

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH :CUTTACK.

Original Application No.171 of 1989

Date of decision 28th November, 1989.

1. Sri Ghanashyam Sethi,  
aged about 52 years,  
S/o Harihar Sethi,  
L.S.G.Assistant, At/P.O.Balikuda,  
District Cuttack.

..... .... Applicant

-Versus-

1. Union of India, represented by Director General,  
Posts & Telegraphs Deptt. New Delhi.

2. Post Master General, Orissa, Circle,  
At/P.O.Bhubaneswar, District Puri.

3. Superintendent of Post Office,  
Cuttack South Division, At/P.O.Cuttack-753001.

..... Respondents

For the Applicant ..... M/s. Ashok Mohanty,  
C.A.Rao &  
P.K.Parida, Advocates

For the Respondents. ..... Mr.Tahali Dalei, Addl.  
Standing Counsel (Central)

-----

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN  
A N D  
THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

-----

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

2. To be referred to the Reporters or not ? *yes*

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

-----

:- JUDGEMENT :-

N. SENGUPTA, MEMBER (JUDICIAL)

The facts alleged in this application under

section 19 of the Administrative Tribunal's Act, stated in brief, are as below:

2. The applicant was appointed as a clerk in the Postal Department in November, 1959 and was confirmed in that post in 1964. Subsequently his juniors were promoted to the L.S.G. (Lower Selection Grade) so he invoked the Writ Jurisdiction of the High Court of Orissa to obtain a direction for consideration of his case for promotion to that grade and that was registered as O.J.C. No. 278/81. This case stood transferred to this Tribunal and was registered as T.A. No. 161/86. In that <sup>Transferred</sup> ~~Original~~ Application this Tribunal found flagrant violation of justice in not considering the case of the applicant for promotion and accordingly, a direction was given to the Respondents to consider the case of the applicant along with others for promotion to the L.S.G. Cadre. This judgement was delivered by this Tribunal on 30.9.86. During the pendency of the O.J.C. and the transferred application, the scheme of time bound one promotion came into force and in accordance therewith he was promoted to the L.S.G. Grade with effect from 1.4.85. After the disposal of T.A. No. 161/86, a review D.P.C. (Departmental of Promotion Committee) meeting was convened and an order promoting the applicant to the L.S.G. Grade with effect from 7.1.77 was passed, but it was added that the monetary benefit of such promotion would be given from 1.4.85, i.e. the date since when he has been working in L.S.Grade. The grievance of the applicant is that he is entitled to monetary benefit not from 1.4.85 but from 7.1.77 the date from which he is

*Subj*  
*Mem 27/11/81*

deemed to have been promoted. The relief that has been sought for is for a direction to the Respondents to pay the applicant arrears pay and allowances from 7.1.77 to 31.3.85 in the L.S.Grade.

3. The Respondents in their Counter have taken a plea that the applicant is not entitled to the relief that he has claimed since he really did not work in the L.S.Grade at any time between 7.1.77 to 31.3.85. Their case further is that though on 17.9.82 his case for appointment to the L.S.G.Cadre was approved after recommendation of the D.B.C., it could not be given effect to as a Disciplinary proceeding was pending against him which ultimately ended in imposition of penalty for recovery of Rs.17,076/- and the applicant did not question the propriety of that order of punishment, so that order became final. Only after the disposal of T.A.No.161/86 by this Tribunal, the case of the applicant for promotion with effect from the date his juniors were promoted was considered and thereafter the order of promotion as at Annexure-1 was passed. They have relied on a letter of the Ministry of Home Affairs, O.M.No.22011/1/79-ST dated 30.1.82 and have contended that according to that letter no arrears are payable. A copy of that letter has been made Annexure R/3 to the Counter.

4. We have heard Mr. Ashok Mohanty, learned Counsel for the applicant and Mr. Tahali Dalei, learned Addl. Std. Counsel (Central) for the Respondents and perused the papers. There is not much of dispute so far as the factual matrix is concerned and the entire arguments on either side are confined on legal question. The questions which really arise for consideration are whether ~~can~~ a person claim to draw salary in a scale

*Mr. Mohanty*  
*Mr. Tahali Dalei*

in the promotional cadre when he actually did not officiate in that cadre, whether the order passed by this Tribunal in T.A.No.161/86 had the effect of setting at naught the non-consideration of the applicant for promotion earlier and finally, whether <sup>the</sup> his claim for the period made by the applicant is within time.

