

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH.

No. O.A. 842 of 1996.

Present : Hon'ble Dr. B. C. Sarma, Member (A)

Hon'ble Mr. D. Purkayastha, Member (J)

B. B. DUTTA

Vs.

1. Union of India, through the General manager, Eastern Railway, 17, N.S.Road, Calcutta - 1.

2. The Chief Personnel Officer, 17, N.S.Road, Calcutta - 1.

3. The Chief Engineer (Survey & Construction), E. Rly. Calcutta-1.

... Respondents.

For applicant : Mr. R.K.De, counsel.  
Mr. A.K.Roychowdhury, counsel.  
Mr. D.P.Bhattacharjee, counsel.

for respondents: Mr. P. K. Arora, counsel.

15.7.97

heard on : 17.7.97 :: ordered on : 17.7.97.

O R D E R

B.C.Sarma, AM

The applicant has prayed for stepping up of his pay at par with his juniors S/Shri S.N.Majumdar and M.R.Talukdar who got more pay than that of the applicant.

2. The material averments made by the applicant are as follows : The applicant, along with the said S/Shri S.N.Majumdar and M.R.Talukdar, were appointed under the respondents on the basis of the recommendation of the Railway Service Commission, now Railway Recruitment Board, and the applicant was senior in the merit list. There was no formal seniority list for the clerical staff working under the construction wing before 10.3.88



and the applicant was not given the benefit of promotion over his juniors on the basis of the seniority list published on 10.3.88. The applicant was promoted as OS Gr.I along with the said S/Shri Majumdar and Talukdar while their names had figured in the lesser order in the list. The applicant's pay was fixed at Rs.2240/- as O.S. Gr.I whereas the pay of both S/Shri Majumdar and Talukdar was fixed at Rs.2600/- although they were junior to the applicant. Being aggrieved thereby, the applicant had filed a representation for the first time on 12.7.95, as set out at to the application annexure A8/ It is also specific contention of the applicant that

/of his  
juniors and

since S/Shri Majumdar and Talukdar had worked in different units, he was in complete dark in regard to the date of promotions/ he came to know for the first time about the fact of their getting higher pay only when the pay was fixed after his retirement. The applicant had retired from service on attaining the age of superannuation on 30.6.90 and Shri Majumdar had retired from service on 31.7.90. The other person Shri Talukdar had also retired on attaining the age of superannuation. The applicant contends that as a result of less fixation of pay than that of his juniors, he has been suffering in the matter of drawal of pension and other retiral benefits and, hence, the petition.

3. The case has been opposed by the respondents by filing a reply. The respondents contend that his juniors, particularly S/Shri Majumdar and Talukdar, were appointed in different units and on the basis of administrative exigency they were given ad hoc promotion as early as in the year 1960. The applicant was also given ad hoc promotion as senior Clerk in the year 1962 in other unit under the DEN/SED, Asansol. The respondents have given history of various litigations which took place in the matter in sub-para (iv) of para 9 of the reply. The respondents contend that the fixation of pay of the applicant was done correctly and since his juniors got higher pay on getting ad hoc promotion earlier that was to be reflected when they were given promotion to OS Gr.I. The respondents have also taken the point



of limitation since the application was filed only in 1996 while the cause of action in the matter had arisen much earlier. They have, therefore, prayed for dismissal of the case on the ground that it is devoid of merit.

4. The applicant has filed a rejoinder, which we have perused.

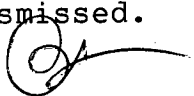
5. During hearing, Mr. R.K.De, ld. counsel, submitted that since the applicant was senior to his juniors, named earlier, he has a right to get more pay or at least equal pay than that of his juniors. In support of his such contention, Mr. De cited the following decisions :

- i) 1993 (24) ATC 652 - Ambika Prasad Sarma Vs. UOI & Ors.  
which was decided by the Guwahati Bench of the Tribunal.
- ii) 1992(19) ATC 569 - N. Lalitha & Ors. Vs. UOI & Ors.  
Mr. De has cited this case particularly to stress the point that the question of limitation in this case does not arise since in the cited case limitation was ignored by the Tribunal.
- iii) 1994(26) ATC 641 - K.Krishna Pillai & Ors. Vs. UOI  
which was decided by the Ernakulam Bench of the Tribunal. On the basis of the particular decision Mr. De challenge that the instant application is deserved to be allowed.

