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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 19 of 1987

Hari Dutta Saxena Applicant.

Versus

Union of India and others Respondents.

Hon'ble Ajay Johri, Member (A).

By this application, received under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who retired in 1979 as a Superintendent (Mechanical) (S(M)) in the Divisional Railway Manager's (DRM) Office, Allahabad, has challenged a reply given to him by a Deputy Director (DD) of the Railway Board in September, 1986 in response to copy of his representation dated 7.5.1985 in respect of the fixation of his pay at par with his junior, Sri J.K. Kapoor, and has prayed for arrears of salary due to him on account of the omission to grant the benefits of stepping up.

2. The facts of the case are that the applicant was appointed on the Northern Railway at Allahabad as a Clerk Gr. III on 20.9.1946 in the scale of Rs.40-2-42-3-45-5-60. He was given the benefit of his previous service from 16.6.1943 to 28.8.1946 with the Army Authorities. Accordingly in terms of the Railway Board's instructions his salary was fixed first in the pre-revised scales and then re-fixed in the prescribed scales (PS) of pay. The applicant claims that he was senior to one J.K. Kapoor, who was appointed on 8.3.1943 as a Clerk on the railway and that on 1.1.1947 he drew a pay of Rs.58/- while J.K. Kapoor was on Rs.55/- only. He was promoted as Gr.II

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Clerk on 1.6.1951 while Kapoor was so promoted on 22.4.1955. Similarly he was promoted as a Gr.I Clerk on 1.12.1959 while Kapoor got his promotion to Gr.I on 28.3.1961. In the provisional seniority list of Head Clerks Gr. Rs.210-380 (AS) he was shown senior to Kapoor (Annexure '2' to the application), but he continued to draw lesser pay than Kapoor. He represented in 1957, then in 1977 and these representations were not disposed of. Thereafter he has sent various reminders and it was only on 12.7.1985 that he was advised that being an old case it could not be considered at this stage and the ~~nexting~~ stepping up of salary was not permissible with effect from 1.5.1981. The applicant then represented to DRM and sent a copy to the Railway Board (RB) and he was replied by the impugned letter of September, 1986.

3. The respondents have challenged the application on the point of limitation on the ground that the claim pertains to 1955 to 1977 and the applicant never agitated the matter prior to 1985. His representations which he claims that he submitted during 1957 and 1984 are not on record and if he had a grievance, which was not settled, he could move the court of law at that time. They have said that J.K. Kapoor was initially appointed in the grade of Rs.40-60 on 8.3.1943 and the applicant's initial appointment was on 16.6.1943. J.K. Kapoor was fixed in the grade of Rs.80-160 with effect from 11.12.50 and not 22.4.1955, as alleged by the applicant. So Kapoor was not junior to the applicant. Since such was the case, the question of stepping up does not arise at all. They have also said that Annexure 16 to the application does not give the correct position.

4. I have heard the learned counsel for the

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parties. The learned counsel for the applicant contended that J.K. Kapoor was junior to the applicant, who had been fixed in the grade of Rs.40-60, ^{when} while Kapoor was appointed in the grade of a fixed pay of Rs.30/- as a Typist and, therefore, the applicant's case is fully justified for stepping up his pay to that of the junior, who had all along been drawing more pay than him. According to the learned counsel, the applicant was senior to J.K. Kapoor, but Kapoor was fixed in higher grades erroneously. These contentions were opposed by the learned counsel for the respondents, who at the ^{3/} ^{out} onset challenged the application on the point of limitation. He submitted that the reliefs being claimed pertain^s to the years 1955 to 1977 which cannot be considered at this belated stage. According to the learned counsel for the respondents, apart from the point of limitation J.K. Kapoor was always senior to the applicant as he was appointed on 2.5.1942, while the applicant joined the Armed Force on 16.6.1943. Kapoor was also given the scale of Rs.40-60 on 7.7.1943 with retrospective effect, i.e. from the date of his appointment and subsequently also in the various grades Kapoor had always been drawing more pay and was senior to the applicant. I have gone through the paper book and relevant documents.

