

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA NO.279/2004

New Delhi this the...<sup>25</sup>...th May, 2005

**HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN**  
**HON'BLE SHRI S.A.SINGH, MEMBER (A)**

Subhash Saini  
S/o Late Sh. Nawal Singh  
Aged about 54 yrs.  
R/o C-177, Delhi Admn. Flats,  
Sindhora Kalan, Chowki No.2, Delhi-110052

And employed as:  
Head Clerk in the Deptt. of Social Welfare,  
At I.C.D.S., Wazir Pur, Delhi.

...Applicant.

(By Advocate: Shri B.B.Raval)

Versus

1. Govt. of National Capital Territory of Delhi  
Through Mrs. Shailaja Chandra  
Chief Secretary,  
Delhi Sachivalaya Building, I.P. Estate, New Delhi.
2. The Principal Secretary (Services)  
Government of Delhi  
Delhi Sachivalaya Building, I.P. Estate, New Delhi.
3. Director of Social Welfare,  
Government of Delhi  
1 – Canning Lane, K.G. Marg, New Delhi.

... Respondents.

(By Advocate: Shri Vijay Pandita)

ORDER

By Shri S.A.Singh, Member (A)

The applicant joined sales Department of Delhi Administration as LDC on 17<sup>th</sup> September 1968. He claims that he appeared in the departmental test for promotion to the post of UDC in 1973 and was declared successful and his name appeared just below that of one Shri Vishan Dass, LDC. The promotion was subject to vigilance clearance.

2. However, before the applicant could be promoted he was issued in February 1974 a charge sheet by the Sales Tax Department under rule 16 of CCS (CCA). The applicant was exonerated, because of which he became eligible for promotion to the post of UDC. He approached the respondents for promotion to UDC based on qualifying the departmental test but nether did the respondents promote him nor gave any reasons.

de

3. The applicant claims that he again appeared (under protest) in departmental test for the post of UDC held in May 1975 and he was successful.
4. He was transferred to the office of Deputy Commissioner on 16.8.1976. On 26.4.1977 he was posted as UDC in the PAO of NCT Delhi which he accepted (under protest) as he was eligible for promotion to UDC from 1973.
5. The applicant was issued another charge sheet on 03.2.1993 for some irregularities pertaining to the year 1985. Applicant was imposed a penalty of reduction in pay, in his existing scale by two stages for two years, with cumulative effect on 17.7.1998.. The applicant filed OA No.2018/99, which was allowed and the impugned order dated 17.7.1998 passed by the disciplinary authority and the appellate order dated 5.11.1999 were quashed and set aside.
6. The applicant had to file contempt petition No.183/2003 for obtaining consequential benefits asked for in MA 709/2001. The Tribunal discharged CP by order 18.7.2003 observing that the respondents had taken action to comply with the directions in OA 2018/99 because the applicant had been promoted, his seniority and pay re-fixed. The Tribunal while dismissing the CP gave liberty to the applicant that if any grievance remained he was free to file a fresh OA for its redress.
7. The applicant filed the present OA seeking relief that the respondents should be directed to pass an order of promotion to the post of UDC from 1974 not from 26.04.1977 and accordingly assign the seniority of UDC at seniority No.3084 i.e. just below the seniority number of applicant's immediate seniors w.e.f 01.02.1975.
8. In addition, to assign seniority as Head Clerk from 1994 and not from 1996 on the basis of UDC seniority from 1974 and issue promotion order of Head Clerk from 1994 instead of 9.7.96 and fix the pay accordingly.
9. Further, there are other relief(s) regarding release of withheld salary, completion of service book, release of withheld increments and monetary benefits from the date of promotion to Head Clerk w.e.f. 9.7.1996 and to break-up the arrears already paid on annual basis, for purpose of calculating of Income Tax.
10. The respondents have vehemently contested the pleadings of the applicant stating that they are barred by limitation as they pertain to the year 1974 and are 30 years old therefore beyond the jurisdiction of the Tribunal.

