

ORIGINAL APPLICATION NO. 484 of 1991 (L)

Lucknow this 23<sup>rd</sup> the day of May 1997.

HON'BLE MR. D.C. VERMA, MEMBER (J.)

KRISHNA KANT MISHRA S/o late K.D. Mishra  
R/o 22/74, Pheel Khana, Kanpur (A Retired Postal  
Officer, Kanpur Head Post Office, Kanpur).

..Applicant

Versus

1. Union of India--through--  
The Secretary Communication,  
Dak Bhawan, New Delhi.
2. The Chief Post Master General, Uttar Pradesh,  
Hazratganj, Lucknow.
3. The Chief Post Master Previously known as  
Post Master) Head Post Office, Kanpur.
4. The Deputy Post Master (Gazetted) Kanpur Head Post  
Office, Kanpur.

..Respondents

For the applicant: Sri K.M.N. Chak, Advocate

For the respondents: Sri A.K. Chaturvedi, Advocate

ORDER

By this O.A. the applicant has claimed arrears of pay and allowances as per the chart (enclosure A-3) and to fix the pension as per the chart (annexure A-4) attached to the O.A.

2. The applicant was initially appointed as Clerk on 8.7.50. The case of the applicant is that, as per the respondents, the applicant was over-age and, therefore, relaxation was granted in favour of the applicant but the applicant was given benefit of one service vide enclosure R-3 dated 10.3.53 instead of w.e.f. the date of / initial appointment

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Thereafter the applicant kept on sending representations but the department took no action and finally the applicant superannuated on 31.5.84. After the representation of the applicant was decided vide annexure A-1 i.e. the impugned order dated 12.4.90, the applicant filed the present C.A. on 9.12.91.

3. The respondents' case is that the claim of the applicant for fixation of his pay and arrears thereof, all is barred by limitation. Before proceeding with the points involved in the case, the relevant facts, as in vouching from the proceedings on record, are noted. Admittedly, the applicant was initially appointed on 8.7.50 and his services were terminated v.e.f. 10.6.52 (vide enclosure C-1 to the C.A.). The applicant was, however, reappointed vide order dated 27.2.52 vide enclosure C-2 to the C.A. at the initial pay of temporary Clerk. This reappointment was not challenged, at any time, by the applicant though this was in the knowledge of the applicant as is clear from annexure R-6 to the R.A. The reappointment order was conveyed vide annexure C-2 in which reference of the P.M.G. order dated 12.2.52 has been made. The applicant claimed copy of the P.M.G. order dated 12.2.52 but the same was refused by the department by annexure R-6 dated 12.4.55. Thus the applicant was well aware that he was reappointed to the post of temporary Clerk as per order dated 27.2.52 (annexure C-2).

4. Some of the facts, as narrated in the T.A. no.1135 of 1987 decided on 13.11.83 reveals that the applicant was suspended on 3.7.73 due to a criminal proceedings u/s 120-B/420 I.P.C. The applicant remained under suspension till the date of his superannuation i.e. 31.5.84. The criminal trial of the applicant had two innings upto the High Court and finally the applicant was acquitted. It appears that during the pendency of the said criminal proceedings the applicant was dismissed

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trial

from service on 24.12.77 due to conviction by the Court. The applicant was subsequently reinstated on revision being allowed by the High Court and the matter remanded back to the Trial Court. However, on subsequent conviction, again the applicant was dismissed vide order dated 18.11.82, This was challenged by a writ petition before the High Court, which was subsequently transferred to the Tribunal and registered as T.A. no.1135 of 1987. The relief claimed in the T.A. was not granted as the disciplinary proceeding initiated against the petitioner had not been finalised. After final acquittal of the applicant from the High Court on 14.10.87, consequential orders were passed by the department (vide annexure C-3, C-4 to the C.A.). The applicant had superannuated ~~prorogued~~ on 31.5.84 (A.M.) i.e. prior to the date of final acquittal by the High Court. The final order of superannuation was passed vide annexure C-5. After the consequential orders were issued by the respondents, the applicant made representation on 16.11.90 for promotion. This was decided by the impugned order dated 10.12.90 (annexure A-1 to the O.A.). By this order the applicant was given notional promotion without arrears of pay to the L.S.G. cadre from a date when officials junior to the applicant were promoted to L.S.G. cadre i.e. 27.10.80. An order for fixation of pay in the L.S.G. cadre w.e.f. 27.10.80 was also issued.