5. The learned counsel for the applicant, on the point of limitation, relied on two cases decided by this Tribunal, ^{3/} ~~in~~ ^{3/} viz. B. Kumar v. Union of India (ATR 1988 (1) CAT 1), ^{3/} where it was held by the Principal Bench of this Tribunal that where an earlier representation made by the applicant was rejected in 1979 and he made further representation in 1984, which was

rejected in 1985, an application made against an order of 1985 will not be barred by limitation if the mode of making representation is provided under the Service Rules. In this case the Principal Bench had observed that the Government instructions envisaged that a representation should be addressed by a person to his immediate superior or Head of Office or such other authority at the lowest level as is competent to deal with the matter and further that an appeal or representation to a higher authority must not be made unless the appropriate lower authority has rejected the claim. Where statutory rules do not exist, e.g. in case of grievance against transfers and postings, fixation of seniority, etc. the administrative instruction in regard to making of representations will apply. On this point the Principal Bench held that in the absence of a specific rule representation by a Government servant to the competent authority for redressal of his grievance is to be treated as covered within the ambit of Section 20 of the Act and while it was true that limitation was to run from the date of rejection of a representation, the same will not hold good where the department concerned chooses to entertain a further representation and considers the same on merits before disposing of the same. It was further observed by the Principal Bench that since it was open to the department to consider a matter at any stage and redress the grievance, even though earlier representations made have been rejected, it would be inequitable and unfair to dismiss an application on the ground of limitation and with reference to the date of earlier rejection.

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placed by the learned counsel for the applicant is the case of Har Binder Lal v. C.A.G. & another (ATR 1988 (2) CAT 250). In this case the first representation was rejected in 1973, second in 1980, 3rd in 1981 and the last on 24.5.1984. The last representation was rejected on merits and not on the ground of delay and latches. The Hyderabad Bench of this Tribunal had held in this case that the rejection, ^{by} ~~earlier~~ earlier to 1977, of the applicant's request for counting the period of service cannot be a bar to his making a claim subsequent thereto as it is only by virtue of Government of India's instruction dated 25.3.1977 that the rights of the Government employees, who went on deputation to public undertakings, were conceded with a rider that it will apply to those who went on deputation after 8.11.1968 and though the applicant's request was rejected in 1980 and 1981 when he again reiterated his request, this was finally disposed of by ^{the} ~~an~~ impugned order of 1984 not by a dismissal on the ground that it had been earlier rejected or on the ground of latches, but on merits. The Hyderabad Bench had relied on the Hon'ble Supreme Court's observations in the case of Sua Lal Yadav v. State of Rajasthan (1977 (2) SLR 698). In Sua Lal Yadav's case a Police Officer, who was dismissed in 1964 and ^{whose} ~~his~~ appeal was dismissed in 1966, ^{and} ~~the~~ ^{by} applicant preferred ^{but by the respondents} a review ^{which} dismissed the same on the ground that it was not fit for review. Thereafter when the High Court found that the review was made by the Governor after a lapse of two years, which was an unreasonable delay, the High Court dismissed the petition filed by the applicant. The Hon'ble Supreme Court in appeal had held that this approach of the High Court was not correct, since the

Governor has not dismissed the review application on the ground of delay but had entertained the same and dismissed the review application on merits.

7. In the applicant's case he had represented ^{as he did so} in 1957, thereafter, in 1977 and his representations were not disposed of thereafter. According to him, he had sent various reminders but it was only in July, 1985 that he was advised that being an old case it could not be considered. On receipt of this reply he had again represented to DRM and sent a copy to the Railway Board, which was replied by the impugned letter of September, 1986. In this letter (Annexure '12' to the application) the Railway Board had replied that the stepping up of pay of seniors with reference to pay of a junior to remove anomalies can be resorted to only when the anomaly arises due to the application of F.R. 22-C and cannot be made applicable when the junior draws more pay from time to time in the lower post and, therefore, the pay of the applicant had been correctly fixed. In the ratio of the Hon'ble Supreme Court's observations in Sua Lal Yadav's case, which was relied on by the Hyderabad Bench of this Tribunal, the Railway Board had by their letter of September, 1986 considered the case of the applicant on merits having in full consideration of the fact that the applicant had already retired in 1979 and that he was agitating a matter pertaining to 1955 to 1977. Since the matter was considered on merits, the limitation will start running only from 1986 and, therefore, objection raised by the learned counsel for the respondents on the point of limitation will fail.

