

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH ALLAHABAD  
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HON'BLE MR. A.K. GAUR, MEMBER (J)  
HON'BLE MR. S.N. SHUKLA, MEMBER (A)

*Original*      *Application No. 521 of 2005*

Allahabad this 7<sup>th</sup> the May day of May, 2009

*Ganga Dhar Mishra*  
*Son of Late Sri Ram Sundar Mishra*  
*R/o Village and P.O. Basupur, District-*  
*Pratapgarh, at present R/o 507/408/13-B,*  
*Buxi Khurd, Daraganj, Allahabad,*  
*Retired Senior Auditor, Account No. 8297826.*  
*Principal Controller of Defence Accounts*  
*(Pension), Allahabad.*

By Advocate – Sri G.D. Mishra

..... *Applicant*

*Versus*

1. *Union of India, through Secretary, Ministry of Finance (Defence), Govt. Of India, New Delhi.*
2. *Secretary, Ministry of Defence, Govt. of U.P., New Delhi.*
3. *Controller General of Defence, Accounts, R.K. Puram, Block-5, New Delhi.*
4. *Principal Controller of Defence A/C (P), Draupdi Ghat, Allahabad.*
5. *D.R. Mishra, Retired as Senior Grade Auditor, through office of Principal Controller of Defence Account (P) Draupadi Ghat, Allahabad.*

By Advocate – Sri M.B. Singh

..... *Respondents*

**ORDER**

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

1. By means of this Original Application, the applicant has claimed pay scale of selection grade (Auditors) with effect from 2.5.1984. Applicant was working as Senior Auditor in the office of Principal Controller of Defence

*62*

Account, Draupadi Ghat, Allahabad and the Competent Authority rejected the claim of the applicant for grant of selection grade vide letter dated 19.01.2004, against which the applicant filed representation dated 16.07.2004 before respondent no.2 but decision could not be taken by the respondent as yet and has filed the aforesaid Original Application for following main relief :-

- (i) *issue a writ, order or direction in the nature of certiorari quashing the communication/letter dated 19.01.2004 (Annexure-13 to the Compilation -I to the Original Applicant and letter dated 18.11.2004 (Annexure C.A.-2 to the Counter Affidavit).*
- (ii) *issue a writ, order or direction in the nature of mandamus commanding the respondents and directing them to provide the post and pay scale of Senior Grade Auditor w.e.f. 2.5.1984 and consequential arrears difference of salary of Senior Auditor and the Salary which the applicant actually received.*
- (iii) *issue a writ, order or direction in the nature of mandamus commanding the respondent and directing them to revise the retrial benefits, pension, gratuity etc on the enhancement salary of the applicant.*
- (iv) *issue a writ, order or direction in the nature of mandamus commanding the respondents and directing them to pay 12% interest on the money, which the applicant is entitled.*

2. The grievance of the applicant is that he was appointed as Upper Division Clerk (UDC) on 12.07.1965 and was promoted as Senior Auditor w.e.f. 01.01.1986 and retired as such on 31.07.2003. The respondent no.5/ Shri D.R. Mishra was appointed as Upper Division Clerk (UDC) in August, 1965 as a junior to the applicant but he was given pay scale of Selection Grade Auditor w.e.f. 02.05.1984 by the respondents ignoring the claim of the applicant.

3. A series of representations have been given by the applicant in this regard but the same yielded no fruitful result.

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4. According to the applicant, his work and conduct has always been excellent and he has illegally being denied the benefit of pay scale of Selection Grade Auditor w.e.f. 02.05.1984 from the date his junior was given.

5. In reply filed by the respondents, it is stated that the applicant represented against anomaly in his pay with that of Sri D.R. Mishra, Sr. Auditor under 4<sup>th</sup> and 5<sup>th</sup> Central Pay Commission Report for the first time on 13.06.2002. The applicant was duly informed that anomaly in his pay with that of Shri D.R. Mishra occurred due to his non-promotion in Selection Grade Auditor Grade w.e.f. 02.05.1984.

