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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI  
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O.A.No. 1792/91.

Date of decision 24 8 93

Shri Madan Mohan Lal Chopra .. Applicant

v/s

Union of India & Others .. Respondents

For the Applicant .. Shri R.K. Virmani,  
counsel.

For the Respondents .. Shri R.L. Dhawan,  
counsel

CORAM:

The Hon'ble Shri B.S. Hegde, Member (J)

- (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) Whether it needs to be circulated to other Benches of the Tribunal ?

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[Delivered by Hon'ble Shri B.S. Hegde, Member (J)]

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the quashing of the Respondent's Order dated 2.1.1991, directing them to refix the pay of the applicant upon promotion to the higher post of Assistant Work Study Officer from the post of Senior

Work Study Inspector by protecting his pay at Rs. 900/- per month drawn by him in the post of Senior Work Study Inspector at the time of promotion etc.

2. The applicant was working as Head Draftsman in the Civil Engineering Department of the Northern Railways Headquarters in the year 1972. Thereafter, he was promoted as Senior Works Study Inspector in the Work Study Organization/Efficiency Cell of the Northern Railways in the grade of Rs. 450-575 from 1.5.1972. The said post was an ex-cadre post. In May, 1975, the applicant attained the maximum grade of Rs. 700-900 in his post of Senior Works Study Inspector and was drawing pay of Rs. 900/- per month. In 1978, the applicant was promoted from Senior Works Study Inspector to the Class II post of Assistant Works Study Officer in the payscale of Rs. 650-1200. The applicant's main contention is that his pay was arbitrarily reduced from Rs. 900 to 810 thereby causing him monetary loss of Rs. 90 plus allowances. He immediately represented against such wrong fixation of pay vide his letter dated 24.1.1979 and brought to the notice of Respondent No. 2 that since the applicant

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10

was working as SWSI in the Works Study Cell in Class III service, his pay in Class II as AWSO should have been fixed under the normal rules, namely one increment/notional increment in the grade of Rs. 700-900 and one increment in the next stage in class II grade of Rs. 650-1200. He further contends, that though the respondent No. 2 had recommended his case to respondent No. 1 that the fixation of pay at Rs. 810 in class II post which he was already drawing as Rs. 900 has caused hardship to him and may be reconsidered. Nevertheless, Respondent No. 1 refused to accede to the recommendation of Respondent No. 2 for fixation of pay of the applicant at Rs. 900/-. He also draws my attention to O.M. dated 10.4.1987 issued by the Government of India wherein it was clarified/directed that where a Government servant is promoted or appointed to other post carrying higher duties/responsibilities than those attached to the post held by him, provisions contained in F.R.22(c) shall apply without pay limit. Consequent to this O.M. he made further representations in 1988, 1989 and 1990. However, the said representations were turned down and his

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request for refixation of pay was rejected vide letter dated 2.1.1991 by the respondents.

3. The Respondents, in their reply, submitted that the application is not maintainable under Section 21 of the Administrative Tribunals Act, 1985. The applicant's appointment was purely on local arrangement on ad hoc basis and will not confer upon him any presumptive right for similar promotion in future in preference to his seniors promotion. The representations submitted by the applicant was duly considered and he was informed that his pay in Class II was correctly fixed with reference to his pay in cadre post and his claim was not tenable vide letter dated 2.1.1991. Reply of the applicant for fixation of his pay at Rs. 810/- + Rs. 90 personal pay was considered by the Railway Board who did not accede to his request. The decision of the Railway Board was communicated to him on 20.12.1990 (A. 'N').

Further, the claim of the applicant was also turned down by the Minister of State for Personnel and Home Affairs vide his letter dated 7.2.1989 wherein it was clearly observed that the applicant was promoted from one ex-cadre post to another ex-cadre post and his pay was fixed with reference to his cadre pay as Head Draftsman as per the then extant orders. Instructions

contained in the O.M. dated 18.11.1985 relating to protecting the drop in emoluments on promotion from one ex-cadre post to another higher ex-cadre post in the form of personal pay which have been made applicable to their employees by the Ministry of Railways in their orders dated 31.12.1985 were not applicable in the applicant's case as these instructions are effective from the date of issue whereas Shri Chopra's promotion to the higher ex-cadre post took place in the year 1978. Therefore, they submit that the limitation started from 28.3.1980 when the decision of the Railway Board was communicated to the applicant when the application has been filed only on 27.6.1991 after a lapse of nearly 11 years. Therefore, the application is barred by time and it is a well-settled law that repeated representations do not extend the limitation. The Respondents relied upon the Railway Board's decision vide letter dated 23.9.1971. The relevant extracts are reproduced below :-