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8. The learned counsel for the respondents has produced the service record of the applicant and J.K.Kapoors. I have gone through the service records. In the case of J.K. Kapoor, though he was originally appointed on 2.5.1942 on a fixed pay of Rs.30/- per month as a Typist his pay was re-fixed by an order of the Deputy General Manager (Personnel (DGM(P)) dated 7.5.1945 in the grade of Rs.40-60 with effect from 2.5.1942 and he was considered appointed against a permanent vacancy in a temporary capacity as an Office Clerk, though Kapoor was working in the Grain Shop Organisation. Kapoor elected to come to the prescribed scales of pay with effect from 16.8.1947. Accordingly his substantive pay was fixed at Rs.67/- in the prescribed scale of Rs.55-130 on 16.8.1947 and since he was officiating in a higher grade of Rs.80-160 he was fixed at Rs.105/- in the officiating grade. He was regularly appointed to officiate as a clerk in the grade of Rs.80-160 by an order of 16/19.3.1951 and his pay considering his past service in the grade was fixed at Rs.120/- on 9.8.1951. He was transferred to the Loco Running Shed, Allahabad in 1954 in the same grade and continued to earn his increments in the officiating post. He was confirmed as a Clerk in the grade of Rs.80-160 on 22.4.1955 when the scale was fixed to Rs.80-220/- with effect from 12.9.1956. His pay was raised to Rs.170/- with effect from 12.9.1957. Kapoor was appointed to officiate in the grade of Rs.210-380 (AS) with effect from 28.3.1961 and his pay was fixed at Rs.260/- in this grade.

9. On the other hand in the case of the applicant his service record shows that he was appointed as a Office Clerk on 20.9.1946 at Rs.40/- in the grade of Rs.40-60. He elected to come on the prescribed scale with effect from 1.1.1947 and accordingly his pay was fixed in the grade of Rs.55-130 at Rs.55/- on 1.1.1947. As shown in the para supra

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Kapoor on 16.8.1947 was fixed at Rs.67/- in the prescribed scale of Rs.55-130. Therefore, Kapoor was definitely drawing more pay than the applicant when both of them elected to come to the prescribed scales of pay. The applicant was promoted as a Booking Clerk in the Loco Shed, Tundla in the grade of Rs.80-160 on 1.6.1951 when he was fixed at a pay of Rs.80/-, while, as already indicated above, J.K.Kapoor had already been fixed at the stage of Rs.105/- in the scale of Rs.80-160 on 16.8.1947 and in 1951 Kapoor was drawing a salary of Rs.120/-. The applicant's pay was re-fixed at Rs.50/- in the scale of Rs.40-60 with effect from 20.9.1946 after taking into account his War service and his pay in the scale of Rs.55-130 was fixed at Rs.58/- on 1.1.1947. Even after this re-fixation he was drawing less pay than Kapoor who had been fixed at Rs.67/- in the prescribed scale of Rs.55-130 with effect from 16.8.1947. Rs.67/- being the 4th stage in the scale of Rs.55-130. The applicant's pay was re-fixed in the grade of Rs.80-220 with effect from 8.7.1956, i.e. the date of his election and he was drawing Rs.115/- on 8.7.1957 while Kapoor was drawing Rs.176/- on 12.9.1957. Therefore, even at this grade Kapoor was drawing more pay than him. The applicant came to the scale of Rs.210-380 and in 1961 when Kapoor was fixed at Rs.260/- the applicant's pay was only Rs.230/-.

10. The above analysis will show that not only the applicant, who had joined the Military Service in 1943, had joined service later than the date on which Kapoor joined service which was 2.5.1942 and from which date he was fixed in the scale of Rs.40-60 but Kapoor was always drawing more pay than the applicant. These facts support the submissions made by the learned counsel for the respondents that the applicant was not senior to Kapoor and he should

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not be so because Kapoor had joined service on 2.5.1942 while the applicant joined the Army Service only on 16.6.1943. The applicant's claim that Kapoor had joined service on 8.3.1943 is not supported by any documentary evidence. As a matter of fact the evidence is against the same because the service record of Kapoor clearly shows that he was appointed on 2.5.1942 and was given the benefit of fixation in the grade of Rs.40-60 on 2.5.1942. The applicant, therefore, has no case. He is not only not senior to Kapoor but even if he would have been senior Kapoor was always drawing more pay than him in the lower grades and, therefore, the anomaly was not a consequence to the fixation of pay under F.R. 22-C as rightly replied by the Railway Board in their latest disposal of the applicant's representation.

II. In the above view, the application is dismissed with costs on parties.

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MEMBER (A).

Dated: December 13th, 1988.

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