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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 885/1991.

DATE OF DECISION: 19-2-1992.

Prem Prakash Sharma

....

Applicant.

V/s.

Union of India & Others

....

Respondents.

CORAM:

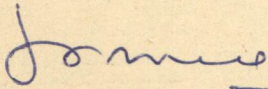
Hon'ble Mr. P.C. Jain, Member (A).

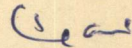
Hon'ble Mr. J.P. Sharma, Member (J).

Shri Sant Singh, counsel for the applicant.

Shri M.L. Verma, counsel for the respondents. 1-3.

1. Whether Reports of local papers may be allowed to see the judgment? *yes.*
2. To be referred to the Reporter or not? *yes.*
3. Whether their Lordships wish to see the fair copy of the judgment? *no.*
4. Whether to be circulated to all Benches of of the Tribunal? *no.*


(J.P. SHARMA)
MEMBER(J)


(P.C. JAIN)
MEMBER(A)

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Hon'ble Mr. J.P. Sharma, Member (J).

Shri Sant Singh, counsel for the applicant.
Shri M.L. Verma, counsel for respondents 1-3.

JUDGMENT

(delivered by Hon'ble Mr. P.C. Jain, Member)

The applicant herein has prayed for quashing the impugned orders (Annexure A-1 and A-2) by which his appeal dated 2.3.1991 against order dated 21.2.1991 rejecting his claim for arrears of pay and seniority was rejected, and for granting full benefits of seniority, promotion and arrears of pay with interest at 18% consequent to his restoration of date of confirmation as L.D.C. Respondents have contested the claim of the applicant by filing a reply, to which the applicant has filed a rejoinder. We have perused the material on record and also heard the learned counsel for the parties.

2. The relevant facts, briefly stated, are that on 8-10-1965, a large number of persons, including the applicant, were appointed as L.D.C. in lieu of combatant when they were all over age. Of these appointees, 545 persons, including one Shri K.L. Bhatia, were regularised on 14-5-1971, but the applicant was not regularised. The case of regularisation of the remaining 102 persons was considered later on and on 7-12-1978, an order was passed, by which these 102 persons were regularised by relaxation of the upper age limit but it was specifically ordered that the service rendered by them prior to 7-12-78 would not count for seniority, promotion and confirmation as it had to be treated as ad-hoc service. The aforesaid Shri

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K.L. Bhatia had been confirmed as L.D.C. with effect from 1-5-1971, but the applicant was confirmed as such with effect from 17-1-1972 by order dated 17-5-1976. But by a subsequent order dated 24-7-1986, he was ordered to be confirmed as L.D.C. with effect from 7-12-1980. The applicant herein had filed O.A. No.825 of 1986, which was decided on 17-11-1989 (PREM PRAKASH SHARMA Vs. UNION OF INDIA AND OTHERS - A.T.J. 1990(1) CAT 350). In that O.A., the applicant had prayed for his confirmation as L.D.C. with effect from 1-5-1971 and for benefits of seniority and promotion from 8-10-1965, i.e., the date of the applicant's initial appointment. He had also prayed for quashing of the order dated 7-12-1978, whereby the service rendered by him prior to that date was held as not to count for the purpose of seniority, promotion and confirmation. He also prayed for fixation of salary, arrears and promotion as U.D.C. Another grievance of his was that while he was appointed on 8-10-1965, the aforesaid Shri K.L. Bhatia, who was defendant No.5 in that case, was appointed on 24-2-1966 and, as such, he could not be confirmed with effect from 17-1-1972 as against Shri K.L. Bhatia's confirmation with effect from 1-5-1971. It was further contended that having once been confirmed from 17-1-1972, there was no question of his confirmation again with effect from 7-12-1980. A Division Bench of the Central Administrative Tribunal in that case came to the conclusion that the applicant's claim in regard to the order dated 17-5-1976 and order dated 7.12.1978 had become barred by time not only on the date when the application was filed on 18-9-1986, but also before the constitution of this Tribunal under the Act. However, the second order of confirmation passed on 24-7-1986 confirming the applicant from 7-12-80 was held to be within time and it was stated that "This petition will succeed only to that extent." The operative part of the judgment in O.A. 825/1986 is extracted as below:

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"13. The petition is partly allowed and while the impugned order of confirmation of the applicant with effect from 7-12-1980 under order dated 24-7-1986 contained in Annexure-H is quashed, the petition is dismissed in all other respects. The opposite parties are directed to consider the question of confirmation of the applicant as LDC afresh in accordance with law after giving an opportunity to the applicant to show cause, within a period of three months from the date of receipt of this order. Parties shall bear their costs of this petition."

3. In pursuance of the above order, the applicant was ordered to be confirmed in the permanent post of L.D.C. with effect from 1.5.1971 and the earlier order dated 24.7.1986 in this connection was cancelled, vide Part II Order No.117/Civ/90, dated 29.11.1990 (Annexure A-3). Here it can be stated that when the second order of confirmation passed on 24.7.1986 confirming the applicant as LDC with effect from 7.12.1980 was quashed, the earlier order dated 17.5.1976 confirming the applicant as LDC with effect from 17-1-1972 could have become final. However, in pursuance of the directions of the Tribunal in para 13 of the judgment in O.A. 825/1986 for considering the question of confirmation of the applicant as LDC afresh and the respondents having given him fresh date of confirmation with effect from 1.5.1971, his request for payment of arrears of pay and allowances was rejected vide order dated 21.2.1991 (Annexure A-2) after consultation with the Ministry of Defence and the Department of Personnel & Training. He preferred an appeal on 2.3.1991 against the above order, which was rejected by order dated 1.4.1991 (Annexure A-1). Hence the present O.A.

