

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No.286/90.

New Delhi, this the seventh day of June, 1994.

SHRI J.P. SHARMA, MEMBER(J).

SHRI B.K. SINGH, MEMBER(A).

Swinder Singh,
son of S. Hazara Singh,
r/o: B-22/G, Delhi Police Group Housing Society,
Sector No.13, Rohini,
Delhi-85.

...Applicant

By advocate : Shri A.S. Grewal.

VERSUS

1. Union of India, through Secretary,
Ministry of Home Affairs, Govt. of India, New Delhi.

2. Lt. Governor of Delhi, through Chief Secretary,
Delhi Administration, Delhi.

3. Commissioner of Police Delhi,
Police Headquarters, M.S.O. Building,
I.P. Estate, New Delhi.

...Respondents

By advocate : Shri N.S. Mehta.

ORDER (ORAL)

SHRI J.P. SHARMA:

The applicant retired as Assistant Commissioner of Police in the year 1988 to which post he was promoted by the order dated 15-12-88 and was given officiating promotion w.e.f. 26-5-1986. Earlier, the applicant filed a Civil Writ Petition No.629/87 in which he has assailed his non-promotion to the post of Inspector from the due date on account of punishment awarded to him in the year 1969. That case was decided in favour of the applicant by the order dated 12-12-1984. Consequent to this judgment, the applicant was promoted as Inspector w.e.f. 18-5-71 by the order dated 5-3-87 and his seniority was fixed between the names of S.I. Vidhya Sagar and Shri Lala Ram. Though he had not been paid the salary but by subsequent order in C.C.P., he was also paid the salary of the post of Inspector from May, 1971 till December, 1975. The grievance of

the applicant is that he is entitled to promotion to A.C.P. from the date his junior Shri Lal Ram was promoted, i.e., from 11-7-78. He filed this application after his retirement in February, 1990 and he has prayed for the relief that his promotion to the post of Assistant Commissioner of Police (ACP), Delhi be ordered to be w.e.f. 11-7-78 with all benefits of arrears of pay etc. He has also prayed that he should also be given arrears of pay for the period he was given proforma promotion from June, 1986 to April, 1987.

2. The respondents in their reply opposed the grant of the relief that the application is barred by limitation and that the applicant cannot claim the benefit vis-a-vis Shri Lala Ram as he is in advantage of position belonging to reserved category. Further, the ad hoc promotion does not give a right as it is not the regular promotion in the cadre. Such promotions on ad hoc basis are made on the basis of exigencies of the service from the available officers. The writ petition filed by the applicant was decided in 1984. Thereafter, he was given the due benefits including promotion to the post of Inspector from 1971. The applicant has also filed the rejoinder.

3. We have heard the learned counsel Shri A.S.Grewal for the applicant and Shri N.S.Mehta for the respondents. By the order dated 2-5-90, the application was admitted, leaving the question of limitation to be decided foremost at the time of final hearing. We, therefore, heard the learned counsel as to whether the present application is maintainable in view of the provisions of Section 21(1) of the Administrative Tribunals Act, 1985. The Administrative Tribunals Act, 1985 is a self-contained Act and has provided the period of limitation of one year from the date of the order of which the person is aggrieved and if a representation is called for, then waiting for a period of six months from the date of representation, the grievance should be got adjudicated within one year thereafter. The learned counsel, however, gave a

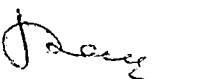
statement that the applicant after he was given seniority from March, 1987, had made a representation. However, this argument is not substantiated by any averment in the original application. There is an attempt to assert this fact in the rejoinder but the date when any such representation was made has not been mentioned. If rejoinder would have accompanied by a copy of any such representation preferred by the applicant or at least the date of the representation should have been mentioned so that the respondents might be in a position to verify the same. When a fact is in a specific knowledge of a person, he has to discharge the burden of placing such document on record that he has made a representation and be given a benefit of the limitation. When it has not been done by the applicant, then from the averment in the application that the application is within limitation becomes incorrect. There is no application for condonation of delay oral or written in this case. When the application was admitted subject to limitation, it was equally open to the applicant at any time during the pendency of this application for about more than 3 years to move for condonation of delay, if any, by making suitable amendment in the original application or making a separate petition for the same. That too has not been done. In such an event, the contention of the learned counsel for the respondents cannot be pushed aside as the language of Section 21 is in the form of injunction to the Tribunal that when the matter is barred by limitation, unless delay is explained under sub-section(3) of Section 21, is not maintainable.

4. The applicant has also retired from service sometimes in 1988. The exact date of his retirement is unknown but it appears that he has not been paid his present salary for the post of VACP from May, 1986 to April, 1987. The date of retirement must be, therefore, after April, 1987. The applicant has been given this promotion on notional basis. He should have made a representation to the respondents at that very time when he was given promotion by

the order dated 15-12-1988 when the applicant had already drawn his pensionary benefits and continued to draw the same for a period of 2 years, now he wants that he should be paid the arrears of salary ^{be} on the post of notional promotion to the post of ACP. I think such a claim is totally stale and one who is indolent and not vigilant has to blame himself for not coming to the Court at the proper time as provided under law. It may be said that the claim for arrears has a recurring cause of action but here the applicant is yet to be given a declaration that he is entitled to the salary for the post of ACP even for the period when he was given notional promotion to the post of ACP. That declaration can only be given when the application is within limitation.

5. In view of the above facts and circumstances, the present application is barred by limitation and is, therefore, dismissed as such, leaving the parties to bear their own costs. We are refrain to express any opinion on the merit of this case obviously because we cannot decide a grievance which has come into existence at the time 3 years earlier to the enforcement of Administrative Tribunals Act, 1985, i.e., prior to November, 1982. No costs.


(B.K.SINGH)
MEMBER(A)


(J.P.SHARMA)
MEMBER(J)

'KALRA'