

(6) (12/11)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

.....

(Registration O.A. No. 117 of 1988)

O.P. Khare ..... Applicant

Versus

C. & A.G. of India & Others ..... Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant is an Accounts Officer in the office of Accountant General, U.P., Allahabad has prayed that the Respondent No. 2 who is Principal Accountant General, U.P. may be directed to re-determine/retix the seniority of the applicant with reference to executive instructions contained in O.M. dated 22.6.1949 in the gradation list w.e.f. 1st March, 1963 and further directed to place him in the scale of Rs. 425-690/ with retrospective effect from 16th May, 1970, The date from which his immediate junior Shri Saheb Deen Respondent No. 3 was moved to the Selection Grade, and consequential benefits in the matter of fixation of pay and drawal of increments in the Selection Grade (Rs. 425-640) as per pay scales obtaining since May 1970 onwards.

2. The applicant was appointed in a Temporary capacity on 16.10.1958 as Upper Division Clerk and re-designated as Auditor w.e.f. 1.4.1973 in the office of the Accountant General, U.P., Allahabad. The applicant was declared Quasi-Permanent in the Auditor's cadre w.e.f. 1st July, 1962 and he was substantively appointed on 1st March, 1967. Thus he was confirmed some after 8 years after entering into the service. Despite having been in service for more than 21 years he was not given Selection



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Grade and that is why he reached with his grievances that the person who is junior to him was given the Selection Grade long back and the applicant has been deprived of the same. Alleging that the Ministry of Home Affairs O.M.No. 9/11/55 RPS dated 22nd December, 1959 came to his notice for the first time in October, 1986, which led him to make further enquiries as to whether the Memo O.M. No. 30-44-48 dated 22nd June, 1959 was applicable in his case <sup>and</sup> finding that he was governed by O.M. of 1959 as he entered into the service prior to the issuance of O.M. of 1959, ~~referred~~ to above, the applicant feeling that he has been not <sup>dealt</sup> with legally and has been wrongly superseded or deprived of the promotion, raised his voice against the same. Failing to get any relief at the departmental level, the applicant had approached the Tribunal.

3. The respondents have rejected the claim of the applicant apart from taking plea that the claim of applicant is barred by time as the applicant kept mum for about 20 years and also pleaded that the applicant is not entitled to the relevant claim. It has been pleaded by the respondent that the Ministry of Home Affairs Memo dated 22 December, 1959 which was received with the Controller & Auditor General of India's letter dated 23rd April, 1960 was circulated to all the Officers, and as such the plea of the applicant that he came to know it in Year 1986 is not at all tenable. Even ~~when~~ the department was bifurcated, ~~into~~ <sup>it</sup> he did not take any action, and his representation in the above circumstances was rightly rejected. So far as the confirmation of Schedule Caste/Schedule Tribes candidates are concerned their confirmation earlier has been justified on the ground that the case mentioned above, that of General candidates and as such they were rightly confirmed earlier.



4. It has been further contended that judgement in Ravi Verma's case, AIR 1970, through Supreme Court in which the O.M. No. 1959 has not been followed by the rules framed by the Government of India and no order have been issued with the concurrence of Comptroller & Auditor General of India that it ~~did~~ not applicable for the person serving in Indian Audit & Accounts Department as communicated by the Comptroller & Auditor General of India by his letter dated 8 May, 1973. The respondents have not said as to whether the same has been approved by the Comptroller & Auditor General of India after year 1973. Now the averments made by the respondents <sup>is</sup> that the claim of the applicant is barred by time would have been correct in case factually there is some dispute regarding the applicability of O.M. of 1949 and 1959. Admittedly the applicant entered into the service in the year 1949, the seniority rule is governed by the rule of Continuous ~~Efficiation~~ <sup>is not</sup> and precisely this <sup>is not</sup> the applicant's case that he entered the service in year 1959 and his seniority would be calculated from the date. In Ravi Verma's case where this question <sup>came up</sup> for consideration, the Supreme Court observed that office memorandum dated 22nd December, 1959 and the provision laid down there to providing determination of seniority of a persons appointed to the various Central Services by the date of confirmation are not retrospective and do not apply to persons appointed before the date of that memorandum. Wherein the memo of 1949 were applicable to the applicant's case no question of limitation in respect of all the pleas which has been placed by the applicant arises.

5. Moreover the Government of India also later on recognised his pension and that is why a notification was issued on 19th April, 1978 in F.R.S.R. (G.I., M.H.A., O.M. No. 20011/1/77-Est(D) page 159, In which the Govt. of



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took a decision that the pay of those Government employees who have been promoted after 4th January, 1972, pursuant to the instructions contained in this Department's O.M.No. 9/3/72-Estt (D), dated the 22nd July, 1972 (determining seniority on length of service basis instead of ~~reference~~ to date of confirmation in respect of those appointed prior 22-12-1959) may be notionally fixed with effect from 4th January, 1972 and their pay on the date of actual promotion, fixed accordingly under R.R. 27 provided the Administrative Ministries/Departments satisfy themselves that the Government employee in question would have been considered for promotion at the appropriate time, had they been assigned their rightful seniority ab initio. This benefit will, however, not be admissible if the Government employee concerned was not found suitable when he was considered for promotion on the first occasion after 4th January, 1972, but was promoted on consideration of his case on the second or subsequent occasions. The arrears arising out of such notional fixation of pay w.e.f. 4th January, 1972, would, however, be admissible from the actual date of promotion only. The benefit of this pay fixation will not entitle the employees to any further benefits such as seniority in the grade to which he is promoted, etc. It is hereby clarified that in respect of such of the employees as had been promoted after 1st January, 1973, in pursuance of the instructions contained in O.M. referred to, the pay on the actual date of promotion shall be determined as if they had been promoted from 4th January, 1972 and by further applying the C.C.S. (R.P.) Rules, 1973, with effect from the 1st January, 1973.

6. In view of what has been said above obviously the applicant's seniority is to be governed by O.M. of 1949 and the respondents are directed to refix the

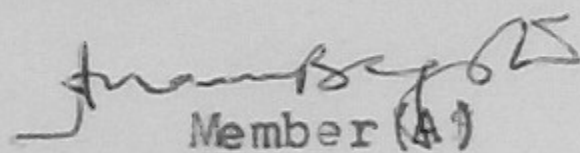



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seniority of the applicant and grant him the same pay scale which his juniors is getting. It has not been stated by the other parties that the seniority list is issued during this period and no objection was filed. It means that the seniority list is issued and objections were not involved. The applicant will be entitled to the relief that the previous seniority is to be counted from the date when he entered into the service and he will be granted the notional seniority as well as the pay scale as has been mentioned in O.A. of 1988 instructed above. But in case the seniority matter has become a closed chapter after inviting objections to it, The applicant may be given notional benefit of pay scale. So far as his seniority is concerned the list will not be disturbed by placing him above those whose placement has already been become final by decision or action on the part of the applicant.

7. With these observations the applicant stands disposed of finally.

  
Member (A)

  
Vice-Chairman.

13th September, 1991.

(sph)