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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1003/87.

DATE OF DECISION: February 23, 1990.

O.P. Malhotra	Applicant.
Shri B.B. Srivastava	Advocate for the Applicant.
V/s.		
Comptroller & Auditor General of India & Anr.	Respondents.
Shri P.H. Ramchandani	Senior Counsel for the Respondents.

CORAM: Hon'ble Mr. G. Sreedharan Nair, Vice Chairman (J)
Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

(P.C. JAIN)
MEMBER(A)

(G. SREEDHARAN NAIR)
VICE CHAIRMAN(J)

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Hon'ble Mr. G. Sreedharan Nair, Vice Chairman (J).
CURAM: Hon'ble Mr. P.C. Jain, Member (A).

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was working as Senior Auditor in the office of the Comptroller & Auditor General of India (for short, CAG) on deputation from the office of Director of Audit, Northern Railway (for short, DA, NR), has prayed that the respondents may be directed to grant Selection Grade to him with effect from 9.1.1978 so as to bring his pay at par with his junior; to pay the arrears consequent on promotion as Selection Grade from the due date; and to calculate the pensionary benefits and pension on the basis of revised pay as on 31.7.87 after the grant of Selection Grade with effect from 9.1.1978.

2. The relevant facts, in brief, are as under: -

The applicant joined as Upper Division Clerk (now designated as Auditor) in the office of the Chief Auditor, Northern Railway, New Delhi (now known as Director of Audit, Northern Railway) on 12.8.58 in the scale of Rs.80 - 130. He proceeded on deputation to the office of CAG (Respondent No.1) with effect from 12.7.72. Pursuant to the recommendations of the Third Central Pay Commission, the aforesaid scale was revised to Rs.330 - 560 with effect

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from 1.1.1973. A functional Selection Grade of Rs.425 - 640 also existed in the cadre of Auditors. This was subsequently revised to Rs.425 - 700 and also converted into a nonfunctional one with effect from 1.8.1976, vide orders dated 20.9.1979.

3. The applicant's case, in brief, is that his juniors in his Parent Office were allowed the Selection Grade with effect from 9.1.78, but he was allowed the Selection Grade while on deputation in the CAG's Office only with effect from 9.5.1983. He has contended that for a part of the period between 9.1.1978 and 9.5.1983, he was not given the option to revert back to his Parent Department and his representations made from time to time for allowing him proforma promotion to the Selection Grade in the Office of CAG with effect from 9.1.1978 have been rejected. He has alleged discrimination and consequential violation of Articles 14 and 16 of the Constitution on the ground that certain Auditors on deputation in the office of Respondent No.1 had been allowed, vide orders dated 2.9.1985, Selection Grade with retrospective effect, i.e., 29.2.1984.

4. The respondents have filed a very detailed reply, but their case, in brief, is that prior to 1.8.1976, i.e., the date from which the functional Selection Grade for Auditors was converted into non-functional one, the benefit of promotion to the Selection Grade Auditors' Grade was not admissible to Upper Division Clerks on deputation unless the borrowing departments / offices agreed or the persons concerned actually reverted to their Parent Office. The above benefit was withdrawn on 12.2.1969, when the Government of India placed restrictions on the use of F.R. 27. It was decided vide CAG's letter dated 2.4.1980 that the Auditors on foreign service / deputation to other offices within / outside I.A.&.A.D. will be eligible for promotion to the Selection Grade if the borrowing organisation / offices were prepared to accommodate them as Selection Grade, subject to the conditions under N.B.R. being satisfied. The applicant could not be accommodated as Selection Grade/before 9.5.1983

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as no post was available against which he could be accommodated in the office of Respondent No.1. However, when he became due for his promotion in non-functional Selection Grade in January, 1978 for the first time in his Parent Office, he was asked to indicate his willingness to accept the aforesaid promotion vide letter dated 4.1.1978. The CAG's office informed respondent No.2, vide their letter dated 13.3.1978 (based on applicant's own reply dated 6.3.1978) that he was not interested in his promotion and desired to be considered for the same after six months. He was again required to give his willingness for promotion as Selection Grade Auditor in his Parent Department, vide letter dated 26.7.78. CAG's office, vide their letters dated 15.2.1979 and 28.5.1979 informed respondent No.2 that the applicant was retained in their office till 30.4.1979 and 29.2.1980 respectively in public interest, without losing his seniority. Vide his option dated 12.1.1981 and 28.9.81, the applicant expressed his willingness to continue in CAG's office as Auditor by foregoing his promotion as Selection Grade Auditor in his Parent office. When again the applicant was asked vide letter dated 4.10.1980, respondent No.2 was informed that he had decided to forego his promotion to Selection Grade. It is also stated that at no stage, the benefit of protection of pay in the cadre of Selection Grade Auditor in Parent Office to the Auditors on deputation was admissible under the normal rules until the borrowing department agreed to accommodate them in the Selection Grade in their office or the persons concerned reverted to their Parent Office. The applicant, according to the respondents, chose to continue on deputation as Ordinary Grade Auditor as he was drawing a special pay of Rs.75 and allowances thereon, while on reversion to his Parent office and promotion to the Selection Grade, the financial benefit to him would have been only marginal, and therefore, the applicant opted for foregoing his promotion on financial consideration. They have refuted the allegation

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of arbitrariness and discrimination and in their reply, they have given relevant facts in support thereof.

