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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 2848/92

.. Date of decision: 13.07.93

Sh. Hari Singh Rajput

.. Applicant

Versus

Union of India

.. Respondents

CORAM

Hon`ble Sh. J.P.Sharma, Member (J)

For the applicant

.. Sh. Sand Lal, Counsel

For the respondents

.. Sh.K.C. Mittal, Counsel.

JUDGEMENT(Oral)

(Delivered by Hon`ble Sh. J.P.Sharma, Member (J))

The applicant, since retired w.e.f. 30.9.91 (AN) as LSG (Sorting Assistant), filed this application aggrieved by memo dated 14.1.91 issued by the Chief Post Master General, Rajasthan Circle whereby the applicant had been denied the arrears of salary in the LSG grade though he has been promoted on notional basis w.e.f. 1.6.74 but the actual payment of salary in the grade of LSG was given to him w.e.f. 30.11.83.

In this application, the applicant has prayed that the impugned order dated 14.1.91 relating to the denial of the claim of the applicant for arrears of pay and allowances w.e.f. 1.6.74 be set aside and the respondents be directed to pay the arrears of pay and allowances arising as a result of promotion of the applicant to LSG grade w.e.f. 1.6.74 upto 29.11.83. Notices were issued to the respondents to contest the application and opposes the grant of the relief prayed for

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by the applicant.

The facts of the case are that the applicant joined as Sorting Assistant in Class III post with the respondents sometimes in 1954. Earlier the criteria for grant of promotion to LSG was the continuous length of service and on that basis the applicant was entitled to the promotion w.e.f. 01.06.74. However, in 1959, this criterion of promotion to LSG was changed from continuous length of service to the date of confirmation of the official in the substantive post. This fact was challenged in the Delhi High Court in Writ Petition No. 678/82 and later it was transferred to the Principal Bench and registered as TA 783/85. This was also contested by the respondents and was ultimately decided by an order dated 29.5.86 whereby it was held that continuous length of service is the criterion for promotion to the grade of LSG and the criterion date of confirmation in the substantive post was held not to be just and therefore, quashed. The respondents, in pursuance of the judgement of the C.A.T., issued DOP No. 93/35/82/ SPB1 dated 20.5.87. In pursuance of this order issued by the Department of Posts, the applicant was given the benefit and his date of promotion to LSG grade was changed from 1.6.74 vide order dated 14.1.91 issued by Sr. Superintendent. This promotion has however, been given on notional basis and infact the actual arrears were allowed to the applicant w.e.f. 14.1.91 i.e. from the date of issue of this order of Chief Post Master General. The applicant made representation but no effect. The applicant has filed the present application in Nov. 92.

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During the pendency of the application, the respondents vide an order dated March 1993, given further benefit to the applicant by giving him actual pay and allowances as LSG w.e.f. 30.11.83.

The respondents, however, in their reply opposed the grant of pay and allowances w.e.f. 1.6.74 and raised two grounds. Firstly, the applicant did not actually work on the promotion post from 1.6.74 to 29.11.83, the date when he actually got promotion. Secondly, in view of Government of India's order No. 7 (FR 27), the arrears arising out of notional fixation are admissible from the actual date of promotion only.

I heard the learned counsel for both the parties at length and perused the records. The learned counsel for the applicant relying on the decision on a similar case involving the same issue between one of the person employed as Sorter Assistant with the respondents and sought the relief of grant of actual benefits from the date of his promotion on the basis of DOP letter of 1987 (OA No. 1045/87 decided on 11.1.90 by the Principal Bench). The applicant of that case was allowed the arrears of pay and allowances w.e.f. 11.4.80 the date from which he got notional promotion on the basis of DOP memo of 1987. The Division Bench arrived at its decision after considering a catena of authorities in this regard viz. P.P.S. Gambur Vs.UOI (1984 Vol.II SLJ 633). The applicant has also relied upon a decision of the Supreme Court in the case of State of Mysore Vs. C.R. Seshadri (AIR 1976 SC page 461). The ratio of the case is evident that if a person is

entitled to promotion and that is denied to him on no fault of him, he would be eligible to be paid salary and other allowances from the date the promotion actually due to him. The learned counsel for the applicant also argued that the nature of work performed by the applicant before his promotion to LSG grade remain unchanged. It was only one time bound promotion increasing the scale of the incumbent to LSG. Against this, the learned counsel for the respondents argued that certain points have not been considered in the reported judgements. I do not agree with the learned counsel with this point. It is a reported judgement touching all the aspects of the matter. I fully agree with the ratio in the judgement and do not consider it a matter that may be referred to Division Bench.

In view of the above facts and circumstances of the case, I find that it is a fit case where the impugned order dated 14.1.91 needs set aside. On the point of limitation also I find that the respondents themselves in March 1993 given a benefit to the applicant by granting actual pay and allowances on the promotional post w.e.f. 30.11.83. Within the fresh cause of action, the respondents to agitate the matter or to award arrears of pay and allowances w.e.f. the date of his promotion as LSG i.e. 1.6.74.

In view of the above facts and circumstances, the application is allowed. The impugned order dated 14.1.91 is modified to the extent that the applicant is also entitled

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to arrears of pay and allowances in the LSG grade w.e.f. 1.6.74 to 29.11.83 as he has already been paid the period beyond 30.11.83. The respondents are directed to comply with the above direction within a period of 3 months from the date of receipt of this order.

There will be no order as to costs.

J.P. Sharma
(J.P. Sharma) 13.7.83
Member (J)