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Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.140 of 1987

Abdul Meid Khan ..... Plaintiff-Applicant

Versus

Union of India & Others ..... Opposite Parties.

Hon. Justice K. Nath, V.C.  
Hon. D.S. Misra, A.M.

(By Hon. Justice K. Nath, V.C.)

These proceedings arise out of a regular Civil Suit No.370 of 1981 of the Court of Munisif Bansi, District Basti. The applicant was working as a Postal Assistant when in the year 1978 a Circle gradation list was issued. The applicant was placed at Sl. No. 1847 in ~~an~~ order of seniority. He filed original Civil Suit No. 142 of 1979 claiming that he ought to have been placed at Sl. No. 1477. It appears that the applicant's claim was admitted and therefore by a judgement dated 10.9.80 the applicant was placed in the gradation list at Sl. No.1477-A. The person immediately next below him at Sl.No.1478 was R.P. Misra. That decision became final.

2. On 29.9.1980 the applicant made a representation claiming that he was entitled to such benefits as accrued to R.P. Misra, ~~in~~ in view of his seniority in the gradation list. He worked out the monetary benefits amounting to Rs.4727-75. Having received no reply he filed original Suit No.370/81, which is before us, on 15.7.81, for the aforesaid benefits. The suit was initially decreed on 21.2.85 for the period 3.5.75 to 31.12.83. Civil Appeal No. 370 of 1981 was allowed and the case was remanded for rehearing to determine the correct date of promotion of R.P. Misra. On 21.4.86 the Suit

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was dismissed but in the meantime this Tribunal was constituted on 1.11.1985 under the Administrative Tribunals Act, 1985. However, the applicant filed Civil Appeal No. 201/86 which was allowed on 23.9.86 and the case was again remitted to the Court of Munsif with a direction to transfer it to this Tribunal. That is how this case is before us.

3. The only question for determination is whether R.P. Misra, the Assistant immediately below the applicant, was given promotion with effect from 3.5.75.

4. It is admitted in the written statement that although R.P. Misra was given an officiating promotion in the Lower Selection Grade cadre, it could not be said to be such promotion of which the applicant could be granted any benefit for the mere reason of his not being promoted although immediately senior. It is also admitted by both the parties that the applicant was promoted, though in officiating capacity, with effect from 6.11.78 in the Lower Selection Grade cadre. An important admitted fact is that R.P. Misra having been given an officiating promotion on 3.5.75 continued to hold that appointment till 1.6.1981.

5. In our opinion an officiating promotion which is not merely fortuitous or for a short term must be deemed to be a promotion for the purpose of salary and other benefits of the higher post. We are, therefore, of the opinion that the continued officiating promotion of R.P. Misra with effect from 3.5.75 must also <sup>ensure</sup> ~~allow~~ for the benefit of the applicant. The applicant would, therefore, be entitled to have his salary fixed in the post of Lower Selection Grade cadre with effect from 3.5.75. Even so, we are of the opinion that the applicant

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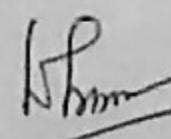
would not be entitled to receive arrears of his salary with effect from that date because he omitted to make that claim in the original Civil Suit No.142 of 1979 which was decided on 10.9.1980. The principle of law contained in Order II Rule 2 of the Code of Civil Procedure is a fair principle and therefore a person who chooses to relinquish a part of his claim without the leave of the Court, may not be permitted to claim the same in a subsequent Suit.

6. Admittedly the plaintiff-applicant was promoted in officiating capacity with effect from 6.11.78 and had been drawing the benefits of the promotional post from that date. The learned counsel for the applicant stated that the applicant had also attained the age of superannuation on 31.12.83 <sup>31.12.83</sup> 28.2.87.

Amended as per  
order dated 31.5.89  
JW

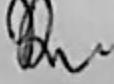
7. In view of what we have said above, we hold that the applicant Abdul Maid Khan shall be deemed to have been promoted to the Lower Selection Grade cadre with effect from 3.5.75 and we direct that his pay shall be fixed on that basis with usual increments etc. He shall not be entitled to receive arrears of salary etc. for the period prior to 6.11.78, but he shall be entitled to receive all the arrears of Pay & Allowances etc. with effect from 6.11.78 as also higher pensionary benefits with effect from 31.12.83 <sup>31.12.83</sup> 28.2.1987. The opposite parties are directed to fix and determine the salary and other monetary benefits admissible to the plaintiff-applicant in the light of the above direction within a period of three months from the date of service of the copy of this order upon them and further to pay off the arrears within the same period. Parties shall bear their costs throughout.

Amended as per order  
dated 31.5.89  
JW

  
Member (A)

Dated the 12th May, 1989.

RKM

  
Vice Chairman