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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1008/87
T.A. No.

198

DATE OF DECISION 18.1.1990.

Shri Jai Chand Sawhney Applicant (s)

Shri Gyan Prakash Advocate for the Applicant (s)

Versus
Union of India & Another Respondent (s)

Shri D.N. Moolri Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative 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. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

The applicant, who is around 76 years of age at present, filed this application under Section 19 of the Administrative Tribunals Act, 1985 on 17.7.1987 praying for the following reliefs:-

- (i) the order/notice dated 14.7.1986, be set aside;
 - (ii) he be declared entitled for promotion as Complaint Inspector, Commercial Inspector and Statistical Inspector when his junior, Shri R.S. Chugh, was promoted;
 - (iii) arrears of Rs.38,933.12 as per the details attached in Schedules of wages at Annexures 'A' and 'B' upto 31.3.1972, be awarded;
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- (iv) he be awarded interest on the said amount; and
(v) he be paid gratuity and other retirement benefits on the basis of the pay and allowances which he would have drawn had he been promoted to the higher posts from the dates when Shri R.S. Chugh and other persons junior to him had been promoted. Pension may also be calculated on that basis and arrears be paid to him.

2. This is indeed an unfortunate case where the applicant had a chequered career. This will be borne out by the following chronological list of dates and events:-

<u>Date</u>	<u>Event</u>
24.2.1948	He was appointed as a Social Guide at Delhi Railway Station.
15.10.1949	The E.P. Railway authorities discharged him on 15.10.1949.
23.12.1957	Shri R.S. Chugh, junior to him, was promoted as P.C.I. on seniority basis.
8.12.1958	Sub-Judge, First Class, Delhi, quashed the order dismissing him from service.
22.5.1962	The Delhi High Court passed order reinstating him, confirming the lower Court's order dated 8.12.1958.
22.5.1963	Union of India withdrew its appeal filed in the Supreme Court after giving written assurance that the judgement passed by the High Court on 22.5.1962 will be implemented.
2.7.1963	General Manager issued order reinstating the applicant.

31.8.1963 He was reinstated as a Social Guide.

21.2.1969 His claim for promotion and arrears as P.C.I. was rejected as he was not in service on 21.9.1962, when R.S. Chugh, his junior, was promoted.

18.7.1969 Order compulsorily retiring the applicant in public interest was issued.

9.6.1970 and 31.5.1970 He filed two suits for recovery of wages and for declaration that the retirement order was illegal and that he was due for promotion.

31.3.1983 Sub-Judge dismissed both the suits by a common judgement.

27.9.1984 The Delhi High Court, by common judgement, allowed the appeals filed by him, quashed the order of compulsory retirement dated 18.7.1969 and passed a decree for payment of salary arrears amounting to Rs.16,046 for the period from 20.10.1969 to 31.3.1972. It was further directed that the respondents should consider his case for promotion to the post of P.C.I. as on 21.9.1962, when ^{Shri} R.S. Chugh, his junior, was promoted to the post of Complaint Inspector.

3. It will be seen from the chronology of dates and events that the applicant, during his entire service career of about 24 years, has worked in the Office of the respondents for only about 7½ years. He would have

retired on attaining the age of superannuation of 58 years on 31.3.1972, had he continued in service.

4. The basic grievance of the applicant is against the decision of the respondents conveyed to him on 14th July, 1986 to the effect that he was not found fit for the post of Public Complaint Inspector. Shri R.S. Chugh, his junior, had been promoted to the said post in September, 1962, as Commercial Inspector, the next higher post in 1969, and as Statistical Inspector in 1970. Had he been also similarly promoted, he would have been entitled to the arrears to the tune of Rs.38,933.12, as claimed by him in Schedule of Wages 'A' and 'B' at pages 20-21 of the paper-book. He is claiming the interest also on the said amount.

5. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. The respondents were good enough to make available to us the relevant personal files of the applicant at the time of hearing. These were also shown to the applicant and his Counsel.

6. In our opinion, the applicant did not receive a fair deal at the hands of the respondents. While quashing the order of compulsory retirement dated 18.7.1969, the Delhi High Court in its judgement dated 27.9.1984 in RFA-187/87 and RFA-198/83, considered the question as regards the promotion of the applicant. The learned counsel for the applicant had argued that the Court itself should give promotion to him. In this context, the Delhi High Court observed that it is a

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selection post and, therefore, it will be for the department to promote him if they find him fit.

