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CEN TRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the day 1st March of 1995.

ORIGINAL APPLICATION NO. 775 OF 1992.

Fakhruddin, S/o Late Nathoo,

R/o 15, Joshiana,

District-Fatehpur.

By Advocate Sri A.S. Rai.

..... Applicant.

Versus

1. Union of India through Ministry of Defence,
New Delhi.

2. Director of Electrical & Mechanical Engineer,
Army Headquarters, E.M.E. Branch,
New Delhi-11.

3. The Commandant, 508, Army Base Workshop, Fort,
Allahabad.

By Advocate Sri N.B. Singh.

..... Respondents.

CORAM: Hon'ble Mr. T.L.Verma, MEMBER (J)

O R D E R (RESERVED)

By Hon'ble Mr. T.L.Verma, MEMBER (J)

1. This application Under Section 19 of the Administrative Tribunal Act, 1985, has been filed for quashing the order dated 6.10.1990 (Annexure-I) and for declaring the applicant to be entitled for his pension of the post of Painter and Decorator (H.S. Grade-I) which the applicant claims to have held at the time of his retirement.
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2. The applicant was initially appointed on the post of Painter and Decorator on 22.11.1947. He was promoted as H.S. Grade-II by ~~the~~ order dated 11th August 1980 and, thereafter, to H.S. Grade-I w.e.f. 15.10.1985. It is stated that although the applicant retired from the post of Painter and Decorator (H.S. Grade-I) but on his retirement he has been granted pension of the post of H.S. Grade-II. The applicant submitted repeated representations to the respondents for sanctioning pension of the post of H.S. Grade-I. The respondents in place of conceding to his request, have rejected his representation by ~~the~~ orders dated 31.8.1987 and 11.8.1989 (Annexure-I and II). The impugned orders have been assailed on the ground that the same are arbitrary illegal and void.

3. The claim of the applicant has been resisted by the respondents. The respondents, in their written reply, have inter alia, stated that this application was not maintainable, as the applicant is getting pension on the basis of last pay drawn and that promotion to H.S. Grade-I is subject to passing of the prescribed trade test and that the applicant, ^{who} ~~had~~ retired w.e.f. 31.3.1986 before passing the said test, was not entitled to such a promotion. The maintainability of this application has also been assailed on the ground of limitation.

4. We have heard the learned counsel for the parties and perused the record.

5. It is admitted on both ends that as per the orders issued by the Ministry of Defence vide a letter dated 8.4.1986, 15% of H.S. Grade II were entitled to promotion to H.S. Grade-I w.e.f. 15.10.1985 subject to passing of the prescribed test. The applicant had already retired from service on 31.3.1986, before the date instructions in that behalf were issued. The representations filed by the applicant for giving him pension of the post of Painter and Decorator H.S. Grade-I, have been rejected by the order dated 21st August 1987 (Annexure-I in Compilation no. 2), 11th August 1989 (Annexure-II in Compilation no. 1).

6. The main thrust of the argument of the learned counsel for the applicant is that as he was in service on 15.10.1985, the date from which promotion to H.S. Grade-I was to be given effect to he was entitled to be promoted w.e.f. from that date without appearing at the trade test because he had already retired on the date, the instructions were issued on 8.4.1986. I am unable to agree with this contention of the learned counsel for the applicant. The instructions providing for promotion of 15% of H.S. Grade-II to H.S. Grade-I have the H.S. Grade-II employees, who were in service on the date the instructions were issued will be entitled to such promotion w.e.f. 15.10.1985 subject to passing of the prescribed trade test. The applicant

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~~*xxkxxx~~ who had retired before issue of the instructions could not have appear at the prescribed test which was held subsequent to July 1986. That being so, the question of his promotion as H.S. Grade-I without appearing and qualifying in the prescribed trade test does not arise.

7. The learned counsel for the respondents urged that the representation of the applicant for giving him the benefit of the pay of the post of H.S. Grade-I was rejected and communicated by a letter dated 31st August 1987 (Annexure-I in Compilation no. 1). The cause of action, if any, for challenging the correctness or otherwise of the said order, ^{it} which was submitted, accrued to the applicant on receipt of the said order. ^{the date of service of} Reckoning that order for the purpose of limitation, filing of this application on 15.11.1991, approximately four years after the rejection of the representation is clearly barred by law of limitation. Subsequent representations and order passed there on, in our opinion are of no assistance to the applicant for extending the ^{period of} limitation. The Supreme Court in S.S. Rathaur Versus Union of India reported in 1990 SC Page 10 has held that the repeated representation and memorials to the President etc. do not extent limitation.

8. In view of the discussions made above, we find and hold that there is no merit in this application and the same deserves to be dismissed and the same be and is hereby dismissed. There will be no order as to costs.

S. M. M. M.
MEMBER (J)

ALLAHABAD: DATED:
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