5. So far as the first question is concerned, the answer to this would depend on the answer to the second question i.e. whether the applicant's non-consideration was set aside. On reading the copy of the judgement at Annexure-2 to the petition, there can be no doubt that this Tribunal came to the definite conclusion that non-consideration of the applicant for promotion to the L.S.G.Cadre was un-just and illegal therefore, it is to be found that the applicant was deprived of officiating in the L.S.G.Cadre due to the fault of the Respondents. It is an elementary principle of law that no person can take advantage of his own fault and it is also an equally settled principle that a person would have a cause of action to ask to redress a wrong done to him. It has already been stated above that the applicant was considered fit by the D.P.C. for promotion and in fact he was promoted to the L.S.G.Cadre with effect from 8.7.77. That being so, there is no difficulty in coming to the conclusion that he should be deemed to have been functioning in the lower selection grade with effect from that date. Sri Dalai, learned Addl. Std. Counsel (Central) has very vehemently urged that in view of the letter, copy of which is at Annexure-3, the applicant could not claim the arrears beyond the date he was actually officiating in that grade. Annexure-3 is the copy of an office Memorandum relied on <sup>it</sup> is an executive instruction and it can not have

Enclosed  
M/s. [unclear]  
11/10/86

validity of a statute or a statutory rule. By an executive instruction a person's right at common law cannot be taken away, therefore, in our opinion Annexure-3 can not be pressed into service to deprive the applicant of getting the arrears if he is found otherwise entitled to. At the cost of repetition, it may be said that for no fault of the applicant, rather for the wrong of the Respondents, the applicant was deprived of the opportunity of actually functioning in the L.S. Grade from the date <sup>when</sup> he was due to be promoted till 31.3.85. Therefore, he would be entitled to compensation for the wrong done to him. This view finds some support from Rajsing -Vs-Union of India (1989-II ATC 374). The measure of compensation in such cases would be the amount that the persons wronged would have got had he functioned in the post to which he was entitled to. Therefore, though the applicant may not be entitled to salary in the strict sense of the term yet he would be entitled to the same amount as compensation.

6. The last of the questions that remains for consideration is whether the claim is in time. There have been decisions of this Tribunal that time would begin to run from the date when the applicant was found entitled to a particular grade. Apart from that, even under the general law of limitation, a right to sue for salary would accrue only from date the person was found entitled to hold the position. Had not the applicant been found fit to be promoted, he would not have had a cause of action, therefore, period of limitation would commence from the date of the order at Annexure-1 to the petition i.e. 8.12.87. Under section 21 of the Administrative Tribunal's Act, special period of limitation has been provided for, the question is whether to the facts of the present case can section-21 of the Administrative Tribunal's Act would have any application.

Manu S. P. 18/11/87

In clauses <sup>and</sup> (a) (b) of Sub-section (1) of section 21 of the Administrative Tribunal's Act, reference has been made to clause (a) and (b) of Sub-section (2) of the preceding section of the Administrative Tribunal's Act, and those clause of sub section (2) of section 20 cover appeals or representation made by the aggrieved person. They do not refer to other claims i.e. for arrears of salary or for compensation where no representation has been made. Therefore, section 21 of the Administrative Tribunal's Act would not be attracted to the facts of the present case. A claim for compensation for anything connected with service would be a "service matter" as such cognisable by the Administrative Tribunal. The limitation Act, 1963 applies to matters relating to courts and not tribunals. It has already been shown above that 521 of the Administrative Tribunals Act, 1985 can not apply. Therefore, strictly speaking there is no limitation for making an application for compensation for wrong to a Government servant in matters relating to his service. However, as is done by the High Courts in writs, a state claim shall not be entertained. Had not the Administrative Tribunals Act, 1985, been passed, the applicant might have filed a suit for arrears of salary when it accrued due, that may conveniently be taken as a standard to judge whether the claim is a state one or not. Since the claim has been made within one and a half year from the date of the order promoting him it is within time. In this connection a reference to A.I.R.1968 Punjab (State of Punjab -Vs-B.S.Gorwal) may be made.

In the result the applicants succeeds and Respondents are directed to pay him the amount that ~~they~~ would have got had he officiated from 7.1.77 in L.S.G.Cadre. The order at Annexure-1 is quashed.

*Sur / 11  
Merv 28*

Thus, the application is accordingly disposed of,  
leaving the parties to bear their own costs.

B.R. PATEL, VICE-CHAIRMAN

I agree



*Neeru*  
28.11.89  
MEMBER (JUDICIAL)

*enacted*  
28.11.89  
VICE-CHAIRMAN

Central Administrative Tribunal,  
Cuttack Bench, Cuttack  
28th November, 1989/Mohapatra