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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No. 628 of 1986

B.C. Tiwari ..... Plaintiff-Appellant

Versus

Union of India & Others .... Defendants-Respondents.

Hon. S. Zaheer Hasan, V.C.  
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

Appeal No. 96 of 1985 B.C. Tiwari Versus  
Union of India & Others has been received on transfer  
from the Court of District Judge, Jhansi under Section  
29 of the Administrative Tribunals Act XIII of 1985.  
This appeal is against the judgement and decree  
dated 25.2.1985 by the learned Munsif Court VII  
in Suit No. 448 of 1981 G.C. Tiwari Versus Union of  
India & Others. The grounds of appeal are that the  
findings of the Trial Court against the Issues 5 & 6  
are per verse as the Trial Court had failed to  
observe the relevant facts and that the Trial Court  
had wrongly held that the suit is barred by time  
and is hit by Section 34 of the Specific Relief Act.  
The Trial Court had, inspite of the fact that on Issues  
1 & 2 he has gone in favour of the appellant, not  
decreed the suit in his favour. The representation

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of the appellant was rejected by the respondents on 12.1.1981 and therefore the cause of action arose in 1981 and therefore the suit was within time. The appellant has therefore prayed that the order of the Trial Court be set aside and the suit be decreed in toto.

2. The case of the appellant is that he was working as Loco Foreman 'B' and retired on 1.4.1975. Before working as Loco Foreman 'B' he was working as Senior Loco Inspector in the grade Rs. 700 - 900. The grade Rs. 700 - 900 was changed to Rs. 840 - 1040 under Railway Board's letter dated 9.9.1977, <sup>3</sup> and that the appellant was entitled to get himself fixed in this grade but he was not given the grade while his colleagues were granted the same. After a number of representations he was fixed at the maximum of the grade with effect from 1.1.73 but he was not paid arrears of salary. He was told on 12.1.1981 that he ~~was com~~ <sup>3</sup> ~~not~~ not paid arrears because from 11.2.74 to 31.3.75 he had not worked as a Senior Loco Inspector <sup>3 on the higher grade</sup>. These contentions were repelled by the respondents on the basis that in accordance with the letter of 9.9.1977 issued by the Railway Board the grade of Rs. 700 - 900 was upgraded to Rs. 840 - 1040 from 1.1.1973 and accordingly the appellant's salary was fixed on proforma basis in the grade Rs.840 - 1040 and since during his service time the above grade was not applicable he was not paid wages though

he was given proforma fixation as no arrears were to be paid in the case of the proforma fixation. The learned Munsif had framed proper issues. Issue No. 1 & 2 dealt with the question of payment of arrears from 11.2.74 to 31.3.1975 and Issue No. 7 dealt with the reliefs that were to be given. At Issue No. 1 & 2 the learned Munsif had held that from 11.2.74 to 31.3.1975 the appellant was working as Loco Foreman 'B' which was in the grade Rs. 700 - 900 and on 31.3.1975 he retired from service. It was an accepted fact that the grade Rs. 700 - 900 was changed to <sup>3<sup>rd</sup> grade</sup> Rs. 840 - 1040 which was applicable to the SLIs/SBC/SFI. The learned Munsif had noted that the grounds taken by the respondents were that during his service time the grade Rs. 840 - 1040 was not existing and therefore no arrears were admissible to the appellant. He had not accepted this contention of the respondents because the grade Rs. 840 - 1040 came into existence from 1.1.73 and it was in replacement of the grade Rs. 700 - 900 in which the appellant was working and therefore the appellant was entitled to be considered as having worked in the grade Rs. 840 - 1040. Taking note of the fact that the respondents had given proforma fixation to the appellant in the grade Rs. 840 - 1040 ~~and therefore~~ he decided the issue in favour of the appellant. But when he

considered the question of limitation he decided that on the question of limitation under the Limitation Act 1963, Section 58 governed the claim and therefore since it was a claim which was more than 3 years old and the case was not presented within that time the appellant's case was subjected to the Limitation <sup>3</sup> ~~as was not entitled to any relief and he was~~ Act and therefore he <sup>3</sup> did not give him any relief in regard to arrears.

3. The appellant has said that the cause of action arose only in 1981 when he was given the proforma fixation after his repeated representations and therefore the decision of the learned Munsif was not based on correct facts. It has been admitted by the respondents that the appellant was given proforma fixation from 1.1.1973. It has also been admitted that the grade Rs. 700 - 900 on which the appellant was working was replaced by the grade Rs. 840 - 1040. <sup>3</sup> Since the Railway Board's letter of 9.9.1977 which was issued to rectify the anomalies arising out of the recommendations of the Third Pay Commission gave the grade Rs. 840 - 1040 and the arrears were to be paid from 1.1.1973. The stand taken by the respondents that since the appellant <sup>3</sup> was not working in that grade at the material time <sup>3</sup> ~~Therefore~~ he is not entitled to the arrears, cannot be accepted. The appellant was working in the grade Rs. 700 - 900 during the period 11.2.74 to 31.3.75 and therefore if proforma fixation has been given to him by the respondents he was also liable to be given the arrears of his salary. The question of limitation does not

arise because the cause of action arose in 1981 and the appellant had filed his claim immediately thereafter. Before that he had been agitating for the grade. Railway Board's letter of 1977 was finally acted upon in 1981 when he got his proforma fixation. It cannot be a question of 'No work No pay'. The appellant was working in the grade Rs. 700 - 900 and that grade was upgraded to Rs. 840 - 1040 from a back date. In a case S.P.Sinha Versus Union of India (Reg. No. 855 of 1986 (T) O.S. No. 49 of 1985) this Bench had observed :-

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" Similar views have been held in a number of other decisions by the various High Courts. In view of the above the law on the subject is very clear that a person who has been wrongly withheld from promotion and has been subsequently given the promotion from a retrospective date cannot be denied the actual payment of arrears of salary etc. irrespective of the fact whether he actually occupied the post from that date or not. In view of this the plaintiff's case must succeed as far as the payment of arrears of salary etc. for the periods for which he has not been paid in the various post that he occupied, is concerned. The contention of the learned counsel for the Union of India that since the plaintiff did not shoulder the responsibility to the higher post he is not entitled to be paid the salary for the period between the date of notional promotion and the date of his actual taking over charge can, therefore, not hold ground and is rejected."

4. In the appellant's case he was actually working on the post which was upgraded. His case is even stronger.

5. Under the circumstances, the appeal is allowed. The judgement and decree passed in Suit No. 448 of 1981 is modified in terms of these orders. Parties will bear their own costs throughout.

Yours

V.C.

3/3/87

A.M.

Dated the 24<sup>th</sup> April, 1987

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