

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
A L L A H A B A D

O.A./T.N.No. 395 of 1988

DATE OF DECISION 19-3-96

--- Nand Lal Prasad Saxena --- PETITIONER(S)

--- Sri R. K. Tiwari --- ADVOCATE FOR  
THE PETITIONER(S)

VERSUS

--- D. S. P. Karapur & Co. Pvt. Ltd. --- RESPONDENTS

--- Sri --- ADVOCATE FOR THE  
RESPONDENT(S)

C O R A M :-

The Hon'ble Mr. R. K. Saxena Member (J)

The Hon'ble Mr. D. S. Bhatnagar Member (A)

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy ✓  
of the Judgement ?
4. Whether to be circulated to all other Bench ?

VKP/-

D. S. Bhatnagar  
(SIGNATURE)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

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Allahabad this the 19th day of March 1996.

Original Application No. 395 of 1998.

Hon'ble Dr. R.K. Saxena, JM  
Hon'ble Mr. D.S. Baweja, AM

Naunihal Prasad Saxena,  
Sri R.C. Saxena, Retired S.P.M.  
of Mathura Postal Division,  
R/o B/21, Shastrinagar, Mathura,  
U.P.

..... Applicant.

C/A Sri R.K. Tiwari

Versus

1. D.S.P. Kanpur.
2. P.M.G. Lucknow

..... Respondents.

C/R Sri

O R D E R

Hon'ble Mr. D.S. Baweja, AM

Through this O.A., prayer has been made for stepping up of pay with reference to his junior, consequential payment of arrears, reversion of his pension, and payment of consequential arrears of the pension.

2. The applicant joined in class IV service on 15.10.54 in the Department of Posts and was promoted to class III service on 6.2.54. In the seniority list issued on 26.2.73, the applicant was at S.No. 65, while Sh. Mathura Prasad was at S.No. 68 (Annexure A-I). However Sh. Mathura Prasad was promoted to Lower Selection Grade (LSG) cadre vide order dated 8.5.79, while the applicant though senior was promoted on 30.11.1983. The

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applicant retired on 31.1.1984. The applicant alleges that since 1979, he has been representing to various authorities including President of India. Formally he has received a reply dated 11.3.87 (Annexure A-I) from Post Master General Uttar Pradesh (Respondent No. 2) through a non-speaking order. Being aggrieved by this reply O.A. has been filed on 24.3.88, praying for stepping up of his pay with reference to his junior Sh. Mathura Prasad and payment of consequential benefits of arrears of pay due to refixation and revision of pension and arrears of pension. He submits that stepping up of pay is admissible to him as per the Government of India, Instructions below Fundamental rule FR 30.

3. The respondents in the counter-affidavit have emphatically refuted the averments of the applicant. The applicant was appointed as a Leave Reserve Clerk in Agra Division with effect from 1.10.61 on probation for two years subject to passing of the confirmation examination. The applicant had however already passed the confirmation examination in the year 1959. In the year 1979 he was approved for promotion on temporary basis in the Lower Selection Grade (LSG) against 20% quota vide order dated 16.6.79 (CA-3). The applicant was posted as a L.S.G. Postal Assistant Mathura Head Quarter but he did not join the said post. Vide letter dated 27.5.80, all the eligible employees were intimated to indicate their willingness to work in the Lower Selection Grade cadre anywhere on the division. In response to the same, the applicant has given his refusal not to work in the lower selection grade cadre he was not promoted. It is also further averred that no junior person to the applicant had been promoted before 8.5.79.

With reference to Sh. Mathura Prasad, it has been pleaded that he was promoted as a Temporary Clerk

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with effect from 4.5.54. He passed the confirmation examination in 1958 as notified vide letter dated 8.4.58 (CA-6). He was appointed as Leave Reserve Clerk from 1.4.60. As such Mathura Prasad was not junior to the applicant. It has been also averred that the seniority list said to have been enclosed by the applicant at annexure A-I dated 26.2.73 has been never issued.

It is also further submitted that the representation dated 17.5.79 submitted by the applicant followed by reminder has been disposed of by considering his promotion vide order dated 17.3.80 posting him as Lower Selection grade (LSG) cadre at Mathura as stated earlier. After the representation submitted having already been disposed of, he has been making repeated representations including the President of India which is not a channel of making such representation. And the reply dated 11.3.87 given to the applicant was with reference to the legal notice given by the applicant. Therefore, the applicant cannot get the benefit of this letter replying the legal notice for determining limitation as this reply does not refer to his representation of May 1979, which had been already disposed of. In view of this the application filed is wholly time barred and deserves to be dismissed on this account alone.

