

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 1107/92

DATE OF DECISION : 23.02.93

Dr. B.S. Attri

...Applicant

Vs.

Union of India & Anr.

...Respondents

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

Hon'ble Shri S.R. Adige, Member (A)

For the Applicant

...Shri V.S. R. Krishna, counsel

For the Respondents

...Shri A.K. Behra, proxy counsel
for Shri P.H. Ramchandani,
counsel

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

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant is working as Additional Director (Scientist-SF) w.e.f. 1.7.1990 and has the grievance for not counting of the service rendered by him as a Senior Environmental Officer for promotion to the grade of Scientist (SF) under the flexible complementing scheme. The representation of the applicant dt. 31.5.1991 was rejected by the impugned order dt. 15.10.1991 which has also been assailed in the present case.

2. The applicant has prayed for the grant of the relief that a direction be issued to the respondents that the

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services rendered by the applicant as Senior Environmental Officer from 1.1.1982 to 9.9.1985 be clubbed with the services rendered by him as Principal Scientific Officer w.e.f. 10.9.1985 and the case of the applicant for promotion under the flexible complementing scheme be considered w.e.f. 1.1.1988 rather than w.e.f. 1.7.1990.

3. The applicant joined service as Senior Environmental Officer in the grade of Rs.1300-1700 on 6.7.1979. This scale has been abolished w.e.f. 1.1.1986 and a composite scale of Rs.3700-5000 has replaced the two scales of Rs.1300-1700 and Rs.1500-2000. The new scale of Rs.3700-5000 requires the same qualifications and experience as was stipulated for the grade of Rs.1300-1700. The applicant was promoted to the post of Principal Scientific Officer. However, both Senior Environmental Officer as well as Principal Scientific Officer have been given the designation of Scientist SE in the above revised scale of pay. The effective date of promotion to the next grade for those within the zone of consideration will be 1st January or 1st July and those who have completed or will complete 5 years' service in a post during the period of three months

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before or three months after 1st January or 1st July, as the case may be, will be considered for promotion to the next higher grade, i.e., Scientist SF. It is the case of the applicant that by the OM dt.28.5.1986

Government of India formulated a new policy to be followed by all scientific departments/ministries of the Government of India to be called as a flexible complementing scheme for providing in-situ promotion for the scientists. The Ministry of Environment and Forests framed the rules known as Department of Environment, Forests and Wild Life

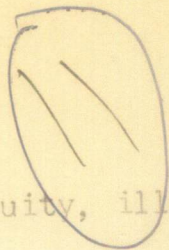
Scientific Group 'A' Posts Rules, 1987. It was stipulated in these rules that the scale of pay for the existing designations of Principal Scientific Officer and that of Senior Environmental Officer, both of which have been given the new designation of Scientist SE will be given and merged into the pay scale of Rs.3700-5000. It is the case of the applicant that the department/respondents conducted their first review for promotion on 31.12.1987 which was made effective from 1.1.1988. The respondents considered those officers who had completed 5 years in any of the pay scales given in the rules of 1987 as on 31.12.1987 for promotion to the next higher grade. The first review covered that period from 1.1.1983 to 31.12.1987. The grievance of the applicant, therefore, is that he was squarely covered under

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the rules of 1987 and was within the zone of consideration for being considered for promotion to the next higher grade of Scientist SF as he had completed the requisite experience of 5 years in the lower scale as on 31.12.1987. During this period, the applicant has worked as Senior Environmental Officer in the grade of Rs.1300-1700 (pre-revised) from 6.7.1979 to 9.9.1985 and as Principal Scientific Officer in the scale of Rs.1500-2000 (pre-revised) from 10.9.1985 to 30.6.1990. Since the applicant has worked in the post of Senior Environmental Officer and Principal Scientific Officer in the pay scale of Rs.1300-1700 and 1500-2000 (pre-revised) which was subsequently merged into the pay scale of Rs.3700-5000 (revised). The contention of the applicant is that he was deemed to have worked in the pay scale of Rs.3700-5000 during this period. It is, therefore, stated that it was incumbent on the part of the respondents to have considered the case of the respondents to the next higher grade under flexible complementing scheme as on 31.12.1987 when the first review was conducted. The applicant made representation to the respondents and it is stated that the respondents instead of considering the

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matter in right perspective and in equity, illegally rejected the representations made by the applicant from time to time. The applicant, however, has already been considered for promotion under the flexible complementing scheme and has been given promotion to the post of Scientist SF w.e.f. 1.7.1990, but the applicant wants the date to be ante-dated to 1.1.1988.