4. The applicant's case entirely rests on the contention that his date of confirmation as LDC having been changed to 1.5.1971 vide order issued on 29.11.1990, he is entitled to seniority, promotion and consequential arrears of pay etc., with reference to that date of confirmation. The respondents, in their reply, have raised the plea of limitation and have also stated that the orders passed by the Tribunal in O.A. 825/1986 have already been complied with by them as per law, and that

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remedies once sought cannot be repeated by making successive representations / petitions on the identical matters in the same court time and again. They have also stated that Shri K.L. Bhatia, who was respondent No.5 in that O.A. and respondent No.4 in the present O.A. was promoted as U.D.C. with effect from 1.1.82 in his own turn, reckoning his seniority with effect from 24.2.66 in the Corps. It is admitted that though in the initial appointment, Shri K.L. Bhatia was junior to the applicant, the applicant had lost his original seniority and his seniority now reckons in the Corps with effect from 7.12.78 and, therefore, he cannot claim to be senior to Shri K.L. Bhatia. As the Tribunal's order in ^{C.T.} O.A. 825/1986 has already been complied with by confirming the applicant with effect from 1-5-71, i.e., the date of his junior Shri K.L. Bhatia's confirmation, there is no question of promoting the applicant and providing other benefits as claimed by him. They have stated that the Tribunal's decision dated 17-11-1989, does not speak of providing further incentives of seniority, promotion etc., and that is the only relief which the applicant could be given as per the directions of the Tribunal.

5. We have carefully considered the rival contentions of the parties. We are of the view that the applicant has got a fresh cause of action in view of the order dated 29.11.1990, by which he has been confirmed in the post of LDC with effect from 1.5.1971 instead of 17.1.1972, which was done by order dated 17.5.1976 or with effect from 7.12.1980, which was done by order dated 24.7.1986. When the order dated 24.7.1986 had been quashed by the Tribunal, the normal consequence would have been that the applicant would have stood confirmed as LDC with effect from 17.1.1972 under order dated 17.5.1976 as the order dated 17.5.1976 was not quashed by the Tribunal in view of the Tribunal holding that such a claim was time-barred. By changing the date of confirmation of the applicant to 1.5.1971, the respondents themselves have given to the applicant a fresh cause

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of action. In that view of the matter, the present O.A. cannot be held to be barred by limitation, as it has been filed within the limitation prescribed under Section 21 of the Administrative Tribunals Act.

6. However, the claim of the applicant for consequential seniority, promotion and arrears of pay stands on a different footing. He had claimed these very reliefs in O.A. No.825/1986 and these were specifically disallowed. The decision on these points cannot, be said to operate as res-judicata to the same/similar claim in the present O.A. for the simple reason that these claims were not disallowed after adjudicating the issue on merits; these were disallowed because these were considered to be time barred with reference to the relevant orders dated 17.5.1976 and order dated 7.12.78. The ground reality has also undergone a change inasmuch as a fresh cause of action has arisen in favour of the applicant. In this view of the matter, we find that disallowance of the claim of the applicant for quashing the order dated 7-12-1978 under which, while regularising the appointment of the applicant, a condition was imposed that the service rendered by him prior to 7-12-1978 would not count towards seniority, confirmation and promotion, has become irrelevant in view of the subsequent confirmation of the applicant as LDC with effect from 1-5-1971, which means that his service prior to 7-12-1978 has been considered regular and not ad-hoc. Similarly, by the respondents' own action, the order dated 17-5-1976, by which the applicant was confirmed as LDC with effect from 17-1-1972 has also become irrelevant. Having said this, it also needs to be stated that while granting relief, we cannot ignore what has already happened through T.A. No.825/1986 and the fact that the monetary claim of the applicant has to be considered in the light of the limitation prescribed for such a relief. Taking all these factors into account, we are of the view that the applicant's seniority in the cadre of LDC should count from 1.5.1971, ^{he} having been confirmed on that date O.A.

vide order dated 29th November, 1990. Shri K.L. Bhatia, respondent No.4, who was also confirmed from that date, is stated to have been promoted as UDC with effect from 1.1.1982. The applicant shall accordingly be also considered entitled for consideration for promotion to the post of UDC with effect from 1.1.1982 if he is found otherwise eligible and fit in accordance with the relevant rules, by the Review Departmental Selection Committee. In case ^{he} is found fit for promotion as U.D.C. with effect from 1.1.1982, he will be deemed to have been promoted as U.D.C. with effect from 1.1.1982, but on the facts and in the circumstances of the case, and for the reasons already stated above, he shall not be entitled to any arrears of pay and allowances on that account upto 30.11.1990, his revised date of confirmation as LDC having been decided on 29.11.90. Further, if he is deemed to be promoted as UDC with effect from 1.1.1982, he shall also become eligible for consideration for further promotion to a post higher than UDC on the basis of his seniority in the cadre of UDC, if he is otherwise eligible and found fit in accordance with relevant rules by the Review D.P.C., and if so, he will be deemed to have been promoted to that higher post with effect from the date his junior in the cadre of ^{U.D.C.} had been so promoted, but he will not be allowed any arrears of pay and allowances etc. from such a deemed date of promotion till the date of 30.11.1990. Arrears, if any, in pursuance of the above directions after 1-12-1990 shall, however, be paid to the applicant.

7. The O.A. is partly allowed in terms of the directions given above, which shall be complied with by the respondents expeditiously and preferably within a period of six months from the date of receipt of a copy of this order. No costs.

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

P.C. Jain 19/12/92
(P.C. JAIN)
MEMBER (A)