

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
\* \* \*

7

O.A. NO.785/92

DATE OF DECISION : 04.09.1992

Shri K.K. Kathuria & Ors. ...Applicants

Vs.

Union of India & Ors. ...Respondents

CORAM

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

For the Applicants ...Shri K.L. Bhandula

For the Respondents ...Shri M.L. Verma

1. Whether Reporters of local papers may be allowed to see the Judgement? JK
2. To be referred to the Reporters or not? JK

JUDGEMENT

Seven applicants in this case have filed this application jointly for the relief that for the period of ad-hoc promotion as Deputy Director, they should have been given the benefit given to similarly placed employees regarding fixation of their pay in accordance with concordance table.

2. The applicants claimed the following reliefs :-

(i) To direct the respondents to grant similar

benefits of judgements dated 25.4.89

↓

...2...

8

and 31.5.1991 in the cases of S/Shri O.P.Khanda (O.A. No.2377/88), A.K. Jain (O.A. 809/89), Devendra Sharma (O.A. 827/89) and S/Shri Naresh Kumar and 9 others (O.A. 2014/90 to the application who are similarly placed.

(ii) To refix their pay in the prerevised and revised scale of Rs.1100-1600/3000-4500 giving them the benefit of adhoc promotion as Dy.Directors followed by their regular promotion without any break and pay the arrears in the same manner as is done in the cases of the aforesaid TWELVE officers.

(iii) To award the costs of this application, and

(iv) To grant such other reliefs as this Hon'ble Tribunal deem fit in the circumstances of this case.

3. The applicants No.3, 4 and 5 retired in June, August and November, 1989 respectively. Applicant No.6 retired in July, 1985 and applicant No.7 retired in October, 1988, each on the last date of the month. Applicants No.1 and 2

↓

○

were working as Deputy Director on the date of the application. The present application was filed on 23.3.1992. The facts of the case are that all the applicants were appointed and promoted as Assistant Director in the junior time scale in Central Water Commission (CWC) under the Ministry of Water Resources. They were promoted to the post of Deputy Director in the senior time scale on ad-hoc basis in the year 1978. Their pay in the grade of Deputy Director, senior time scale on their ad-hoc promotion was fixed on the basis of the pay drawn on regular basis in the grade of Assistant Director. Their ad-hoc promotion was followed by regular appointment/promotion in the grade of Deputy Director in the year 1980-85. The applicants continued to work on ad-hoc basis without any break. On their regular promotion in the grade of Deputy Director, their pay was refixed with reference to their notional pay of Assistant Director in the junior time scale and ignoring the service rendered by them in the senior time scale of Deputy Director on ad-hoc basis which counts for increments under FA 26. In view of this, the refixation of pay on promotion on regular basis is

the year 1980-85 resulted in loss to the applicants as they were denied the benefit of ad-hoc service followed by regularisation in the grade without any break. The applicants have annexed a chart to the application (Annexure-VI) which is reproduced below :-

Sl. Name No.	Date of Appointment as Asstt. Director on regular basis & pay before promotion as Dy. Director	Date of Promotion as Dy. Director on Ad-hoc basis and pay fixed in scale of Rs. 1100-1600	Date of Promotion as Dy. Director on regular basis without break and pay fixed in scale 100-1600	Fixation of pay claimed by the applicant as Dy. Director (1100-1600) and date
S/Shri				
1. K.K.Kathuria	4.5.1973 Rs.1060/-	18.4.1978 Rs.1100/-	31.7.1980 Rs.1350/-	18.4.78 Rs.1300/-
2. T.S. Grover	11.8.1975 Rs.900/-	15.9.1978 Rs.1100/-	1.4.1985 Rs.1400/-	1.9.85 Rs.1450/-
3. R.K. Chopra	31.5.1975 Rs.1060/-	30.9.1978 Rs.1200/-	22.1.1985 Rs.1500/-	30.9.78 Rs.1300/-
4. Pritpal Singh	15.5.1975 Rs.980/-	19.4.1978 Rs.1100/-	22.1.1985 Rs.1450/-	19.4.78 Rs.1300/-
5. P.R.Malhotra	31.5.1975 Rs.1060/-	28.8.1978 Rs.1200/-	16.3.1985 Rs.1500/-	28.8.78 Rs.1300/-
6. M.M. Shah	7.6.1975 Rs.100/-	18.4.1978 Rs.1150/-	22.1.1985 Rs.1500/-	18.4.78 Rs.1350/-
7. J.N' Kathpalia	.5.1973 Rs.940/-	15.5.1978 Rs.1100/-	1.1.1985 Rs.1400/-	15.5.78 Rs.1150/-