In view of the fact that, no one junior to the applicant had been promoted, even on the merits, the applicant is not entitled for stepping up of his pay as prayed for.

4. We have heard the learned counsel for the parties, and given careful consideration to the material placed on record. Counter and rejoinder replied have been filed.

5. The respondent have opposed the application

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at the outset on the ground of being time barred by limitation. Before going into this aspect we will examine the application on merits so as to avoid repetition of the facts.

The applicant has claimed the stepping up of the pay with reference to his junior Sh. Mathura prasad as permissible under departmental rules and also the instructions of Government of India below Fundamental Rule FR-30. The applicant has not quoted the relevant departmental Rules and also the specific instructions below FR-30 which are applicable in his case. On going through FR-30 and the various instructions issued by the Government of India, we find that the case of the applicant is not covered by this rule. This rule concerns with the promotion under commonly known as "next below rule" or stepping up of pay in the event of junior getting more pay than the senior due to anomalies arising out of pay fixation. The underline intention of this rule is that the employee out of his regular lien for any reason is prevented from officiating in a higher post in his own cadre which he would have otherwise received had he remained in his original lien. The stepping up of pay is ~~as~~ permitted if the senior person appointed earlier may get less pay than his junior promoted latter on after earning one more increment in the lower grade. The applicant's case as borne from the facts in that of non-promotion from 8.5.79 when his junior is alleged to have been promoted while he has been subsequently promoted on 30.11.83. In such a case proforma promotion is to be admissible from the day of promotion of his junior if the applicant was senior and due for promotion and was overlooked due to administrative error. In view of these facts, the rules under which the relief

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has been claimed for stepping up of the pay are not applicable to the applicant's case.

The respondents have averred that the applicant was promoted vide order dated 17.3.80, after his representation dated 17.5.79. This promotion order was been annexed by the applicant as RA-I, and therefore he was aware of the same. This order just mentions promoted with <sup>qualifying</sup> mentioning ~~ad hoc~~/temporary promotion. This implies that the applicant was promoted <sup>regularly</sup> to the post of Lower Selection Grade Cadre. This material fact has not been disclosed by the applicant in the original application. On being brought out by the respondent, in the counter, the applicant has admitted the issue of this promotion order by annexing the copy of the same stating that he was not relieved to join and the order remained uncomplied. The applicant has not made any submission whether any representation was made by him for non-operation of the promotion order. Probably the posting on promotion vide order dated 17.3.80 did not suit the applicant and he did not press for being released. The respondents are also silent at this aspect in the counter. In any case, it is a admitted fact that the applicant was promoted by the order dated 17.3.80, and this was subsequent to the representation dated 17.5.79. Once this promotion order was issued which appeared to be a regular promotion as brought out above, the grievance if any of the applicant should have been only with regard to promotion from 8.5.79 instead of 17.3.80. In ~~some~~ of the representations subsequently he has <sup>Mr.</sup> brought out this fact and has been representing that he has been promoted only on 13.11.83 instead of 8.5.79 when his junior has been promoted. This vital fact has thus not been disclosed by the applicant.

The applicant had initially indicated the promotion of his junior Sh. Mathura Prasad in 1979 without giving the order No. and date of issue. These details were

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furnished subsequently by way of amendment to application which was allowed. As per the details furnished, it is alleged that Sh. Mathura Prasad was promoted vide order dated 8.5.79. The copy of this order has not been annexed. The respondents in the counter have not indicated the actual date of promotion and have only averred that no junior to applicant has been promoted before 8.5.79, and Sh. Mathura Prasad was senior to the applicant. In the objection to the amendment application also, the respondents have not questioned the order dated 8.5.79 vide which Sh. Mathura Prasad is promoted as averred by the applicant. Therefore in view of these facts, we have no option but to conclude that Sh. Mathura Prasad was promoted on 8.5.79. The main issue now is whether Sh. Mathura Prasad when promoted on 8.5.79 was senior to the applicant or not. The respondents have stated that Sh. Mathura Prasad passed the required examination for confirmation in 1958 as per the details furnished at CA-6, and he was appointed as Leave Reserve Clerk on 1.4.60. The applicant passed the same examination in 1959, and was promoted as Leave Reserve Clerk with effect from 1.10.61 (CA-2). In view of this, Sh. Mathura Prasad was senior to the applicant and therefore promoted to the Lower Selection Grade earlier than the applicant. The applicant in the rejoinder while replying to the relevant para of the counter has emphatically denied this fact but has not specifically indicated with regard to date and year of passing of examination for confirmation, which is crucial for promotion to the post of Leave Reserve Clerk, and subsequently as Lower Selection Grade Cadre as submitted by the respondents. The applicant has based his claim of seniority referring to the seniority list issued on 13.2.73, the extract of which has been placed at A-I, indicating the applicant being senior

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to Sh. Mathura Prasad. Complete seniority list with the covering letter has not been furnished. The respondents have totally denied the existence and issue of such a seniority list. In the absence of complete seniority list along with the covering letter not being made available, we are unable to accept the genuineness of the seniority list issued in 1973 and the same remaining valid till 1979, being acceptable. Therefore, we are inclined to agree that Sh. Mathura Prasad was senior to the applicant, based on the facts furnished in the counter.

