

21

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No.            1074            1986  
T.A. No.

DATE OF DECISION 31.12.1986

Shri Harendrelal Bhattacharyya ~~Petitioner~~ Applicant

Applicant in person ~~Advocate for the Petitioner(s)~~

Versus

Union of India & ors. Respondents

None Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member

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 to be circulated to all the Benches? *Yes*

*K. Kaushal*  
( Kaushal Kumar )  
Member  
31.12.86

*K. Madhava Reddy*  
( K. Madhava Reddy )  
Chairman  
31.12.86

3

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

REGN. NO. OA 1074/86

Dated:- 31.12.1986

Shri Harendrelal Bhattacharyya ---- Applicant

Vs.

Union of India & Ors. ---- Respondents

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman  
Hon'ble Mr. Kaushal Kumar, Member.

For the Applicant ---- Applicant in person

For the Respondents ---- None

( Judgement of the Bench delivered by Hon'ble  
Mr. Justice K. Madhava Reddy, Chairman)

JUDGEMENT

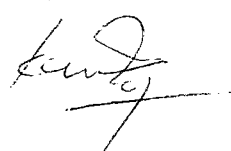
This is an application under Section 19 of the  
Administrative Tribunals Act for the following reliefs:-

- (a) to declare that the applicant is entitled to the promotions to the post of Accounts Officer( in the scale of Rs.840-1200)/ Secretary to the Comptroller & Auditor General of India(in the scale of Rs.1100-1600) in accordance with the service rules as were then in force;
- (b) to direct the Respondents 1& 2 to give full benefit of promotion to the applicant till the date of his superannuation in terms of the Delhi High Court's judgement dated 29.5.1981 in Writ Petition No.950/77; and
- (c) to quash the order dated 19/20.1.1978 issued by the Comptroller and Auditor General of India appointing Shri S.Jagannathan as Accounts Officer( in the scale of Rs.840-1200)/ Secretary to the Respondent No.2(in the scale of Rs.1100-1600) as being illegal and contrary to the Service Rules.

2. The applicant was initially appointed on 11.8.1949 as a stenographer to the then Deputy Auditor General

*C. S. J.*

(Inspection) in the office of the Comptroller and Auditor General of India. On passing the S.A.S. Examination the applicant was appointed as S.A.S. Accountant and subsequently he was promoted as Senior Personal Assistant. His main grievance is that he is entitled to promotion when his junior Shri S. Jagannathan was promoted. Frustrated by the fact that his junior was promoted, he submitted his resignation, but before it was accepted, he withdrew the same. His services were deemed to have been terminated and he was informed accordingly vide order dated 30.6.1976. The applicant called that order in question by way of Writ Petition No.950/77 which was allowed by the learned Single Judge of the Delhi High Court vide his order dated 29.5.1981 declaring that the applicant has not retired on 19.8.76 and that he continued in service till 31.8.1979 that is till completion of 58 years. The High Court also declared that the applicant was entitled to full salary, increments etc. between 19.8.1976 to 31.8.1979 when he would have retired on attaining the age of superannuation. Certain other directions with regard to the finalisation of his pension and deduction of certain amount payable by him to the Government <sup>/towards the rent</sup> for accommodation provided to him was also ordered with which we are not presently concerned. That order of the learned Single Judge was confirmed in L.P.A. No.112/81 on 8.7.83 and the appeal filed by the Union of India was dismissed. Subsequently, the applicant herein filed CMP No.341/84 seeking certain clarifications and directions. In that petition he claimed that since he was not treated as having resigned and was deemed to have continued in service, he should also be given promotion as if he had continued in service and salary should also be paid and



pension calculated accordingly. The Division Bench vide its order dated 9.11.1984 rejected his claim. That order of the learned Single Judge confirmed by the Division Bench in so far as it is relevant reads as under:-


" It is true that he has said ~~xxxxxxx~~ that the respondent 'is entitled to full salary increments, etc. between 19th August 1976 to 31st January 1979', but, in our opinion, the word 'etc.' must be read as ejusdem generis with 'salary' and 'increments' and was not intended to cover promotion which is a different matter altogether."

