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DATE OF DECISION: 17.5.1988.

REGN. NO. O.A. 1630/87.

Shri V.K. Vaid

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Applicant

Vs.

Union of India

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Respondent.

CORAM:

Hon'ble Mr. Justice G.Ramanujam, Vice-Chairman.

For the applicant:

In person.

For the respondents:

Shri M.L. Verma, counsel.

J U D G M E N T.

In this application filed under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter called 'the Act'), the applicant has prayed for stepping up of his pay on par with that of his junior, one Shri Vidya Dhar.

The circumstances under which the applicant has come before us seeking the above relief may briefly be noted.

2. The applicant while working as an Assistant in the Ministry of Education and Social Welfare, went on deputation in 1969 to the office of the Director-General, Security, Cabinet Secretariat and he remained on deputation in that office till 14.3.1973. During the time when he was on deputation, ten of his juniors had been promoted as Section Officers. After his reversion to the parent Department on 15.3.1973, he was promoted as Section Officer with effect

from that date and his pay was fixed at Rs. 710/-.

The applicant found that his junior Shri Vidya Dhar was getting a salary of Rs. 740/- as Section Officer in view of his promotion from an earlier date as Section Officer. After coming to know that his junior was getting higher salary of Rs. 740/- as against his pay of Rs. 710/-, he made various representations to his parent Department, ^{for stepping up his pay.} However, his request was not considered favourably. It is in those circumstances that the applicant has chosen to file this application claiming parity in pay with that of his junior, Shri Vidya Dhar.

3. The application is opposed by the respondents by filing a counter affidavit to the following effect:

Since the cause of action arose on 15.3.1973, the application has to be rejected outright on the ground that it is barred by time under Section 21 of the Act and the series of representations said to have been made by the applicant cannot save his claim from the bar of limitation. If the applicant wanted promotion as Section Officer, he should have come back from deputation but he continued on deputation notwithstanding the fact that he would lose the chances of promotion in his parent Department.] Thus, on the pleadings referred to above, two questions arise for consideration. First, whether the application is barred by time under Section 21 of the Act and secondly, whether the applicant could be denied the benefits of ^{stepping up of his pay} as a result of junior's promotion in his parent Department during the period of his

deputation to another Department.

4. On the first question, the learned counsel for the respondent submits that since the cause of action arose on 15.3.1973, the applicant cannot agitate the claim that his salary should be stepped up in parity with that of his junior should be taken to be barred by time as it is consistently ^{been} held by the various Benches of the Tribunal that an application based on a cause of action which arose three years prior to the constitution of the Tribunal i.e. 1.11.1982, cannot be entertained and considered by the Tribunal.

It is, no doubt, true that in respect of matters based on a cause of action which arose three years prior to the constitution of the Tribunal cannot be entertained in view of Section 21 of the Act. But in this case, the applicant went on making representations and in respect of the last representation, the Department appears to have considered the entire question ^{afresh} and the applicant was sent a reply on 29.9.1987, ^{rejecting} his claims. If the representation had been merely rejected, it would have been a different matter but where a representation, though filed belatedly, has been considered on merits and an order is passed, that will give a fresh cause of action to the applicant. As already stated, in the letter dated 29.9.1987, the applicant's claim was considered once again and the same was rejected by the Department. In view of the said communication, it has to be taken that it gives a fresh cause of action to the applicant to come before the Tribunal. I have, therefore, to hold that the application is not barred by time in view of the said communication dated 29.9.1987.

5. Coming to the second question as to the merits of the applicant's claim for stepping up of his salary ~~in parity~~ ^{on par} with that of his junior, Shri Vidya Dhar, it is seen that the question is already covered by the decision ^{dated 1.5.1986} of the Principal Bench of the Tribunal rendered in T.A. 3/85 - Satish Kumar Vs. Secretary, Ministry of Human Resources Development.

In that case also, an official was on deputation for a period of five years in another Department. During the period of deputation, his juniors had been promoted. The question

arose as to whether during the period of said deputation, ^{in respect of his junior's} promotion in his parent department against a regular vacancy ^{he could claim parity with his junior.} ~~could be denied to him.~~ The Tribunal, applying the next-below-rule, ^{the respondent's} directed to fix the pay of the applicant in that case from the date of his reversion to his parent Department at the stage at which his immediate junior was drawing pay by virtue of his officiation in the higher post. I am in entire agreement with the view expressed in the said judgment. Merely because a person is on deputation to another Department, his chances of promotion in the parent Department cannot ^{stand} ~~be~~ affected. Even though the applicant may get promotion after his reversion, his salary in the higher post has to be fixed on par with that of his junior, who was earlier promoted, by applying the next-below-rule. Therefore, following the aforesaid judgment of the Tribunal, the claim of the applicant has to be upheld.

6. It is also seen that the respondent-department has given the benefit of stepping up of pay in ~~identically~~ similar circumstances in favour of certain other individuals, as is clear

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from the order dated 15.1.1975 passed by the Ministry of Education and Social Welfare. In that order, the benefit of stepping up of pay has been given to as many as eight individuals with reference to the pay fixed in respect of their ^{Respective} immediate juniors. I do not see why the same principle cannot be applied to the applicant, who is also similarly placed as the individuals referred to in the said order.

7. For the reasons set out above, the application is allowed and the respondent is directed to fix the pay of the applicant in the scale of a Section Officer from the date of his reversion to his parent office at the stage at which his immediate junior, Shri Vidya Dhar, was drawing pay by virtue of his promotion as Section Officer. The applicant will not, however, be entitled to claim any arrears of pay for the period prior to his reversion to his parent Department.

In the circumstances of the case, there will be no order as to costs.

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(G. Ramanujam)
Vice-Chairman.