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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH :CUTTACK.

Original Application No.50 of 1987.

Date of decision : July 13, 1988.

1. P. Suseela, w/o Late P. Sivaramiya
2. P. Bijaya Kumar, s/o late P. Sivaramiya
3. P. Koti Usha Rani d/o late P. Sivaramiya
4. B. Venkata Swarna Laxmi, the married daughter of late P. Sivaramiya.

At present at Qrs. No.JD/II/IA New Rly Colony New Malgodown, Cuttack-3.

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Applicants.

Versus

1. Union of India, represented by
Chief Engineer(Cons) South Eastern
Railway, Gardenreach, Calcutta-43.
2. General Manager, South Eastern
Railway, Garden Reach, Calcutta-43.
3. Chief Personnel Officer, (Railways)
South Eastern Railway, Gardenreach,
Calcutta-43.
4. Chief Engineer(Cons)
South Eastern Railway, Garden Reach,
Calcutta-43.
5. District Engineer(Cons),
South Eastern Railway, Cuttack.

6. Suraj Kumar Lal,
 Inspector of Works (Cons),
 C/o Dist. Engineer (Con),
 South Eastern Railway, Cuttack.

7. P.V. Suba Raju,
 Inspector of Works (Cons),
 C/o Dist. Engineer (Con),
 Rayagada, District-Koraput.

... Respondents.

For the applicants	..	M/s J.Das, R.L.Bose, B.S.Tripathy, P.K.Deo, S.Mallick, P.K.Rout, B.K.Sahoo, S.M.Mishra, Advocates.
For the respondents	:	Mr. L.Mohapatra, Standing Counsel (Railways)

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.

2. To be referred to the Reporters or not ? Yes.

3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P. ACHARYA, MEMBER(J), In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays for grant of higher scale of pay to him.

2. Before we give our findings on the merits of the case, it is necessary to note that the applicant while serving as Inspector Grade I works, South Eastern Railway, under the District Engineer, Cuttack unfortunately died on 5th February, 1988 i.e. after filing of this application. The legal representatives of the applicant prayed for substitution and it was allowed by this Bench. Therefore, the legal representatives are on record claiming to the entitlement of financial benefits, if the application is allowed.

3. Shortly stated, the case of the applicant is that while he was working as Inspector Grade II(Works) under South Eastern Railway in one particular Division, two of his juniors namely Respondents 6 & 7 working in another Division were promoted to the post of Inspector Grade I and consequently Respondents 6 & 7 were given the higher scale of pay, namely the scale of pay prescribed for Inspector Grade I. On this account, the applicant has a grievance and hence he has come up with this application claiming relief as mentioned above.

4. In their counter the opposite parties maintain that the posts of Grade I were required to be urgently filled up and therefore without waiting for taking steps to resort to process the matter for regular appointment, steps were taken to fill up the posts pending regular appointment and

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in such circumstances the appointment of Respondents 6 & 7 amounts to fortuitous appointment. Therefore, according to the Respondents, the petitioner is not entitled to any relief because in cases of fortuitous appointment, seniors to the appointees cannot claim any step up in their existing scale of pay.

5. Admittedly, the applicant is senior to Respondents 6 & 7. Further admitted case is that Respondents 6 & 7 were given the higher post and consequently higher scale of pay vide order dated 27.6.1979 to be given effect to from 17.6. 1979. Admittedly, Respondents 6 & 7 continued to remain in the said posts as ~~on~~ adhoc appointees till 1.1.1984 as an interim arrangement and thereafter the applicant and Respondents 6 & 7 were given regular promotion to the post of Inspector Grade I after necessary formalities according to Rules had been completed. Therefore, it can be safely concluded that Respondents 6 & 7 being admittedly junior to the applicant continued to receive higher scale of pay in the next higher post from 17.6.1979 till 1.1.1984 and this continued for about 4 $\frac{1}{2}$ years. In these circumstances, the case of the applicant is that he is entitled to step up in his pay as he is admittedly senior to Respondents 6 & 7. Stepping up of the pay in such a situation of a particular officer is permissible according to the Circular of the Railway Board which was rightly and fairly not disputed at the Bar especially in view of the clarification given by the Railway Board in its letter No. PC-60/PP/1 dated 28th March, 1962 and PC-80PP/1-2 dated 25th May, 1962 contained in Annexure-C

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which runs thus :

" Whether it would be permissible to step up the pay of a senior employee in terms of Board's letter of 25.5.62, if the promotion of the junior employee is in a leave/short term vacancy.