The respondents were, therefore, directed to consider his claim for promotion to the post of Complaint Inspector as on 21.9.1962, when R.S. Chugh, his junior, was promoted as Complaint Inspector. The learned counsel for the applicant had mentioned that the juniors were considered for promotion in 1963, 1964, and 1965. The Delhi High Court directed that he should also be considered for promotion in these years also.

7. While making the aforesaid order, the Delhi High Court was well aware that the applicant had attained the age of superannuation in March, 1972. It is a matter of great surprise that the respondents wrote to ^{him to attend} ~~DRM's~~ Office on 17.9.1985 and 27.2.1986 for selection to the post of Public Complaint Inspector (written and viva-voce). This selection had been arranged by them purportedly in compliance with the order passed by the Delhi High Court on 27.9.1984. The applicant had already crossed the age of 71! This clearly indicates that there was non-application of mind on the part of the respondents. The respondents failed to appreciate that the case of the applicant was not one to be dealt with under the normal rules and that the Delhi High Court also did not direct them to consider the promotion of the applicant under the normal rules.

8. The applicant attended the Office of the respondents on 27.2.1986, but he asked for postponement of the selection. He was again directed to attend the Office on 4.4.1986 for selection. Instead of attending the

selection on that date, he submitted a list of 36 questiona ~~re~~ and refused to appear in the selection unless replies to them were given.

9. Thereafter, as a special case, a modified selection was held by a Committee consisting of D.T.S., D.C.S. and D.P.O. on the basis of his service records. The Committee did not find him fit for the post of Public Complaint Inspector. This decision had also the approval of D.R.M.

10. The respondents ^{did not} produced the report of the Selection Committee or the confidential reports of the applicant before us. It is also not clear whether the Committee which was constituted to consider his case, was a review D.P.C. in accordance with the relevant rules.

11. The applicant has produced a copy of the order dated 23.12.1957 whereby Shri R.S. Chugh, his junior, was promoted as Complaint Inspector on temporary basis. It is clear from the said letter that his promotion was "pending selection" by the respondents. He has produced two other letters dated 6.9.1962 and 7.12.1965 from which it appears that Shri Chugh had been promoted as Complaint Inspector "pending selection" (vide Annexures B, C and D, at pages 24-26 of the paper-book). The respondents have not controverted this in their counter-affidavit.

12. The applicant has also brought to our notice a proforma prepared by the respondents in the context of his retention in service. In the said proforma, the respondents have remarked that he may be retained in

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service upto 58 years of age and that there are no reasons to doubt his integrity. The decision of the competent authority was that "having scrutinised the character roll and personal file of Shri Jai Chand Sawhney and having taken into account all other available information, I certify that this person has a good reputation for integrity and honesty." (Vide Annexures 'K' and 'L', pages 32-33 of the paper-book). This has also not been controverted by the respondents.

13. As the applicant is presently aged about 76 years, it will not be in the interest of justice and equity to direct the respondents, at this point of time, to hold a regular review D.P.C. in accordance with the rules to consider his case for notional promotion as Complaint Inspector as on 1962 to 1965 and grant ~~of~~ consequential benefits on the basis of such a Review Committee's recommendations. We have taken note of the fact that the applicant is getting only a meagre ^{approximately} sum of Rs.446/- per month by way of pension from 1.1.1986. In our opinion, the interest of justice will be adequately met in the instant case if, having regard to the age of the applicant and the protracted nature of the litigation, a direction is issued to the respondents to pay a lump sum amount to him, by way of full and final settlement in regard to his claim for notional promotion and all other consequential retirement benefits.

14. Accordingly, we consider that a lump sum amount of Rs.15,000/- (fifteen thousand only) would be reasonable in the facts and circumstances of the case. The respondents are directed to make good the said sum of rupees fifteen thousand only to the applicant within two months from

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the date of communication of this order.

There will be no order as to costs.

D.K. Chakravorty
(D.K. Chakravorty)
Administrative Member
18/1/1990

P.K. Kartha
18/1/90
(P.K. Kartha)
Vice-Chairman(Judl.)