CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 12TH DAY OF SEPTEMBER,2000

Original Application No. 799 of 1994

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.DAYAL,MEMBER(A)

1. Hari krishna Khare,Retired Selection Auditor, office of the Accountant General Audit 1, son of Sri Sukhdeo Prasad Khare R/o 108/2D/2 Patel nagar Meerapur, Allahabad.

2. Shri O.P.Khare Retired Selection Grade Auditor, Office of the A.G.(Audit)1, Son of Late Sri Govind Behari khare R/o 792/1382 Daryabad, Allahabad.

Alongwith OA No.798 of 1994

1. S.S.Rathi, retired Asstt. Audit Officer Office of the A.G Audit 1, Allahabad Son of Late Shri Chet Ram singh R/o 161/82-C,Rasoolabad, Allahabad.

... Applicants.

(By Adv: Shri A.N.Sinha)

Versus

1. The Comptroller & Auditor General of India, 10 Bahadurshah Zafar Marg, New Delhi.

2. The Principal Accountant General Office of the A.G A/E-1, Allahabad.

... Respondents

(By ADV: Shri Satish Chaturvedi)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

In both the OAs questions of fact and law are similar and they can be decided by a common order against which counsel for the parties have no objection.

The grievance of the applicant raised in these applications u/s 19 of the A.T.Act 1985, is against non-granting of promotion to them on the basis of the Office Memorandum dated 22.6.1949. In short, the

..p2

claim of the applicants is that as they were appointed before the Govt. Order dated 22.12.1959,their services were governed by O.M.dated 22.6.1949 and for the purposes of promotion their seniority ought to have been computed from the date of apapointment. In other words, the consideration for promotion should have been on the basis of length of service. It is not disputed by the respondents that applicants were appointed before 22.12.1959 but the claim of the applicants have been resisted on the ground of limitation. It is stated that on their own showing promotion was granted to Lakhi ram Rajak on 22.9.1967 but the applicants raised this claim for the first time on 26.2.1992 i.e. after about 25 years. It is submitted that the claim of the applicants is highly time barred for which there is no explanation and they are not entitled for relief.

Shri O.P.Khare, learned counsel for the applicant,however,submitted that all the three applicants have already retired from service and in their case in order to remove the grievance the respondents are only required to give a notional promotion and pay fixation from the date Lakhi Ram Rajak,Junior to them was promoted. Learned counsel has also submitted that the Constitution Bench of Hon'ble Supreme court by judgement dated 4.1.1972 in Civil Appeal no.1846/68 held that in case of employees appointed before 22.12.1959 their seniority was governed by the Rule of length of service as contained in O.M. dated 22.6.1949 and not by the Rule based upon the date of confirmation as contained in O.M.dated 22.12.1959. Learned counsel has also submitted that as wrong fixation is a recurring cause of action the claim of the applicants cannot be thrown out on the ground of delay. For this purpose reliance has been placed on a judgement of Hon'ble Supreme Court in case of M.R.Gupta Vs. union of India and Others, A.I.R 1966 SC 669. Reference has also been made to a judgement of Single Member of this Tribunal in case of P.S.Subramanian and another Vs.Union of India and Others, 1994(26) ATC 187.

...p3

We have carefully considered the submissions of the counsel for the parties and in our opinion, the applicants are not entitled for relief from this Tribunal on the ground of inordinate and unexplained delay. It is not disputed that Lakhi Ram Rajak,the person junior to the applicant was promoted on 22.9.1967. However, the applicants did not raise any objection. They were granted similar promotion in 1974. The objection was raised for the first time in 1992. Such a long delay disentitle the applicants for the relief. Shri Khare has strongly relied on a judgement of the Hon'ble Supreme Court in case of M.R.Gupta Vs. union of India and Others(Supra). However, we are of the opinion that judgement does not help the applicants. The case before Hon'ble Supreme Court was with regard to non fixation of the initial pay which involved the calculation work and there was no order passed which could have been followed by fixation of salary. In the present case, a positive order was passed promoting Lakhi Ram Rajak w.e.f. 22.9.1967 and the claim of the applicant was ignored, as they have stated before us. Thus there was a positive action of the respondents by passing an order which followed fixation of salary. In such a case the cause of action arose on the date of promotion was passed in favour of a person junior to the applicants. Thus, the case is distinguishable on facts. In case of P.S.Subramanian Vs.Union of India and Others(Supra) also the finding recorded by the learned Member is that applicants deligenty pursued their claims before the department after the judgement and the facts of that case the delay was not taken to be a bar for granting relief to the applicants.

In the facts and circumstances of the case, the applicants are not found entitled for the relief on the ground of delay.

Both the applications are accordingly rejected. There will be no order as to costs.

MEMBER(A) VICE CHAIRMAN

Dated:12.9.2000

Uv/

OA 799/94

with OA 798/94

12.9.2000

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.DAYAL,MEMBER(A)

Heard counsel for the parties. Order dictated, typed separately.

MEMBER(A) VICE CHAIRMAN

Uv/