

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

...

D.A.No. 1819/91.

Date of decision 30/9/92

Shri B.S. Kataria

...

Applicant

V/s

Union of India
and Others.

...

Respondents

CORAM

Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

Hon'ble Mr. I.P. Gupta, Member (A)

For the applicant

...

Shri D.C. Vohra, Counsel.

For the Respondents

...

Shri P.H. Ramchandani,
Counsel.

(1) Whether Reporters of local papers may be
allowed to see the Judgement ?

(2) To be referred to the reporter or not ?

J_U_D_G_E_M_E_N_T

[Delivered by Hon'ble Mr. I.P. Gupta, Member (A)]

In this application filed under Section 19
of the Administrative Tribunal Act, 1985, the Learned
Counsel for the applicant only pressed the point that the
applicant, who was promoted notionally to the posts of
U.D.C. and Assistant with effect from 17.8.1974 and
3.12.1979 respectively, should be allowed actual

payment for the higher posts from 1974 and 1979
respectively and the promotion should not be
treated as notional. He drew attention to the
counter filed by the respondents where the following
has been mentioned :-

" A vacancy of U.D.C. became available
in L.B.S.N.S.A., Mussoorie from 22.5.74.
According to roster this was an OC vacancy.
However, the previous vacancy was a SC vacancy
but was filled up by one OC candidate as no
eligible SC candidate was available and also
it was a lone vacancy. Therefore, the SC
point should have been carried forward and
vacancy becoming available on 22.5.74 should
have been filled up by a SC candidate. Sri
B.S. Kataria, a SC candidate was eligible
for this. However, by mistake, this position
was overlooked and OC candidate was appointed
against this vacancy. Later the mistake was
corrected and Sri B.S. Kataria was promoted
retrospectively from 22.5.74. Sri B.S. Kataria
was given notional promotion to the post of
UDC and Assistant w.e.f. 17.8.74 and 3.12.79
respectively. He was also given due seniority
on the basis of notional promotions. The
applicant was promoted on notional basis to
the post of UDC w.e.f. 17.8.74 to 5.10.78 and
to the post of Assistant w.e.f. 3.12.79 to
15.12.83. During these periods, the applicant
did not actually hold the posts of UDC and
Assistant respectively and, therefore, was
not entitled to the monetary benefits for
this period as stipulated under sub-para IV

of para 5 of Rule 11 of Delegation of Financial Power Rules, and Rule 17(1) of Fundamental Rules."

2. The Learned Counsel for the applicant contended that the applicant should not be made to suffer for no fault of his. He cited the case of Romesh Chander [1992 (1)ATJ 674] where it was held that if the promotions were denied wrongly consequential benefits have to be paid and consequential benefits would cover arrears of pay also. He added that FR 17 could not be invoked where assumption of duty was delayed or debarred by the acts of the Department (Benod Bahari Sahu v/s Union of India & Others - 1190 (Vol.14) ATC 422). In the case of Vishnu Sambhaji Dange v/s Union of India and Others [1988(3)(CAT) SLJ 315] also it was held that when promotion was denied due to the mistake of the department which was later discovered, arrears of pay should be given.

3. The Learned Counsel for the respondents raised the question of limitation. He said that by an application filed on 1.8.1991 the applicant cannot claim benefits of arrears for the period relating to 17.8.1974 to 30.10.1978 in the grade of U.D.C. and from 3.12.1979 to 15.12.1983 in the grade of Assistant.

4. Regarding limitation we quote below an extract from the order of the Tribunal in O.A. No. 321 of 1986 etc. [C.N. Locanathan v/s Union of India & Ors. 1989 (9)ATC 617-

" However, salary and allowances as well as pension are payable to a public servant month after month. Right to receive salary or pension is a recurring right. This being a recurring right, the cause of action to claim these amounts arises from month to month. Hence, merely because the applicant was entitled to claim this amount from 1969 or 1973, the claim for the period prior to 1.11.1982 cannot be entertained and the right to claim arrears of more than three years prior to the filing of the original application is barred by time; the application itself cannot be declared as not entertainable or time barred. The applicant's right to receive the amounts which are within limitation is entertainable.

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As stated above, the right to receive salary and allowances and subsequently the pension being a recurring right, the application is entertainable and the applicants are entitled to receive all amounts that fall within three years immediately prior to the filling of these applications before the Tribunal."

5. Thus while the application in regard to salary

and allowances is entertainable, treating ^{it} as a recurring right and taking a liberal attitude towards monetary claims, as opposed to claims for seniority, promotion or appointment where entertainment of stale claims disturbs settled conditions, yet in regard to actual payment of arrears of salary and allowances the period falling under the period of limitation becomes relevant.

6. Section 21(1)(a) of the AT Act, 1985 is reproduced below :-

" A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

Section 21(2)(a) is also reproduced below :-

" Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates".

7. Therefore it is the period of one year that is relevant in this case for purposes of limitation, as the application was filed on 5.8.1991, much after the expiry of the period of one year after 1.11.1985 when the A.T. Act came into force. The period of three years as mentioned in 21(2)(a) was for the transition period i.e. if an application was filed within the limitation period of Section 21(1), the grievance pertaining to ^a period within 3 years immediately preceding 1.11.1985 could have been entertainable.

8. The memo. dated 8.8.1990 (^{Saying} ~~says~~) that a copy of the decision of the Department of Personnel and Training ~~was~~ enclosed) does not protect the applicant from the bar of limitation since earlier letters i.e. 17th January 1990 and still earlier ^{dated June 87 & 20.7.88} had conveyed the information about rejection of the applicant's representation.

9. This application relating to payment of arrears for periods within 17.8.1974 and 15.12.1983 and filed on 5.8.1991 is thus barred by time. The application is dismissed with no orders as to costs.

I.P. Gupta
I.P. Gupta
Member (A) 30/9/92

Ram Pal Singh
Ram Pal Singh
Vice-Chairman (J)