The case of the applicants is also that Shri O.P. Khanda, Shri A.K. Jain and Shri Devender Sharma, the colleagues of

the applicants filed their applications under Section 19 of the Administrative Tribunals Act, 1985 before the Tribunal which were registered as O.A.Nos. 2377/88, 809/89 and 827/89 seeking reliefs for giving the benefit of ad-hoc promotion to the higher grade of Deputy Director followed by their regular promotion as Deputy Director towards fixation of their pay and consequential arrears. These applications were allowed. The Government of India, CWC issued an Office Order dt. 21.7.1989 (Annexure VII) in compliance with the directions of the Hon'ble Tribunal in the aforesaid three cases and ordered that the ad-hoc promotion followed by regular promotion without any break will count for fixation of pay at the appropriate stage under the concordance table and in accordance with the OM dt. 14.11.1975 (Annexure VII). This order also lays down that these officers shall be entitled to the arrears of pay arising due to the fixation of their pay. Certain other colleagues also filed the applications, which were also decided by the judgement dt. 31.5.1991 and they were also given the benefits of the fixation of pay taking into account their ad-hoc service in the grade of Deputy

Je

...6...

Director with arrears arising due to the refixation of pay vide order dt. 30.8.1991 (Annexure VII). The grievance of the applicants is that inspite of the above two judgements, the applicants have been denied the same benefits.

4. The respondents contested the application and stated in the reply that the application is belated and barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985. That all the applicants cannot join together in one application as applicants No.3 to 7 have already retired from service before filing of this application. In terms of the provisions contained in the Ministry of Defence OM dt. 14.11.1975, the pay of the officers on their promotion to the senior time scale on regular basis prior to 1.1.1986 is required to be fixed under the concordance table contained therein. In the case of promotions on regular basis in continuation of promotion on ad-hoc basis for the purpose of fixation of pay under the concordance table, the notional pay of the officers in the grade of Assistant Director/Assistant Executive Engineer, which he would have drawn, had he not been promoted to the post of Deputy Director/Executive Engineer on ad-hoc basis, is taken into

↓

...7...

13

account and pay fixed in the senior time scale at the appropriate stage is specified under the concordance table. The applicants in their petition have contended that they are entitled to the benefit of fixation of pay under the concordance table in terms of the provisions contained in para 2(ii)(v) of the Ministry of Finance OM dt. 14.11.1975 read with FR 26(a), i.e., by giving the benefit of their service on ad-hoc basis.

5. I have heard the learned counsel for both the parties at length and have gone through the record of the case. The learned counsel for the respondents has raised the question of limitation. The grievance by a Central Government servant after the Administrative Tribunals Act, 1985 can only be assailed under Section 19 of the said Act within the limitation provided under Section 21 of the Act. Section 21 is the self contained section of limitation. It specifically provides that against an order, the applicant can file the application within a period of one year thereafter and in case any representation is