The applicant ~~xxx~~ in that petition had also claimed that the provident fund dues subsequent to his so called voluntary retirement should also be paid to him. He also claimed interest on the provident fund due to him. His further contention was regarding the deduction of certain amounts towards the house building advance which the Respondents are not entitled to. As regards the payment of interest, the Court observed vide its order dated 30.11.84 as under:-

" In our opinion, this is a bona fide dispute which cannot be summarily decided on this application."

As regards his grievance in respect of deduction from his salary towards the house building advance, the court held that there is no substance in the contention. At the same time, the Court observed that if the applicant still has any grievance he can proceed by way of a suit if it be maintainable in law.

3. It appears that he subsequently filed a writ in regard to interest on the provident fund which became the subject matter of an appeal before the Supreme Court in Civil Appeal No.42 of 1986. When that appeal came up for hearing it was conceded on behalf of the Respondents



that" the Union of India is willing to pay interest on such amount in accordance with the rules prevailing at the relevant point of time." In view of that statement the Supreme Court allowed the appeal and directed that " the interest so payable shall be paid within six months". The applicant seems to have proceeded to file a Special Leave Petition in regard to the other reliefs and the Supreme Court dismissed that S.L.P on 7.11.86 with the observation that the petitioner may approach the Central Administrative Tribunal for such relief to which he may be entitled. This observation is the excuse for the applicant to file this application under Section 19 of the Administrative Tribunals Act. The applicant's claim is that he should be granted promotion with effect from the date his junior Shri S. Jagannathan was promoted on 26.3.1972 as Senior Personal Assistant. Shri S.Jagannathan was next promoted as Assistant Private Secretary on 26.3.74 and as Administrative Officer on 1.1.1977 and was given the scale of Rs.1100-1600 after serving for six years as Administrative Officer on 9.5.1983. The applicant claims that he is entitled to all these promotions with effect from the date Shri S.Jagannathan got them as also consequential emoluments. In this application the applicant makes a grievance that Shri S.Jagannathan appointed for the first time as Stenographer Grade II in 1964 was given all these promotions while the applicant appointed on 11.8.1949/<sup>who</sup> was fifteen years senior to him was denied that benefit. Whatever may be the merit of his grievance, his application before the Central Administrative Tribunal is not only barred by time but also barred by the principles of constructive res judicata . This application is filed in the Tribunal for the first time on 28.11.86. His grievance with respect to the promotion of Shri S.Jagannathan to various posts relates back to the years 1972, 1974 and 1977. His promotion to the scale of Rs.1100-1600 is only incidental to his having put in


*Security*


6 years' service as Administrative Officer. If the applicant was aggrieved by the said promotion, he could have moved the High Court. In fact he did not specifically challenge the promotion of Shri Jagannathan in any of the earlier writ petitions. He raised this question only in CMP No.341/84 before the High Court and the High Court in very clear terms declared that the relief granted in writ petition and confirmed in the L.P.A. 112/81 did not cover any claim for promotion. The applicant has also retired from service on attaining the age of superannuation on 31.8.1979. The promotion of Shri S. Jagannathan cannot be called in question at this distance of time; much less before this Tribunal after a period of one year of the "Appointed Day". Further the applicant having moved the High Court for that relief, the High Court<sup>having</sup> turned it down vide its order dated 9.11.84, this application would be<sup>barred</sup> on the principles of constructive res judicata. Merely because while disposing off the petition for Special Leave to Appeal, the Supreme Court on 7.11.86 observed that" the petitioner may approach the Central Administrative Tribunal, the applicant does not get a fresh cause of action. That observation of the Supreme Court only means that if the application is maintainable in law before the Central Administrative Tribunal, he may move the Tribunal. It cannot be construed as enlarging the period of limitation prescribed under Section 21 of the Administrative Tribunals Act which enjoins that an aggrieved person may file an application before this Tribunal in respect of any grievance arising out of an order made within three years of the constitution of the Tribunal and such application should be filed within one year of the order or within six months of the Constitution of the Tribunal whichever is later.

4. Viewed from any angle this application is beyond time. As already observed it is also barred by the principles of



constructive res judicata. The application, therefore, fails and is accordingly dismissed.

  
( KAUSHAL KUMAR)  
MEMBER  
31.12.86

  
( K. MADHAVA REDDY)  
CHAIRMAN  
31.12.86