5. We have carefully perused the pleadings of the parties and have also heard the ^{ir} learned counsel.

6. The learned counsel for the respondents raised a preliminary objection that the relief prayed for is barred by limitation. In support of this contention, he cited the relief prayed for in the application, which is from 9.1.78, and that he was informed, vide letter dated 18.7.80 (referred to in Annexure 4 to the O.A.) that it was not possible to adjust him in Selection Grade in the CAG's office for want of a vacancy and, as such, no NBR certificate was likely to be issued by his Parent Office and, therefore, it would not be possible to protect his pay as Selection Grade even if he was retained in public interest. In his reply dated 11.8.80 thereto, he prayed that he be allowed to continue in the CAG's office in public interest. The learned counsel for the respondents, therefore, argued that the cause of action accrued as early as in August, 1980. The applicant first represented to the CAG's office vide his letter dated 6.9.1985 wherein he prayed that he may be allowed the benefit of promotion as Selection Grade Auditor from the date of promotion of his junior in his Parent Office. This representation was replied to on 23.9.1985, wherein it was stated that his request had been carefully considered, but could not be acceded to. He again represented on 21.8.86, which was replied to on 30.1.87. His mercy petition dated 25.2.87 was replied to on 4.6.1987. The learned counsel for the respondents, therefore, argued that in view of the prayer for relief from 9.1.78 and intimation to the applicant vide letters dated 18.7.80 and 7.8.80 and then again in September, 1985, the application is clearly barred by limitation and that in this case as the cause of action accrued three years prior to the date of coming into existence of the Central Administrative Tribunal, the Tribunal does not have

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jurisdiction even to condone the delay.

7. The learned counsel for the applicants drew our attention to his application for condonation of delay filed on 7.8.1987. The relevant portions from this application are as under: -

"From the facts explained herein, it will be observed that the petitioner had been pursuing the matter regularly and vigorously. However, if their Lordships feel that there was a delay, the petitioner prays that such a delay may kindly be condoned. "

The prayer in the end is:

"It is, therefore, humbly prayed that the petitioner who has served the Department faithfully should not go disappointedly only at the end of his career. "

The Tribunal considered this application on 14.8.87. Relevant portion of the orders passed in that connection is as under: -

"This is an application for condonation of delay in OA No. 1003/87. The relief sought is that the applicant was not given benefit of next below Rule with retrospective effect although he was given benefit w.e.f. 9.5.83. He says that he has made representations against this act of the respondents but the same was finally turned down by order dated 4th June 1987 (Annexure 12). If that be so there is just & sufficient cause for condoning the delay, if any, in the filing the O.A. No. 1003/87. "

8. From a perusal of the above, it is seen that the delay was condoned only if the final order was the one which was referred to therein. However, as will be clear from the facts stated above, this was not the final order, but it was a reply to his mercy petition. The cause of action accrued on the date when his juniors were given the Selection Grade with effect from 1.9.78. It can be extended to July / August, 1980 when he was informed that he could not be adjusted in the Selection Grade in the borrowing office for want of a vacancy and that it would not be possible to protect his pay as Selection Grade/^{even} if he was retained in that office in public interest. Both these dates are significantly prior to three

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years from 1.11.1985 when the Tribunal came into existence and, as such, in accordance with the provisions of section 21(2) of the Administrative Tribunals Act, 1985, the Tribunal has no jurisdiction to adjudicate in the matter. In such a case, the Tribunal also has no power to condone the delay. In any case, in the application for condonation of delay, the delay is not satisfactorily explained because the applicant represented for the first time only on 6.9.85. This was also replied to on 23.9.85 and looking from this angle also, the application is barred by limitation, as it was filed only on 17.7.87. Repeated representations do not extend the period of limitation (Gian Singh Vs. High Court of Punjab & Haryana & Others - 1980 (4) SCC 226). As recently as on 6.9.89, the matter of limitation under the Administrative Tribunals Act, 1985 came up for consideration before a Bench of seven Judges of the Hon'ble Supreme Court in the case of S.S. Rathore Vs. State of Madhya Pradesh (1989 (3) Judgement Today 530) and it has been clarified therein that for purposes of limitation, only the statutory remedies are to be taken into account. Repeated representations and mercy petitions do not fall in that category.

9. In view of the above discussion, we do not consider it necessary to go into the merits of the rival contentions of the parties, and hold that the application is not maintainable under Section 21 of the Administrative Tribunals Act, 1985 and is accordingly dismissed. There shall be no order as to costs.

23/2/90
(P.C. JAIN)
MEMBER(A)

23.2.1990
(G. SREEDHARAN NAIR)
VICE CHAIRMAN(J)

23.2.1990.