The respondent have also countered the application on another front that the applicant gave refusal for promotion. All the eligible staff were asked the option for posting on promotion anywhere on the Division. The applicant gave his refusal vide letter dated 2.6.80 at (CA-5). Since the refusal was given the applicant was not promoted. The respondents have not quoted the rules applicable for refusal of promotion. Refusal does not mean as a permanent refusal and the applicant should have been due for promotion after the debarring period was over. Therefore, the contention of the respondents does not explain as to why the applicant was considered for promotion in 1983. However in our opinion this fact is <sup>not</sup> very material to the present case although this is the main argument of the respondents. Without going into the merit of this contention, the very fact that Sh. Mathura Prasad being senior to the applicant and the applicant having been promoted vide order dated 17.3.80, there is no merit in the prayer made by the applicant with regard to stepping up of the pay with reference to his junior.

6. With regard to the pleadings of limitation by the respondents, the respondents have stated that the promotion order was issued on 17.3.80, keeping in view

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the representation dated 17.5.79 of the applicant. The promotion order however does not refer to the representation. The applicant has therefore contended that this promotion was not in with reference to his appeal dated 17.5.79. Even if accepting this contention of the applicant, the admitted fact that he was promoted on 17.3.80. The grievance of the applicant as brought out in application dated 17.5.79 had been redressed. As brought out above, in the event of this promotion the case of the applicant would have been for proforma promotion from 8.5.79, if his claim for seniority with reference to Sh. Mathura Prasad was accepted. The applicant has averred that he has been making representations at various level including the President of India and his representation dated 17.5.79 has been replied only on 11.3.87. Therefore, the limitation period should count from this date. We are unable to accept the contention of the applicant. The repeated representations even after the representation having been decided does not give the leverage, in case the any representation at a later date is favoured with a reply from the Department. It is also fact that the reply given by the Department, does not refer to his representation dated 17.5.79.

As concluded earlier the case of the applicant is that of non promotion and not of stepping up of pay as prayed for. Having been promoted vide order dated 17.3.80, the cause of action commences if the applicant is aggrieved that his junior has been promoted earlier. Further the applicant has stated that he has been promoted on 30.11.83, though due on 8.5.79 when his junior was promoted. Even taking this promotion order as a reference by which the applicant was aggrieved, the application has been filed after several years. Apart from this the cause of action as per the applicant arose

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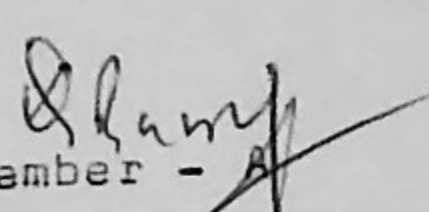
on 8.5.79 when his junior was promoted. This cause of action to the applicant arose prior to three years of the Administrative Tribunal Act 1985, coming into force with effect from 1.11.85, and in such matter, the Tribunal has no jurisdiction as held in several cases e.g.:-

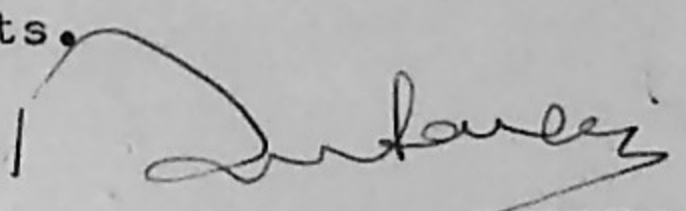
- (i) V.K. Mehra Vs. Secretary M/o Information and Broadcasting New Delhi (ATC 1986 (1) CAT 203).
- (ii) Sukumar Dey Vs. U.O.I. 1987(3) ATC 427 (CAT).
- (iii) V.S. Raghavan Vs. Secretary M/o Defence 1987 (3) ATC 602

In view of the above facts, the application attracts the provisions of limitation <sup>under</sup> Section 21 of Administrative Tribunal Act 1985, and is time barred.

7. In light of the <sup>above discussion</sup> decisions, the application is not only time barred but is also devoid of the merits and the same deserves to be dismissed, and is dismissed.

Parties to bear the costs.

  
Member - A

  
Member - J

Arvind.