5. A reading of the impugned order (annexure A-1 dated 10.12.90) shows that question for consideration before the Department while passing the said order was about promotion of the applicant to the L.S.G. cadre from a date when officials junior to the applicant was promoted. For that end, the applicant had sent a representation dated 16.11.90. Copy of the said representation has not been filed either by the applicant or by the respondents. However, the contents of the impugned order shows that representation dated 16.11.90 was only in

12. In the case of State of Kerala versus M. Padmanabhan Nair reported in 1985 S.C. page 356 interest was allowed at the current market rate till the date of payment commencing from expiry of two months from the date of retirement. In the case before this bench, as it has been found that the applicant herein is not entitled to back salary, question of interest does not arise.

13. In the case of State of Bikaner and Jaipur versus State of Bikaner and Jaipur Employees Association and Others reported in 1992 Lab.I.C. page 895, the High Court of Madras also allowed interest on delayed payment. This decision also is not of help to the applicant of the present O.A.

14. Considering the discussions made above, it is found that the O.A. has no merit and is liable to be dismissed. The O.A. is dismissed. Cost easy.

  
MEMBER (J.)

DATED:LUCKNOW:MAY 23, 1997.

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respect of promotion to L.S.G. cadre and that was accepted by the respondents with effect from the date officials junior to the applicant was given the said cadre. The learned counsel for the applicant has during the course of arguments elaborated his claim and submitted that in case the seniority of the applicant with effect from the initial <sup>date of</sup> appointment i.e. 8.7.50 is taken into account, the applicant would be getting higher pay from earlier date and also promotion to the L.S.G. cadre from earlier date. The relief claimed in the C.A. is not specifically on the point of claiming seniority i.e. from the initial date of appointment i.e. 8.7.50. The submission made by the learned counsel for the applicant during the course of argument is also being considered as below:

(1) Undoubtedly, applicant was initially appointed as a temporary Clerk on 8.7.50 but subsequently vide annexure C-1 dated 9.6.50, his services were terminated. That termination order was not challenged at any time. The applicant was reappointed vide annexure C-2 dated 27.8.52. This fact was in the knowledge of the applicant, as per enclosure R-6 and para-2 of his representation dt. 14.10.52 (Annexure R-4), still the applicant did not challenge this reappointment order and remained satisfied with the said order. If the applicant had any grievance against the reappointment order dated 27.8.52, he should have challenged the said order in the judicial forum then available to the applicant. There is nothing on record to show that order of termination dated 9.6.52 (annexure C-1) was ever recalled or withdrawn. Thus, there was a break in service of the applicant from 10.6.52 till he took over charge vide reappointment order dated 27.8.52. Thus, service of the applicant would count with effect from the date of reappointment and not from the earlier date. In the circumstances, the settled position regarding reappointment of the applicant in the year 1952 cannot be now unsettled after more than 4 decades.

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6. The claim of the applicant that he was initially ~~initially~~ appointed on 3.7.50 his second increment would fall on 3.7.52 has no basis because prior to the said date of so-called second increment, the services of the applicant had been terminated and the applicant was not in service on 3.7.52. The question of grant of second increment on the basis of initial appointment on 3.7.50 does not arise.

7. Taking the applicant in continuous service with effect from the date of reappointment, he has been granted the scale and increments as per rules. Though the applicant was under suspension since 3.3.73 upto the date of his superannuation from service i.e. 31.5.84 the applicant has been treated <sup>as</sup> on duty and consequential benefits as per rules has been given to him.