/

11. The relief regarding seniority from the year 1974 is also time barred, as it is a 10 years old claim. The claim for salary pertains to 1.12.85 to 31.12.85 which the applicant received 28.4.1986. Moreover, the applicant is raising this issue after 19 years of release of payment.

12. The respondents held that an application against an order made three years before immediately preceding the date of setting up of the Central Administrative Tribunal is time barred by limitation since CAT cannot even condone the delay in such cases. They relied upon the cases of Sukar Dey Vs UOI (1987 3 ATC 427 (CAL)) and V S Raghavan Vs Secretary to the Ministry of Defence (1987) 3 ATC (CAT) (Madras). The respondents have further contested the claim of the applicant that he had appeared in the Departmental Test in 1973 and was declared successful. They have pleaded that the applicant has not filed any document or proof to substantiate his claim, which is 30 years old. Because of delay and latches, it is has to be rejected. No system of pasting of results of the successful candidates could be confirmed from any angle despite all out effort to get the claims verified. In absence of any documentary proof, the respondents are unable to examine his claim.

13. The respondents placed on record some pages of PBRs and acquaintance roll showing that the applicant had been paid salary for period 1.12.85 to 31.12.85 on 28.4.1986.

14. Further, the respondents stated they have paid Rs. 98094/- because of pay fixation arrears. If the applicant still had any grievance, he could have approached the respondent for rectification instead he has preferred to approach the Tribunal. With regard to his contention that the respondents have not taken into consideration the withheld increments of 1.9.75 and 1.4.83, the respondents pleaded that the Tribunal in its order of 23.5.2002 had only quashed the penalty imposed by the disciplinary authority and appellate authority, no relief was granted to him. Hence, the applicant's contentions concerning increments are to be rejected. With regard to bifurcations of arrears year wise, the applicant is required to make the request to disbursing officer. The applicant has not mentioned in his OA whether he had made any such request.

15. We have heard the counsel for the parties and gone through the documents placed on record. The facts of the case are that applicant had been issued a charge sheet and punished by reduction in pay, in his existing scale by two stages for two years, with cumulative effect. This punishment was set aside by CAT vide order dated 23.5.2002 in OA 2018/1999.

dr


Consequently, the applicant was granted promotion vide Office order No. 203 dated 25.6.2003 to Grade-II (DASS) w.e.f. 9.7.1996 on notional basis, which is the date when his immediate junior Sh. Yash Pal Puri, Gr.III, seniority No. 3675 was promoted to Grade-II (DASS) in the pay scale of Rs.5000-8000 (Revised). He was also paid arrears of Rs.98094/-.

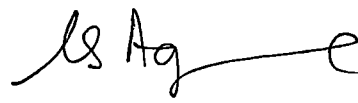
16. It is the contention of the applicant that he had appeared in the departmental test for promotion of UDC in 1973, which he had successfully passed and once again in 1975. However, he has not been able to place any document on record to back his claim. The respondents have strongly contested his claim stating that the applicant has placed no such document or proof and they are unable to verify this claim in absence of supporting documents. The respondents have pleaded that case is debarred by limitation as the claim is over 30 years old and hence, cannot be adjudicated upon by the Tribunal. Under rule 21(2), the Tribunal is debarred to go into any matter, which pertains to an order more than 3 years before the Tribunal was established. The respondents have stated that they have paid pay as claimed in the relief..

17. On going through the documents we find that the applicant has not placed any documentary proof supporting his claim that he had passed the Departmental Test in 1973 and 1975. He also claims that he had taken his promotion/transfer under protest. No documents supporting this have been placed on record. We are therefore unable to agree with the applicant that he was eligible for promotion from the year 1973 as there is no document(s) to support this contention.

18. The matter is also hit by limitation as it pertains to issues before the establishment of the Tribunal.

19. In view of the foregoing, the OA is without merit and is accordingly dismissed. No costs.

  
(S.A.Singh)  
Member (A)

  
(V.S.Aggarwal)  
Chairman

Patwal/