

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

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Original Application No. 237 of 1991

B.V. Bajpai

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Applicant

Versus

Union of India & others

Respondents

Hon'ble Mr.S.N. Prasad, Judicial Member

The applicant has approached this Tribunal for quashing the impugned order dated 8.3.91 passed by the respondent No. 3 and for directing the respondents to fix the pay of the applicant and to pay salary and other allowances of the applicant with arrears and interest at the rate of 18% for the period from 1.7.1984 to 10.7.86 in the scale of Rs. 550-750 (RS) as Divisional Personnel Inspector instead of the scale of Rs. 425-640 (RS) as Personnel Inspector which have been paid to him; and for further directing the respondents to give retiral benefits to the applicant accordingly.

2. Briefly stated the facts of the case are that the applicant was initially working as Office Clerk in the office of the Respondent No. 3 in the pay scale of Rs. 330-560 (RS) subsequently revised to Rs. 1200-2040 (RPS). Three clear permanent vacancies fell vacant in the scale of Rs. 425-640 (RS) revised to Rs. 1400-2300 (RPS) on account of the retirement of 3 personnel Inspectors in the scale of Rs. 550-750 (RS) (revised to Rs. 1600-2660) in the year 1983 due to the retirement of Shri T.N. Pandey on 31.12.82 and J. Rai on 30.6.83 and Gaya Prasad on 30.6.83. These vacancies of Personnel Inspectors are selection post and are to be filled in on seniority-cum-suitability basis. The respondent No. 3 could not hold

selection to fill up these regular vacancies of Personnel Inspector in the scale of Rs. 425-640 (RS) and decided to fill up these vacancies on adhoc basis and he promoted the applicant along with others in the pay scale of Rs. 425-640 (RS) as Personnel Inspector as per order dated 8.8.83 (Annexure-II). The applicant was placed at serial No. 2 on the promotion order dated 8.8.83, but Shri Devamand refused his selection. So the applicant became the senior most amongst those who were in the year 1983, promoted on adhoc basis.

3. It has further been stated that while the applicant had been working in the pay scale of Rs. 425-640, two more regular permanent posts of Personnel Inspector in scale of Rs. 550-750 fell vacant on 30.6.84 and applicant being senior most was deputed to work as such. The applicant was selected by the Selection Board on 10.7.86 and he was placed at Sl. No. 1 (vide Annexure-5). The applicant had been working as Divisional Personnel Inspector in the pay scale of Rs. 550-750 since 1.7.84 and shouldering higher responsibilities of post by the direction of respondent No. 3, but he was allowed the pay and other allowances of the said scale only w.e.f. 11.7.86 after formation of the panel of Personnel Inspector in scale of Rs. 425-640 (RS) although the applicant is eligible for such benefits o-f pay and allowances w.e.f. 1.7.84, the date he actually shouldered higher responsibilities and his is not liable to suffer for no fault of his own but suffered for the delays and laches of the respondent No. 3. The applicant retired from service on 31.7.89 while officiating in the scale of Rs. 550-750 (RS) as Divisional Personnel Inspector and he worked and shouldered higher responsibilities of the said post from 1.7.84 to 31.7.89 but he has been paid pay and allowances for that post only 11.7.87 to 31.7.89

and not from 1.7.84 to 31.7.89 depriving him thereby his pay and allowances, increments and retiral benefits for the period of 1.7.84 to 10.7.86 and he was paid his pay and allowances in the scale of Rs. 425-640 (RS) for the period of 1.7.84 to 10.7.86 and not in the scale of Rs. 550-750 (RS) and as such the applicant has approached this Tribunal for the reliefs sought for.

4. The respondents have filed counter reply with the contentions, interalia, that the applicant was promoted as Personnel Inspector on adhoc basis vide order dated 8.8.83 and thereafter was selected in accordance with the rules and was promoted and regularised w.e.f. the date of issue of the selection in Panel i.e. 19.8.86. However, the applicant was allowed to officiate as Divisional Personnel Inspector in the scale of Rs. 550-750 w.e.f. 11.7.86. The applicant was allowed to officiate in the grade of Rs. 550-750 w.e.f. 11.7.86 and not prior to that. The applicant attained the age of superannuation on 31.7.89 while working in the grade of Rs. 550-750 and has been paid his entire settlement dues and the applicant has accepted the same and did not make any protest at that time. The impugned order has been passed legally keeping in view all the facts and circumstances. In view of the above circumstances the application of the applicant is liable to be dismissed, ~~as the application is based on~~

5. The applicant has filed the Rejoinder affidavit wherein he has reiterated almost all the view points as mentioned in the O.A.