4. The respondents contested the application by filing a short reply stating that the present application has been filed by the applicant on 21.4.1992 and the application is not within limitation as provided under Section 21 of the Administrative Tribunals Act, 1985. The respondents have given alongwith the counter a chart (Annexure R1) which goes to show that the applicant for the first time made a representation on 11.2.1988 (Annexure A3 collectively) which was replied by the respondents on 8.11.1988 (Annexure R2). The applicant made another representation dt.17.5.1989 (Annexure R3) and it was replied by the respondents on 13.9.1989 (Annexure R4). The applicant again made a representation on 17.10.1989 (Annexure A3 collectively) and

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it was replied by the respondents on 17.1.1990 (Annexure R5). The applicant made another representation on 31.5.1991 (Annexure A3collectively) and it was replied by the respondents on 15.10.1991 (Annexure R6).

5. We have heard the learned counsel for both the parties at length on the point of admission. It is the established law that even in service matter, the applicant has to come before the competent court within the period of limitation. The matter has been considered by the Hon'ble Supreme Court in the case of State of Punjab Vs. Gurdev Singh, ATC 1991 (17) SC 287. The Hon'ble Supreme Court observed that even in service matter, the aggrieved party has to come before the court within the limitation provided under the statute. The case of the applicant is that he was not considered under the flexible complementing scheme when the first review was conducted for promotion to the post of Scientist F on 31.12.1987. His case is that his working as Senior Environmental Officer from 6.7.1979 to 9.9.1985 and as Principal Scientific Officer from 10.9.1985 onwards stood completed to the completed 5 years on 31.12.1987 and he has been arbitrarily omitted from consideration.

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The ground of the applicant is that he is a highly qualified Scientist and the respondents failed to take into account the services rendered by him as Senior Environmental Officer and thereby depriving him of precious years of service rendered by him. In fact the applicant was specifically told by the respondents in the communication dt.8.11.1988 (Annexure R2) that the matter of counting his services rendered as Senior Environmental Officer for promotion to the grade of Scientist SF under flexible complementing scheme has been examined in consultation with the Department of Personnel and Training and it was decided that the services rendered as Senior Environmental Officer cannot be counted for promotion to the grade of Scientist SF under flexible complementing scheme. The applicant should have come at the relevant time for the redress of his grievance, but the applicant has not come at that time. The learned counsel for the respondents has placed reliance on the case of S.S.Rathore Vs. State of M.P., reported in AIR 1990 SC p-10. The 7-judges Bench of the Hon'ble Supreme Court has considered the matter and

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held that the repeated representations or non statutory representations after rejection of the earlier one will not add to the period of limitation and the applicant should come at the right time for assailing his grievance. Thus the representations which the applicant has been making time and again in 1989 in the month of May and October and lastly in May, 1991 would not add to the period of limitation which has expired under Section 2(1) of the Administrative Tribunals Act, 1985. The learned counsel for the respondents has also referred to the authorities of Jamuna Prasad Verma Vs. Union of India, 1991 (3) SLJ 442 and V.K. Nanda Vs. Union of India, 1992 (2) SLJ 17, both decided by the Principal Bench of the Central Administrative Tribunal. It has been, therefore, a constant view that a person who is aggrieved by any action of the respondents who claim the relief within the period of limitation provided under the provisions of the Act. The present application of the applicant is against rejection of his request for counting of his services as Senior Environmental Officer for promotion to the post of Scientist SF under flexible complementing scheme by the order dt.15.10.1991. A similar request made by the applicant has already been earlier rejected

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very well by the order dt.3.11.1988, then again in May, 1989 and January, 1990. When he chose to make another representation, it was rejected by the impugned order. It appears that the applicant has submitted the latter representations only with a view to escape from the provision of limitations which barred the consideration of his application on merits. We have seen the representations made by the applicant time and again, but in all these representations, the same grievance has been addressed to the respondents of counting his services as Senior Environmental Officer for promotion to the grade of Scientist SE under flexible complementing scheme. If the services of the applicant have not been counted, then it is the applicant himself who has come very late for adjudication much beyond the period of limitation and the respondents have taken the specific plea of limitation on the application which has been filed on 21.4.1992. The present application is, therefore, barred by limitation. We are, therefore, of the view that the present application is barred by limitation and is not maintainable and is, therefore, dismissed leaving the parties to bear their own costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

J.P. Sharma
23.2.93
(J.P. SHARMA)
MEMBER (J)

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