The applicant is not senior to them. The applicant is not entitled to any relief prayed for.

4. We have heard the applicant on an earlier occasion at length and he was given time. Now, he is assisted by two learned counsel who pressed the arguments. Ms. Jasvinder Kaur appears as proxy counsel for Shri K.C. Mittal and argues the matter.

5. The facts are simple. The applicant was Jr. Store Keeper appointed before 1964 rules. 1964 rules provide that a promotion to the post of Sr. Store Keeper in the scale of Rs.335-485 is by promotion of Store Keepers who have got 3 years standing in that cadre. The applicant has never worked as Store Keeper. In 1983, another rules came for the post of Jr. Store Keeper and subsequently on 30-1-89, the rules of 1964 were modified and replaced by the Delhi Milk Scheme (Senior Store Keeper)

Recruitment Rules, (1989 (hereinafter called the 1989 rules). These 1989 rules laid down that from Jr. Store Keeper with 5 years service in the grade rendered after appointment of regular basis, 25% of the vacancies shall be considered for promotion and remaining 75% to be filled up by direct recruitment. From the record, it appears that for the first time, the applicant made a representation in April, 1987 and that too only for the grievance of not being regularised in his appointment as Sr. Store Keeper though having put in more than 15 and a half years' of service by that time. It is followed by another representation in 1988 where the applicant has also raised the issue of getting the scale of Rs.335-485 which was the scale of Sr. Store Keeper according to 1964 rules.w.e.f. 21-2-73.

6. We have heard the learned counsel on the point of limitation. The only emphatic contention that has been raised is that since the applicant has continued to work as Sr. Store Keeper for 15 years and he has all along been ignorant of the factual position which was never disclosed to him during this period by the employer-respondent, he could not assert his right at the relevant point of time. It is argued that technicality should not be made a hurdle by an employer in a case where justice is to be done. It is also argued that the applicant could not approach because of financial stringency as he was

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looking to his family. We have given a careful consideration to these contentions. The relief claimed by the applicant is that he should be given promotion of Sr. Store Keeper since April, 1969; then he again switches to 1971 when he was condemned by D.P.C. because of certain vigilance inquiry and now the learned counsel asks for placement of applicant in the scale of Rs.335-485 as Sr. Store Keeper w.e.f. the date of promotion, i.e., 21-2-73. Regarding <sup>/promotion w.e.f.</sup> 1969 and 1971, it is totally uncalled <sup>for</sup> because the applicant was never considered for that post and he never made a representation that he should be considered. It is upto the respondents to keep a vacancy unfilled and applicant has only a right to be considered when the process of filling up <sup>of</sup> the vacancy is taken up. Regarding the matter of promotion as Sr. Store Keeper in Feb., 1973, under 1964 rules, the applicant could not have been promoted. The respondents in their counter have stated that they have abolished the post of Sr. Store Keeper and created two posts of Store Keeper in the scale of Rs.210-425. It is because of vigilance enquiry <sup>/</sup> that the applicant was not found fit by the D.P.C. of 1971 and was given ad hoc promotion to the <sup>/only in Feb., 73.</sup> post of Sr. Store Keeper. But, actually, he was placed in the scale of Sr. Store Keeper in the scale of Rs.210-425 because of Sr. Store Keeper <sup>cadre</sup> was <sup>2</sup>

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recommended to be abolished by General ~~Body~~ 1 Body of Delhi Milk Scheme. New rules of 1989 only lays down promotion of Sr. Store Keeper of 5 years standing as Store Keeper. The applicant has already been promoted to the post of Sr. Store Keeper. The grievance ~~shall~~ highlighted by the learned counsel is that initially the applicant should have been placed in the scale of Rs.335-485 because he has been promoted to the post of Sr. Store Keeper by the order of 28-2-73. This issue has not been raised by the applicant at any time, not even in his representation in April, 87 where he has made only a request that his appointment as Sr. Store Keeper be regularised so that he can come in the zone of consideration for the next promotional post of Store Supervisor. Delay defeats a right. It also defeats the remedy. The applicant <sup>before</sup> /only a couple of months of his retirement is raising the issue of 1973. Even his seniors - Shri T.C.Bakshi and Sharma were given promotion in the scale of 210-425. It cannot be a case of discrimination on that account also.

7. Tribunal is not to make an inquiry as to what the applicant was getting on the eve of Third Pay Commission or when the Fourth Pay Commission's recommendations were applied from 1-1-86. Nothing has been placed on record to show what was the pay the

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applicant was drawing and the scale he was getting in the Third Pay Commission or in the Fourth Pay Commission. We cannot, therefore, find <sup>that</sup> any injustice has been done <sup>will ignore</sup> of such a magnitude which <sup>the</sup> hurdle of limitation. In the case of STATE OF PUNJAB V. GURDEV SINGH reported in 1991 (4) SCC p.1, the Hon'ble Supreme Court held that even in service matter, the matter has to come within the period of limitation and at least if there is a delay, there must be some explanation reasonable and probable to explain the delay so that the same may be condoned. That is not here. No oral or written request for condonation of any such delay is made.

8. We are, therefore, of the view that this case is hopelessly barred by limitation and is dismissed, leaving the parties to bear their own costs.



( B.K.SINGH )  
MEMBER (A)



( J.P.SHARMA )  
MEMBER (J)

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