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Order dated 29.1.2002

Learned counsel for the petitioner Shri B.Routray and his Associates are absent on call nor has there been any request seeking adjournment. This is a matter relating to arrears claim of a retired employee. Pleadings in this case have been completed long since. In view of this the matter cannot be allowed to be dragged on indefinitely, moreso in the absence of any request for adjournment. We have, therefore, heard Shri Ashok Mishra, learned Senior counsel appearing on behalf of the respondents and also perused the pleadings.

In this Original Application/petitioner has prayed for a direction to respondents to release the arrears amount towards his refixation of pay from July, 1971 till 17.2.1989, along with interest. Respondents have filed their counter opposing the prayer of the applicant and applicant has filed rejoinder.

The case of the applicant is that he was appointed as Field Assistant on 16.5.1951 and was promoted to the post of Sr.Assistant on 14.1.1971 and thereafter to the post of T-I-II on 1.7.1977 and to the level of T-4 on 1.1.1986. His grievance is that his pay has to be stepped up with reference to one D.N.Lenka, who is junior proforma to him and was given/promotion to the post of Observer. He has stated that after repeated representations his pay was stepped up in order dated 18.2.1989 vide Annexure-2. He has further stated that from 18.2.1989 he was authorised and he drew pay at the stepped up level and

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accordingly he got the pensionary benefits, but the arrears from 17.7.1971 till 18.2.1989 were not allowed to him. In the context of the above the petitioner has come up in this O.A. with the prayers referred to earlier.

It is not necessary to refer to all the averments made by the respondents in their counter because those will be taken into consideration while considering the prayer of the applicant. It is only necessary to note that for stepping up of the pay of a Govt. servant, under Circular dated 4.2.1966, certain conditions have to be fulfilled. The gist of the circular dated 4.2.1966 has been printed at Page-69 of Swamy's Compilation of F.R. S.R. (12th Edn.). One of the conditions is that both the senior and junior officers, should belong to the same cadre and the posts to which they have been promoted should be identical and the scale of pay of the lower and higher posts should be identical. Respondents in their counter have stated that Shri D.Lenka, with reference to whom the applicant wants the arrears of stepping up of the pay was not in the same scale in the lower post before his promotion. According to respondents the applicant was promoted to the post of Sr.Field Assistant in the scale of Rs.150-300/- on 14.1.1971 from the scale of Rs.110-200/- whereas Shri Lenka was promoted to the post of Observer on 14.1.1971, i.e., on the same day carrying the scale of Rs.130-300/- and therefore, while the applicant was in the scale of Rs.150-300/-, Shri Lenka was in the scale of Rs.130-300/-. Thus, before promotion of both of

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them to the rank of Sr. Field Assistants, Shri Lenka and the applicant were not in the identical scale of pay. Therefore, Clause-B of the Circular dated 4.2.1966 was not fulfilled in this case and therefore, the applicant was not entitled to have his pay refixed. Respondents ~~this was~~ wrongly have stated that notwithstanding ~~the order~~ issued and on 18.2.1989 at Annexure-2, the applicant got an undue benefit with regard to his stepping up pay ~~with~~ prospectively. A bill for arrears claim from 1971 to 1989 was also prepared. But as it required clearance of Audit, this was presented before the Audit which objected to payment being made and accordingly the payment has not been made. In the context of the above, respondents have opposed the prayer of the applicant.

For the present purpose it is not necessary to go into the question whether the applicant was really entitled to get his pay stepped up with reference to pay of Shri Lenka. The fact of the matter is that order dated 18.2.1989 having been issued the applicant was allowed stepped up pay w.e.f. 18.2.1989, but he was not allowed the arrears from 1971. In that event he should have approached the Tribunal immediately after 1989 when the arrears were not allowed to him. But he has approached the Tribunal after passage of one decade in 1999. In this view of the matter applicant's claim for arrears from 1971 is hopelessly barred by limitation. In this view of the matter, O.A. is held to be barred by limitation and is accordingly rejected. No costs.

Free copies of final order dt. 29.1.02 issued to counsel for both sides.

DS
31.1.02

Phyll
S.O (5)

MEMBER (JUDICIAL)

Journalist
VICE-CHAIRMAN
24.1.02