Clarification : " The benefit of stepping up of the pay of the senior employee can be given except in a case where the junior gets a fortuitous promotion

6. In view of the aforesaid clarification issued by the Board the sole point that needs determination in this case is as to whether the promotion of Respondents 6 & 7 is fortuitous or not. In case, it is held to be fortuitous the application is bound to be dismissed. In case, it is held that the appointment was not a short term one and hence not fortuitous, the applicant is certainly entitled to the relief claimed by him. Therefore, this Bench is called upon to decide the definition of the word ' fortuitous '. We had an occasion to peruse the dictionary meaning of word ' fortuitous '. In Black's Law Dictionary, 5th Edition, the word, ' fortuitous ' means,

" Happening by chance or accident. Occurring unexpectedly, or without known cause. Accidental; undesigned; adventitious. Resulting from unavoidable physical causes. "

The meaning of ' fortuitous event ' is as follows :

" An event happening by chance or accident. That which happens by a cause which cannot be resisted

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An unforeseen occurrence, not caused by either of the parties, nor such as they could prevent."

Apart from the dictionary meaning of 'fortuitous' the Hon'ble Supreme Court have been pleased to define the meaning of 'fortuitous'. It has been decided in the case of P.S. Mahal versus Union of India which has been relied upon by the Central Administrative Tribunal, Delhi Bench in the case of K.N. Mishra v. Union of India reported in 1986 (II) ATR 270. In his judgment Hon'ble Chairman of the Central Administrative Tribunal has quoted the observations of Their Lordships of the Hon'ble Supreme Court in the case of P.S. Mahal which is at page 291. It runs thus :

" If a vacancy arises on account of an incumbent going on leave or for training or on deputation for a short period, it would be a fortuitous or adventitious vacancy and the quota rule would not be attracted in case of such a vacancy."

So far as the case of K.N. Mishra is concerned the Delhi Bench was dealing with a case of fixation of inter se seniority between the promotees and the direct recruits and therefore, the question of quota rule or rota rule came up for consideration by the Bench. It has no bearing to the facts of the present case. But we confine ourselves to the observations of Their Lordships of the Hon'ble Supreme Court in regard to the definition of the word 'fortuitous'. Nothing was placed before us to indicate if the Railway Board has in its manual defined the word 'fortuitous'. Even if the Rai

Board would have given its definition, the verdict of the Hon'ble Supreme Court is the last say in the matter and is bound to be relied upon. Admittedly, the vacancies which were filled up by Respondents 6 & 7 were regular vacancies and they continued to occupy those posts for about 4½ years which by no stretch of imagination could be conceived to be ' fortuitous '. If it is not fortuitous then clarification issued by the Railway Board quoted above has full application to the facts of the present case and therefore the claim is bound to be allowed.

7. As a last straw on the camel's back learned Standing Counsel for the Railway Administration strenuously urged before us that even if this Bench holds that it was not ' fortuitous ', yet the claim of the applicant being barred by limitation, no relief should be given to the applicant. Relying on the observations of Their Lordships of the Hon'ble Supreme Court in a case reported in AIR 1962 SC 8 (Madhab Laxman Vaikuntha v. State of Mysore) it was vehemently contended that the claim should not be allowed because it is barred by limitation. We do not feel inclined to accept this contention of Mr. L. Mohapatra because law laid down by Their Lordships of the Hon'ble Supreme Court on this point has no application to the facts of the present case because in the present case pay of the petitioner has not been fixed and therefore salary claimed by the petitioner has neither accrued to him nor it has become due. Their lordships of the Supreme