6. After carefully consideration of the representation of the applicant dated 8.5.2003, he was clearly and specifically informed that his request could not be acceded to at this belated stage. The applicant was also informed that position of Seniority already settled long back should not be unsettled after such a long time in view of the decision rendered in **1998 SCC (L&S) 611 - S.B. Bajwa Vs. State of Punjab.**

7. The applicant has not given any reasonable or plausible explanation for giving representation as such a belated stage. Since the case of denial of promotion to SGA Grade is very old and files related to DPC proceedings for the year 1983 are not available with the respondents and the same has been weeded out, nothing could be done in the matter. The promotion to the Selection Grade was made on the basis of condition laid down in Para-9 of letter dated 10.01.1977, wherein, it is, clearly stipulated that zone of

consideration should be limited to twice the number of vacancies expected to be filled in a year and official in the zone of consideration could be graded as 'outstanding' 'Good' and 'Unfit' on the basis of their records of service. On perusal of C.R. Grading of the officers, who were promoted to SGA grade w.e.f. 2.5.1984, it is obvious that the name of the applicant could not have been considered for promotion to S.G.A. Grade as his name was placed below others in terms of Para(ix) C of the said letter dated 10.01.1977.

8. The application submitted by the applicant regarding anomaly in his pay with reference to pay of Shri D.R. Mishra was examined and was found that Shri D.R. Mishra is junior to the applicant in service by 26 days, but Shri D.R. Mishra was promoted to SGA w.e.f. 02.05.1984, whereas, the applicant was never promoted to as SGA and in these circumstances Shri D.R. Mishra started drawing more pay than the applicant. By no stretch of imagination it could be termed as an anomaly.

9. According to respondents, the applicant made a representation for removing the anomaly in his pay with that of Shri D.R. Mishra i.e on 13.06.2002 and respondents clearly replied that as the applicant was never promoted to SGA, his junior Shri D.R. Mishra started drawing more pay than him w.e.f. 02.05.1984.

10. This decision of Competent Authority was duly conveyed to the applicant at his residential address by registered letter dated 19.01.2004 (Annexure No.4).

11. In rejoinder reply filed by the applicant, it is, submitted that the applicant is not claiming for quashing promotion of Shri D. R. Mishra but the applicant is claiming pay scale equal with Mr. D. R. Mishra, who is junior to the applicant.

12. We have heard Shri G.D. Mishra learned counsel for the applicant and Shri M.B. Singh learned counsel for the respondent. Learned Counsel for the respondents submitted preliminary objection that the claim of the applicant is not maintainable on the ground of delay and latches. It is also argued that the position of Seniority already settled long back can not be unsettled. In support of this contention, 1998 SCC (L&S)-611 S.B. Bajawa Vs. State of Punjab has been relied upon by the respondents.

13. We have carefully considered the point of delay and latches as well as preliminary objection. It is seen from the record, that anomaly in fixation of pay of the applicant with that of Shri D.R. Mishra, occurred due to his non promotion in SGA Grade w.e.f. 02.05.1984. Although Sri Mishra is junior, but promoted on higher post, since 02.05.1984, the applicant is not entitled to fixation pay alike Mr. D.R. Mishra.

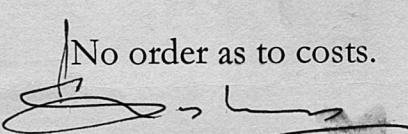
14. In the letter dated 19.01.2004, it is clearly replied to the applicant that the request of the applicant regarding antedating of promotion in the grade of SGA has been examined by the Head Quarters Office and his request for antedating of promotion in the grade of SGA could not be acceded to at this belated stage.

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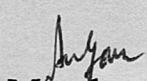
15. We have also seen from the record that promotion to the Selection grade was implemented vide Ministry of Finance (O.M. No.792) E-III (A)/74 dated 10.01.1977, but the applicant sat over the matter for several years and suddenly filed representation in 2002 claiming the same pay scale as was given to Mr. D.R. Mishra.

16. Having given our thoughtful consideration to pleas advanced by the parties counsel, we are fully satisfied that the request for antedated promotion of the applicant to the grade of SGA has rightly not been acceded to by the respondents after such long lapse of time. The claim of the applicant for grant of Selection grade with effect from 02.05.1984 is not tenable in law inasmuch as, that the applicant did not fulfill the criteria laid down in Government Letter dated 10.01.1977. The request of the applicant for antedation of promotion w.e.f. 02.05.1984 is not at all sustainable in the law.

17. In view of our aforesaid observation, we are clearly of the view that the applicant has utterly failed to make out any case warranting interfere. The Tribunal. O.A. is accordingly dismissed.

  
Member (A)

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Member (J)