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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: 15.05.92

DA 228/90

SUBHASH CHANDRA PURI ... APPLICANT.

Vs.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... Shri G.K. Aggarwal,
Counsel.

For the Respondents ... Shri J.C. Madan,
proxy counsel for
Shri P.P. Khurana,
Counsel.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporters or not ?

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant, Scientist-B, Defence Institute of Fire Research, filed this application for the benefit of the judgement dated 23.11.87 passed in T-552/86 Ved Prakash Malhotra Vs. Union of India & Ors. The applicant claimed the relief that the respondents be directed to allow benefit of three advance increments

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Judgement - Produced to day

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to the applicant in the pay scale of Senior Scientific Assistant effective from 17.11.72 and consequent and subsequent pay-fixation in higher grades of J.S.O. (effective 31.1.79), Scientist-B (effective 1.7.88) and further, with arrears effective 17.11.72 till date of payment, with interest @ 23% per annum from due dates of date of payment.

2. The facts are that the applicant was offered the post of Senior Scientific Assistant (SSA) in the Department of Defence Research Development, which he joined on 17.11.72. At the time when he joined the said post, the applicant possessed the B.Sc.(Engineering) degree. The applicant was entitled to three advance increments vide Govt. of India, Ministry of Defence OM dated 4.2.69, dated 2.6.71, dated 5.9.72 and dated 18.3.74. However, by Govt. of India, Ministry of Defence memo dated 15.4.81, the respondent No.1 held out the benefit only to those who were appointed before 5.9.72. It was only on 23.11.87 by the Judgement of Ved Prakash Malhotra (Annexure A-1), ^{when} the benefit was also allowed to those who were appointed before 1.12.73. The applicant came on transfer to the Defence Institute of Fire Research (DIFR) on 12.7.88 and he learnt about the said Judgement only on March, 89 and prior to that he has no knowledge. Thus, the case of the applicant is that since he was appointed and joined as SSA on

17.11.72, i.e. prior to 1.12.73 and he is entitled to three advance increments w.e.f. 17.11.72 onwards with all consequential benefits in the grade of SSA and higher grades.

3. The respondents contested the application and took the preliminary objections, firstly, that the Tribunal lacks the jurisdiction to try and entertain the present application as admittedly the cause of action arose between the period 1969 to 1974 much before 1.11.82 and that the applicant had earlier filed an application OA 1349/89 and that application was rejected on 11.7.89 as premature at the admission stage itself. It is further stated that the case of the applicant is entirely different of the case of Ved Prakash Malhotra. The applicant was appointed to the post of SSA in the Pay scale of Rs.325-575 w.e.f. 17.11.72 and he was granted initial pay of Rs.370/- p.m., in the above said pay scale after granting the three advance increments from 17.11.72. However, in the case of Shri Malhotra, the pay was fixed at Rs.325/- on his appointment as SSA, so the applicant cannot claim the benefit of three advance increments based on the Judgement and order of the Hon'ble CAT in T-552/86. It is further stated that the grievance of the applicant is basically against the clarificatory orders dated 5.9.72 (Page-21 of the OA). Thus, the respondents have denied the

claim of the applicant.

4. I have heard the learned counsel for both the parties at length and have gone through the records of the case. The Judgement in the case of Ved Prakash Malhotra in T-552/86 was given on 23.11.87. The applicant was not a party of that case. The applicant has earlier filed OA 1349/89 and the respondents, in their counter have stated that OA 1349/89 was dismissed at the admission stage because the applicant had filed that Original Application without approaching the administrative authorities. In that OA 1349/89 it was directed that the applicant after the disposal of his representation would be at liberty to approach the Tribunal if his claim is not accepted. It is, therefore, evident that the applicant, even if it is taken for granted that the case of the applicant is similar to that of Ved Prakash Malhotra, he has not come within the period prescribed under Section 21 of the Administrative Tribunals Act, 1985. Section 21 of the Administrative Tribunals Act, 1985 lays down the period within which the applicant has to file the application regarding redress of his grievances before the Bench. Sub-Section 2 of Section 21 also bars the jurisdiction of the Tribunal regarding such grievances in ^{which} cause of action has arisen at any time during the period of 3 years

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immediately preceeding the date on which the jurisdiction, powers and authority of the Tribunal become exerciseable under this Act in respect of the matter to which such grievances relate . Thus, preliminary objections of the respondents, therefore, has got sufficient force and the relief claim^{ed} by the applicant for award of three increments since 17.11.72 cannot be said to be a grievance which can be entertained by the Bench, and the application is liable to be dismissed as barred by limitation on the preliminary objections raised by the respondents.

5. However, since matter has been heard on merits and the applicant's case has also been considered because in the case of Ved Prakash Malhotra TA 552/86, the grievance of 1972 was considered by the Single Bench. In the case of the applicant he had already been granted three advance increments at the time of entering into service and the scale as admitted to the applicant was Rs.325-15-475-28-20-575 and the salary of the applicant was fixed at the stage of Rs.370/-, i.e., he was given three advance increments. The learned counsel for the applicant could not show that under what conditions of service the applicant has been allowed these advance increments while the similarly appointed person, i.e., Ved Prakash Malhotra was given the starting

salary of Rs.325/- in the same scale of pay and he also functioned on the post of SSA since the date of his appointment. The burden lay on the applicant to show that these three increments were ^{not} awarded to him under the relevant Govt. of India, Ministry of Defence orders referred by the applicant in the application. The contention of the learned counsel for the applicant that the applicant was given higher start of Rs.370/- in the pay scale of Rs.325-375 on the basis of the performance in the selection cannot be accepted without any cogent evidence in that regard. The applicant has failed to show that he was given three advance increments because of his specific performance in the interview and if it was so, the selection committee whether recommended the same, the applicant was free to summon in that regard from the respondents. The learned counsel, in the rejoinder has also stated that Shri Paramjit Singh, now Scientist-B in Aeronautical Department (Establishment), Bangalore under respondent No.1 was recruited as SSA along with the applicant identically placed and was given six increments but there is nothing to substantiate this fact except a mention in para-7 of the rejoinder. The applicant should have mentioned it as a fact in the application so that the respondents could have an occasion to affirm or rebut the same.

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This fact, therefore, cannot by itself go to show that the applicant was given 3 initial increments at the time of appointment as SSA on the basis of his specific performance in the interview. In fact, in the Original Application the applicant has also not stated as a fact that he was given 3 additional increments at the time of his selection and appointment as SSA on 17.11.72.

6. In view of the above facts, the judgement of T-552/86 Ved Prakash Malhotra is not applicable to the case of the applicant and also that the present application is not within the jurisdiction of the Tribunal being barred under Section 21(2) of the Administrative Tribunals Act, 1985 raising an issue for which cause of action arose in 1972. On merits also the applicant has no case and the application is totally devoid of merit and dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J).
15.8.92