le

M

required under Section 20 of the Act, then he can wait for a period of six months for the decision of that representation and a further period of one year if no decision is given and can file the application for the redress of his grievance. In the present case, the chart filed by the applicants as an annexure to the application goes to show that they are claiming the relief from their ad-hoc promotion w.e.f. 1978 and the regular promotion was given to applicant No.1 in 1980 and to applicant Nos.2 to 7 in 1985. The applicants have not come at the proper time for the redress of their grievances after the regular promotion in 1985 when they were given the benefit of concordance table only from the date of regular promotion denying the same benefit from the date of ad-hoc promotion. It is a fact that there are a number of decisions given by the Tribunal in the year 1989 in the case of O.P; Khanda, A.K. Jain and Devender Sharma (Annexure A III collectively). The applicants at the most can take the limitation from April, 1989 as at that time, all the applicants except applicant Nos.6 and 7 were in service. They did not assail the same nor made any effective representation thereafter. Then

↓

...9...



15

another judgement came in May, 1991 in the case of Naresh Kumar (Annexure AIII collectively) and then the applicants made representations in 1991 and which were rejected by the impugned order. It is thereafter that the present application has been filed in March, 1992. Even for a claim in a service matter, the applicants have to approach the Court in time. The learned counsel for the applicants has referred to the case of Dharampal & Ors. Vs. Union of India (T-950/85) which was decided on 26.11.1987 along with T.961/85, T.972/85, T.986/85, T.1049/85, T.11/85 and T.333/86. In this case, the services of the employees were terminated under Rule 5(1) of the Central Services (TS) Rules, 1965. On some of the earlier Writ Petitions filed before the Delhi High Court, the decision was given on 1.10.1975 quashing the order of termination of the petitioners of these Writ Petitions, and appeal against that judgement was also dismissed by a Division Bench of the High Court. On the basis of that decision, the Tribunal by the judgement dt. 26.11.1987 allowed the claim of the applicants of the above noted T.As. By virtue of this, the learned counsel for the applicants stated that the

le

...10...

16

benefit of the judgement should be given to the applicants.

Further it is also contended that in the OM of November, 1975, there is no indication to exclude ad-hoc appointments from its purview. In the T.A. No. 362/85 decided on 21.8.1986 (Y.D. Piplani & Ors. Vs. UOI), a copy of which has been annexed with a written note during the course of the arguments, there is an observation also to the petitioners of that case that these petitioners who were Executive Engineer should be fixed from the date of their appointment as Executive Engineer without any distinction between the regular and ad-hoc promotions for the application of concordance table and stepping up of pay. However, it is an established law that the benefit cannot be given to those who are not vigilant. The Hon'ble Supreme Court has considered the matter in the case of State of U.P. Vs. Bahadur Singh, reported in 1983 (3) SCC p-73 where the Hon'ble Supreme Court held that the Court may not examine stale matters as the Court helps the vigilant, not the indolent. The same view was taken by the Hon'ble Supreme Court in the case of A.L. Berry Vs. Collector of Central Excises, reported in 1975 (4) SCC p-714.

1

...11...

17

6. In a recent decision of Bheep Singh Vs. Union of India, reported in 1992 (2) ATJ p-153, the Hon'ble Supreme Court has distinguished the case of Dharampal & Ors. cited by the learned counsel (supra) where the SLP against the same by Lt. Governor of Delhi was also dismissed (Lt. Governor of Delhi & Ors. Vs. Dharampal & Ors., 1990 (4) SC 13). The Lordships of the Hon'ble Supreme Court observed as follows in para-7:-

"It is expected of a government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fact to be given due weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement. In our opinion, the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason to not classify him with the other dismissed constables who approached the Court earlier and got reinstatement. It was clear to the petitioner latest

1

18

in 1978 when the second batch of petitions were filed that the petitioner also will have to file a petition for getting reinstatement. Even then he chose to wait till 1989, Dharampal's case also being decided in 1987. The argument of discrimination is, therefore, not available to the petitioner."

7. In view of the above facts and circumstances of the case, the present claim of the applicants is hopelessly barred by limitation and is dismissed leaving the parties to bear their own costs.

AKS

*J.P. Sharma*  
4-9-82  
(J.P. SHARMA)  
MEMBER (J)