6. However, Mr. P.K.Arora, ld. counsel, cited the decision of the Full Bench of this Tribunal, reported in 1997(1) ATJ 1 - B.L.Somayajulu & Ors. Vs. Telecom Commission & Ors. and batches of other cases.

Mr. Arora also cited the decision of the Hon'ble Apex Court reported in 1991(1) SCC 745 - Chandigarh Admn. Vs. Jagadish Singh.

Mr. Arora also cited two other decisions pronounced by both of us separately in O.A.1511/1514 of 1995 dated 14.5.97 and O.A. 380 of 1996 dated 6.3.97. According to Mr. Arora in support the above decision the application deserves to be dismissed.



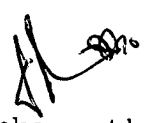
7. We have heard the ld. counsel for both the parties, perused records and considered the facts and circumstances of the case. We note that the applicant was given promotion to the rank of OS Gr.I by an order dated '3.5.90 and he retired from service on attaining the age of superannuation on 30.6.90. The applicant's grievance is while he got the promotion to the post of OS, he was given less pay than his juniors, but his juniors getting more pay dates back to the year 1960 or near about. Since his juniors who had worked in different units were given ad hoc promotion in the interest of exigency of administration and by virtue of that ad hoc promotion they have got ad hoc higher pay while the pay of these persons was fixed in the rank of OS. There is no challenge made by the applicant for the promotion given to his juniors earlier. the applicant's only grievance is that since his juniors's pay was fixed as OS Gr.I, he must not get less pay than that of his juniors. This issue has been settled by the Hon'ble Apex Court in the case of State of Andhra Pradesh & Ors. Vs. G. Srenivasa Rao & Ors, reported in 1989(10) ATC 61. In the cited case Their Lordships had held that getting higher pay <sup>by</sup> junior is not per se bad, only if there is no justifiable ground on which the juniors had drawn higher pay, the doctrine of equal pay for equal work can apply. In this case, we find that as we have discussed already there is adequate justification for the juniors for getting higher pay than the applicant since juniors were promoted <sup>on ad hoc basis</sup> in different units and obviously that was reflected in the pay-scale of the OS Gr.I. On the basis of the law laid down by the Hon'ble Apex Court, we have no hesitation to hold that the fixation of higher pay to the applicant or in other words, fixation of the juniors to the applicant at higher level in the rank of OS, cannot be said to be arbitrary and there is no ground for doing so. Therefore, on the basis of the law laid down by the Hon'ble Apex Court, there has been no ground to interfere with the imougned order or action of the respondents. This issue was also adequately

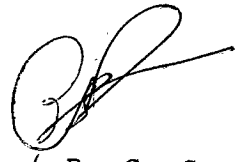
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discussed by us in the judgements dated 14.5.97 and 6.3.97. In the judgement dated 14.5.97 the decision of the Hon'ble Apex Court in Chandigarh Admn. case and State of Andra Pradesh case, cited hereinbefore, were also discussed.

8. We now come to the point of limitation. The applicant wants to take shelter on the point that since he is getting less pension which involved financial implication and, therefore, the case is not barred by limitation. We have gone through the representation of the applicant filed on 17.11.95. This representation has two earlier references dated 12.7.95 and 18.8.95. It is, therefore, amply clear that the applicant for the first time has represented to the authority only in 1995 whereas his pay was fixed in the year 1990. The drawal of lesser pay of the applicant than that of his juniors is only a ~~sequence~~ <sup>consequence</sup> of the said action taken by the respondents in the matter of fixation of pay. We are, therefore, of the view that the application is hopelessly barred by limitation since this was filed only on 15.7.96 about six years after his pay was fixed in the grade of OS.

9. For the reasons given above, we do not find any merit in this application. The application is also barred by limitation. Accordingly, it is dismissed without passing any order as regards costs.

  
( D. Purkayastha )  
MEMBER (J)

  
( B. C. Sarma )  
MEMBER (A)