By a letter dated 26.2.79, the applicant was informed that his pay under class II was correctly fixed in accordance with a purported circular of the Railway Board dated 23.9.1971 and the precedence cited by him was not applicable. True copy of the said letter dated 26.2.79 is annexed hereto and marked Annexure E (page no.18)

4. During the course of hearing the Learned Counsel also brought to my notice that once Shri M.M. Verma was appointed on officiating/ad hoc basis as Asstt. Study Works Officer with effect from 26.11.1970 and his pay on such appointment was fixed in accordance with the Railway Board's instructions which were in force at that time vide letter dated 28.3.1961 and 9.9.1964 respectively. In so far as the applicant is concerned, he was appointed subsequent to the Railway Board's instructions. Therefore, bringing analogy of M.M. Verma does not benefit the applicant.

5. I have heard the counsel of both the parties and have perused the records. It is an undisputed fact that Shri Chopra has been promoted to Class II service purely on local arrangements and ad hoc basis and will not confer upon to him any prescriptive right for similar promotion in future in preference to his seniors (Annexure 'B'). It is also made clear that Railway Board's letter dated 28.9.1971 takes effect from the date of issue of letter in accordance with para 2045-G-I as Shri Verma was promoted to Class II prior to 23.9.1971. Therefore, he cannot claim parity with that of Shri Verma.

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6. The short question for consideration is whether the applicant is justified in urging the respondents to fix his pay when on promotion to class II post on the basis of the last pay drawn on adhoc service which is in ex-cadre post or the pay should be fixed in accordance with the relevant rules then existed. As per normal rules it is clear that in case of promotion from one ex-cadre post to another ex-cadre post where the railway servant opt to draw pay in the scale of ex-cadre post, the pay in the subsequent ex-cadre post should hereafter be fixed with reference to his cadre pay and not the pay drawn while working in ex-cadre post. Two issues have arisen for consideration, one is regarding limitation and another with regard to fixation of pay.

7. In so far as limitation is concerned, initially, the application <sup>is</sup> apparently barred by time. However, in view of the repeated representations made by the applicant vide dated 12.4.1988, 2.1.1989 and 8.9.1990 which were rejected by the respondents vide letter dated 2.1.1991. Therefore, he gets a new cause of action on receipt of the reply from the respondents.

8. The Learned Counsel for the applicant in support

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of his contention relied upon the decision of this Tribunal in the case of Shri B. Kumar vs. UOI ( 1988 ATR (1) 1). In that case it was held that once the representation is entertained and considered on merits as was done in this case. Order rejecting the representation gives a fresh starting point of limitation. This decision has been followed in the case of A.N. Gambhir vs. Secretary, Ministry of Water Resources [1988 (8) ATC (CAT) 249]. In the light of the aforesaid decisions of this Tribunal, I am unable to accept the plea of bar of limitation put-forth by the respondents. Secondly, regarding fixation of pay, on perusal of the records, I find that the respondents have fixed up his pay in accordance with the relevant rules i.e. fixation of pay in higher ex-cadre post has to be made with reference to his pay in regular cadre pursuant to the decision by the Board thereby fixing his pay at Rs. 810 p.m. vide their letter dated 15.1.1979 which under the circumstances is justified and is in accordance with the views expressed by the department of Personnel vide their letter dated 7.2.1989. The respondents have also clarified stating that Shri Verma's case is not identical to the case of Shri Chopra. The benefit, if any, given to Shri Verma prior to the

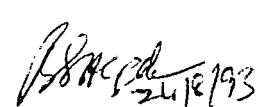
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instructions given by the Board vide letter dated 26.11.1970. Therefore, the applicant cannot take advantage of the benefits given to Shri Verma.

Further, in law, normally, any instructions issued by the Department will be given effect from the date of issue and not ~~anterior~~ to that unless the relevant rules or the Act intended to do so. In the instant case, the instructions issued by the Railway Board will have only a prospective effect whereas Shri Chopra's promotion to the higher cadre took place in the year 1979. As such, he cannot take advantage of the subsequent instructions given by the Board vide dated 18.11.1985.

9. In the light of the above, I am of the view, that the fixation made by the respondents is found to be justified and there is no merit in the petition. Accordingly, I dismiss the O.A. with no order as to costs.

  
(B.S. HEGDE)  
Member (J)