Court

Court in the case reported in A.I.R. 1962 Supreme Court 8 held that the claim to be barred by limitation because the appellant before Their Lordships had claimed recovery of arrear of salary which had accrued in his favour due to the order of reversion passed against him having been declared to be void and inoperative. In this case decided by Their Lordships the salary had been fixed and definite amount for a particular period was claimed by the appellant before Their Lordships and the appellant not having come to the court for redressing his grievance within the statutory period of limitation, Their Lordships held that the arrear claim for a particular period was barred by limitation. In such circumstances, we are of opinion that the principle enunciated by Their Lordships in regard to Article 7 of the Limitation Act does not apply to the facts of the present case. Our view stated above stands fortified by a judgment of the Hon'ble High Court of Gauhati reported in A.I.R. 1974 Gauhati 10 (State of Assam vrs. Gopal Krishna Mehera) facts of which are exactly similar to the facts of the present case. The appellant before Their Lordships of the Gauhati High Court had retired as Director of Veterinary and Animal Husbandry on 31.3. 1963. During the incumbency of the appellant before Their Lordships, as such he had been put under departmental proceeding, suspended and ultimately he was relieved of the proceeding and suspension and the Government had ordered payment of 3/4th of his pay during the period of suspension. During the time when the appellant before Their

Lordships was under suspension pay scale of Director of Veterinary was revised and he had claimed 3/4th of the pay according to the revised scale which was denied to him. Hence the appellant before Their Lordships filed a suit for declaring that he was entitled to the whole of the amount of the increment as due under the revised scales of pay which came into force with effect from 1.10. 1956 till 31.3. 1963 i.e., the date of retirement and he also prayed for a decree declaring the order of the Government denying him the revised pay scale to be illegal and inoperative. In view of the relief claimed by the appellant before Their Lordships it was held by Their Lordships that the revised scales of pay claimed by the appellant not having been fixed by the Government, the case cannot come within the scope and ambit of Article 7 of the Limitation Act and it was further held by Their Lordships that the judgment of the Hon'ble Supreme Court reported in A.I.R. 1962 SC 8 had no application to the facts of the case decided by the Hon'ble High Court of Gauhati. In our opinion, the facts constituting the present case being similar to the facts of the case decided by the Hon'ble High Court of Gauhati, we would hold that the principles enunciated by Their Lordships of the Supreme Court in A.I.R. 1962 SC 8 have no application to the facts of the present case. We are in respectful agreement with the view taken by Their Lordships of the Hon'ble High Court of Gauhati and Their Lordships of the Hon'ble High Court of Punjab in a case reported in A.I.R. 1968 Punjab 58 (State vrs. Bhagaban Singh) which has also been accepted by the

Hon'ble High Court of Gauhati. In view of the aforesaid discussions we would unhesitatingly hold that provisions contained under Article 7 of the Limitation Act will not apply to the facts of the present case and hence the aforesaid contention of the learned Sr. Standing Counsel deserves no merit and hence rejected.

8. In view of the aforesaid discussions, we hold that the claim is not barred by limitation. We would unhesitatingly hold that the applicant is entitled to the higher scale of pay in the post of Inspector Grade I works as was given to Respondents 6 & 7 with effect from 17.6. 1979. The competent authority should calculate the amount to which the applicant is entitled to and payment should be made to the legal representatives of the applicant who are on record within four months from the date of receipt of a copy of this judgment failing which the applicant's legal representative on record will be entitled to interest at the rate of 10 % per annum on the amount payable to the legal representatives from the date on which the period of four months lapses.

9. In view of the discussions made above, this application stands allowed leaving the parties to bear their own costs.



B.R. PATEL, VICE-CHAIRMAN,

I agree.

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Member(Judicial)

B. R. Patel
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Vice-Chairman