6. I have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

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7. Learned counsel for the applicant while drawing my attention to the contents of the application and to the papers annexed thereto has argued that the applicant had been continuously discharging the duties of Divisional Personal Inspector in the pay scale of Rs.550-750 since 1-7-84 and had been shouldering the higher responsibilities of post, as is clear from endorsement appearing in Annexure-3, but he was allowed pay and other allowances of said pay scale only w.e.f. 11-7-86 in the scale of Rs.425-640 (RS., although the applicant is entitled for such benefit of pay and allowances w.e.f. 1-7-84 to 10-7-86 but illegally and arbitrarily the claim of the applicant has been rejected by the respondents and has further argued that the claim of the applicant is not in any way barred by limitation as withholding of salary or pension gives rise to recurring ~~extenuating~~ cause of action and in support of his arguments, has placed reliance on the following rulings :-

1. (1983) 8 Administrative Tribunal Cases, P. Suseela and others (Applicants) Vs. Union of India & Others (Respondents) at page No.213 wherein it has been enunciated that "Promotion - Fortuitous promotion - Held, if promotion continues for about 4½ years, it cannot be considered as fortuitous - if a senior person is ignored and junior promoted for a long period, senior is entitled to stepping up of pay - pay fixation - FR 30(1) - Next Below Rule - Railway Board's letters Nos. PC-60/PP/I dated 28-3-1961 and PC-80PP/1-2 dated 25-5-1962."

2. (1989) 9 Administrative Tribunal Cases, " C.N. Iocanathan (Applicant) Vs. Union of India & Others (Respondents, " at page No.61. Wherein it has been enunciated that "Administrative Tribunals Act 1985 - Section 22 - Cause of action - Salary or pension, held give rise to recurring cause of action from

month to month - Salary - Pension."

3. A.I.R. 1989 S.C. 1133, State of Maharashtra (Applicant) Vs. J.A. Karandikar (Respondent) wherein it has been enunciated that Constitution of India, Arts.309, 311, examination - To be passed within stipulated period - Failure of Govt. to hold examination for several years - Person who has not exhausted all his chances, could not be denied of his seniority - It is unreasonable and arbitrary to penalise such person for default of Govt. to hold examination every year.

8. Learned Counsel for the respondents while drawing my attention to the pleadings of the parties has argued that the applicant can get the pay scale only from the date of promotion order i.e. 11-7-86 and not prior to that, and has further argued that two adhoc promotions cannot be given in same continuity, and has further argued that on 8-8-83 the applicant was given adhoc promotion as Personal Inspector (vide Annexure A-2) and on 10-7-86 the applicant was selected as Personal Inspector and on 19-8-86 the approval was made of that selection ^{dated} 10-7-86 (vide Annexure-6), and has further argued that the impugned order was passed validly and legally and the applicant is not entitled to any relief as the claim of the applicant is barred by time also.

9. This is important to point out that the endorsement dated 25-1-89 of C.P.S./LKO, appearing at the left hand margin of Annexure-3 on the joint representation of this applicant (B.V. Bajpai) and one Shri S.N.Dass reads as follows :-

"Certified that both Shri B.V.Bajpai and Shri S.N. Dass had shouldered higher responsibility in grade Rs.550-750 (R.S.) w.e.f. 1-7-84 and 1-8-84 respectively, when there was acute shortage of Personnel Inspectors. It is recommended that they may be allowed officiating allowance.

10. This is also important to note that P.S.No.8814 (Copy of Railway Board's letter No.3(NG) I-85-PM 5 - 3 dated 28-8-85 addressed to the GMS, All Indian Railways and Production Units and others etc.) in sub-para II of para 1 makes clear mention that to avoid adhoc promotions, selections should be held regularly once a year and sub para V of para 1 states that adhoc promotions should not be allowed for unduly long periods say beyond three to four months. In this context it is worthwhile making mention of this fact that Annexure R-1 to the Rejoinder affidavit of the applicant shows that the noting in regard to para 3 of the P.S. No.8814 and the endorsement of the authority concerned thereon reads as follows:-

"On going through the office note from PP-5 to above, it is noticed that while making adhoc arrangement, no approval from the competent authority was obtained which was the responsibility of office itself and if this was done, this embarrassing position would never has come. Finally it being the lapse on the part of the administration, the representation of the employees carries weight."

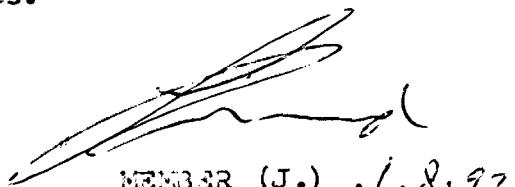
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11. This fact should also not be lost sight of that a perusal of Annexure R-1 to the Rejoinder affidavit of the applicant further shows that the applicant had shouldered higher responsibilities (as stated above) at the crucial time when there were 6 more vacancies in a cadre of 14 inspectors (as explicitly certified by the CPI/ANJ at S.No.14).

12. Thus, from the foregoing discussions and after considering the entire material on records and keeping in view the principles of law as enunciated in the above rulings, I find that the above arguments of the learned Counsel for the applicant are found to be sound and tenable and get much support from the above rulings; and the above arguments of the learned counsel for the respondents are found to be devoid of force and weight.

13. In the result the application of the applicant is allowed and the respondents are directed to refix the pay of the applicant and to pay him his salary and other allowances, if any, for the period from 1-7-84 to 10-7-86 in scale of Rs.550-750 (R.S.) as Divisional Personnel Inspector instead of the scale of Rs.425-640 (R.S) as Personnel Inspector which have been paid to him; and accordingly to refix his pension and to pay him his ^{also} ~~retiral~~ benefits/within a period of three months from the date of receipt of the copy of this judgement.

14. The application of the applicant is decided as above. No order as to costs.



MEMBER (J.) 6.8.93

Lucknow, dated 6/8/93.