8. Coming to the question of promotion of the applicant to the L.S.G. grade, it is clear from the impugned order dated 10.12.90 that the applicant has been given notional promotion with effect from the date officials junior to the applicant were promoted to L.S.G. grade. It is apparent from the facts given above that actually the applicant never worked in the L.S.G. grade as he remained under suspension throughout the said period. Thus, giving of notional promotion to the applicant is also in accordance with law. For the purposes of pension, the applicant's pay fixation has been done on the basis of notional promotion. The impugned order, therefore, is perfectly justified.

9. Learned counsel for the applicant has urged that the impugned order (annexure A-1) is a non-speaking order as it does not disclose the reasons for such an order. In support of his contention, the learned counsel for the applicant has placed reliance on the decision of the apex court in the case of S.N. Mukherjee versus Union of India ( 1990 (3) U.P.L.E.L.C. page 2093). It was

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a case under Army Act and the question for consideration was, whether as a general principle of law, an administrative authority is to record the reasons for its decision. The apex court held that recording of reasons would guarantee consideration by the authority and minimise the charge/<sup>of</sup> arbitrariness in making decision and would facilitate the exercise by the appellate or the supervisory authority. Thus the purpose of recording reasons is to facilitate the appellate or the supervisory authority in exercise of its jurisdiction. In the case before this bench, the impugned order (Annexure A-1) is not a nonspeaking order as the same provides the details of the reasons on which the decision has been taken by the administrative authority. This shows that the administrative authority has applied its mind and after looking to the fact and circumstances of the case, the administrative authority has given notional promotion to the applicant w.e.f. the date officials junior to the applicant was promoted to the I.S.C. grade. The learned counsel has referred to case of A.K. Chatterjee versus South Eastern Railway & Others (AIR 1985 S.C. page 482). In that case a clerk of N.E. Railway, holding a substantive post, was transferred on request in 1958 but was placed below the temporary staff in the seniority list. His representations were rejected subsequently but the claim of the applicant was allowed in terms of Railway Board's circular dated 15.10.64 as putting the applicant in the seniority list below temporary staff was found administrative lapse on part of the department. On the basis of this decision, the learned counsel for the applicant has submitted that in the case before this bench it was an administrative lapse on the part of department not to grant seniority to the applicant w.e.f. his official date of appointment i.e. 8.7.50 and, therefore, any delay and lapse on part of the applicant should be condoned in view of the circular of D.C. (P. & T.) dated 28.2.57 (Annexure-2/3) <sup>to the R.A.</sup>

*[Handwritten signature]*

After considering the paras 1 & 2 of the circular, it is found that the claim of the applicant is not covered by this circular. This circular is in respect of wrong detachment or reversion caused by administrative lap errors. In the case before this bench, there is no such administrative error. As has been found, the applicant was reappointed in August 1952 and the applicant accepted the same without assailing the said order, therefore, the case of the applicant is not covered by the circular R-8.

10. Learned counsel for the applicant has referred to the Full Bench case of Allahabad High Court(L.) of State of U.P. & another versus Sri Madan Mohan Khanna & another reported in 1990 S.C.D. page 546. In this Full Bench case dismissal of the applicant therein was finally set aside and thereafter the applicant therein claimed arrears of pay. It was held that the right of the applicant therein to claim arrears would be only after the dismissal order was finally set aside and, therefore, the claim for arrears was found not barred by time. In the case before this Bench, the order of dismissal of the applicant was due to his conviction in the criminal case. The order of dismissal was not set aside by any competent court as illegal, but the department consequent to the acquittal of the applicant revised the earlier order of dismissal. Therefore, the case before this bench is different from the facts of Full Bench.

11. The learned counsel for the applicant also placed reliance on the case of D.P.N. Rai Sham State of U.P. and Others reported in <sup>AIR</sup> 1962 SC page In this case, the dismissal of the applicant therein declared invalid by a Civil Court and the applicant therein was reinstated, even then the High Court disallowed a salary prior to the date of suit and order of the High Court was upheld by the Hon'ble Court.

12. In the case of State of Kerala versus M. Padmanabhan Nair reported in 1985 S.C. page 356 interest was allowed at the current market rate till the date of payment commencing from expiry of two months from the date of retirement. In the case before this bench, as it has been found that the applicant herein is not entitled to back salary, question of interest does not arise.

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