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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT SITTINGS AT AURANGABAD.

Original Application No.657/88

Shri Vijay S.Dahale,
C/o Office of the Collector,
Central Excise & Customs,
Jafar Gate, Mondhe Road,
Aurangabad-431 001.

.. Applicant

V/s.

1. Union of India
through Dy.Secretary,
Govt. of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. Shri S.P.Kundu,
Under Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.
3. Collector,
Central Excise & Customs,
Pune.
4. Collector,
Central Excise & Customs,
Aurangabad.

.. Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar
Hon'ble Member(A), Shri P.S.Chaudhuri

Appearance:

1. Applicant in person.
2. Shri R.G.Deo,
Learned Additional Standing Counsel,
for respondents No.1, 2 & 4.

ORAL JUDGMENT:-

Dated: 29.6.1989

{PER: Shri M.B.Mujumdar, Member(J)}

The applicant's father died in an accident in
September, 1973 after serving as a Sepoy at Digloor,
District-Nanded in the Central Excise and Customs
Department. Thereafter the applicant was appointed as

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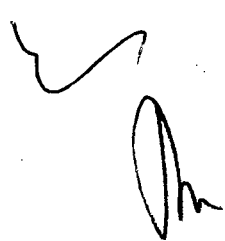
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Sepoy in the same department on compassionate ground. He passed S.S.C. in 1978. On 3.7.1981 he appeared for the examination for filling up 10% vacancies in the grade of Lower Division Clerk (for short, LDC), reserved for educationally qualified Group 'D' employees. He passed in that examination and also in the typing test which was held subsequently. Thereafter, he received a letter dated 14.10.1981 from the Assistant Collector (Headquarters), Central Excise and Customs, Pune, informing him that he was selected for the post of LDC against 10% vacancies reserved for educationally qualified Group 'D' staff. He was further informed that his appointment order as LDC would be issued subject to his exoneration from the disciplinary cases which were then pending against him.

2. At this stage we may refer to the disciplinary proceedings which are referred to in the letter dated 14.10.1981. The applicant was served with a minor penalty charge-sheet dated 19.9.1981 but it was withdrawn in May, 1982. However, immediately thereafter another major penalty charge-sheet dated 17.5.1982 was served on him. But that was also withdrawn on 8.6.1982. But by the same order the charge-sheet dated 17.5.1982 was substituted by another charge-sheet dated 10.6.1982. However, after holding a departmental enquiry the applicant was exonerated of all the charges. We may point out that the charges in all these three charge-sheets were similar.

3. After the applicant was exonerated establishment

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Order No.89-85 dated 3.6.1985 appointing him to officiate as LDC was passed by the Deputy Collector(P&E), Central Excise and Customs, Aurangabad. By subsequent Establishment Order No.110/85 dated 3.7.1985, the previous Establishment Order No.89-85 dated 3.6.1985 was made effective from 25.9.1981. By subsequent order dated 29.7.1985, the applicant's pay was fixed by giving him increments due to him from 25.9.1981, but he was denied arrears of pay from that date till 2.6.1985. The applicant did not challenge the said order denying him arrears of pay till he made his representation dated 18.2.1988 requesting for giving him the arrears. According to the applicant he came to know about the correct legal position when he read about Bharat Singh's case decided by the Principal Bench of this Tribunal, which was reported in February, 1988 issue of Swamy's News. After coming to know about that case he made the representation. As no early reply was received he sent a reminder dated 13.6.1988. Finally a reply dated 9.8.1988 was issued by the Under Secretary to the Government of India, Ministry of Finance informing him that there was no question of granting arrears of pay and allowances to him for the period from 25.9.1981 to 2.6.1985 as he had not actually worked as LDC during that period. As regards the judgment of the Principal Bench of the Tribunal in Bharat Singh's case he was informed that it applies to the parties of that case only.

4. Within three weeks of receipt of the reply, he filed the present application on 30.8.1988 praying for directing the respondents to pay him arrears of pay and allowances for the period from 25.9.1981 to 2.6.1985

with 12% interest. After taking 5 adjournments the respondents have today filed their reply opposing the application, with a copy to the applicant.

5. We have just now heard the applicant in person and Shri R.G.Deo, learned Additional Standing Counsel for Union of India for respondents No.1, 2 and 4. He is not appearing for respondent No.3, but in our opinion respondent No.3 is not a necessary party to this application.

6. The first point which was urged before us by Mr.Deo was that the applicant is not entitled to the arrears because he had not worked during the relevant period. But may it be noted that though the applicant was selected for the post of LDC against 10% vacancies reserved for educationally qualified Group-D staff, he could not be appointed immediately because of the pendency of the disciplinary cases against him. That is why by letter dated 14.10.1981 he was informed that his appointment order as LDC would be issued subject to his exoneration from the disciplinary cases which were pending against him. After he was exonerated from the departmental proceedings pending against him on 3.3.1984 he was appointed as LDC with effect from 25.9.1981. But by order dated 29.7.1985, though his increments were taken into consideration while fixing his pay he was held not eligible for arrears of pay for the period from 29.5.1981 to 2.6.1985.

7. The applicant has cited a number of cases in support of his submission that he is entitled to arrears of pay for that period though he had not actually worked

as LDC during that period. The first case cited by him is Bharat Singh v. Union of India, A.T.R.1987(1) C.A.T. 621. It is a judgment of the Principal Bench of this Tribunal. The applicant in that case was working as a Head Clerk in the Northern Railway. He was empanelled for promotion as Assistant Superintendent but was not promoted as Assistant Superintendent as some disciplinary proceedings were pending against him. On 14.10.1981 two posts of Superintendent were created and two persons junior to him were promoted. The disciplinary proceedings were dropped about one month thereafter and the applicant retired from service on 30.11.1981. He claimed for the payment of the difference of pay between the pay of Head Clerk and Assistant Superintendent for the period from 4.10.1979 to 14.10.1981 and the difference of pay between the pay of Head Clerk and that of the Superintendent for the period from 14.10.1981 to 30.11.1981 i.e. the date on which he retired. After referring to some decisions of the High Court and the Supreme Court, the Principal Bench held that where promotion is made with retrospective effect, the employee cannot be deprived of benefit of pay and other benefits because the Government cannot take advantage of its wrong or illegal order not promoting the employee. Hence, respondents in that case were directed to pay arrears of pay and allowances to the applicant.

8. In the present case also the applicant was given promotion as LDC with retrospective effect from 25.9.1981. However, he was not given arrears of pay and allowances for the period from that date till 2.6.1985 because he had not actually worked during

that period as LDC. In view of the judgment of the Principal Bench in Bharat Singh's case the applicant will be entitled to the arrears for that period. Mr. Deo tried to distinguish Bharat Singh's case from this case by pointing out that the applicant in Bharat Singh's case was working as Head Clerk and the promotions to which he was entitled were as Assistant Superintendent and Superintendent. According to Mr. Deo the duties performed by the Head Clerks are similar to the duties performed by the Assistant Superintendent or Superintendent, whereas the duties performed by a Sepoy are not similar to the duties performed by a LDC. But in our view this cannot be a distinguishing feature so as to disentitle the applicant for the payment of arrears. The ratio of the judgment of Bharat Singh's case is that when an employee is promoted with retrospective effect because an earlier wrong or illegal order is set aside, he cannot be deprived of the benefits of pay and other allowances because he did not actually work in the higher post during the relevant period.

9. The next case on which the applicant has relied is Balkrishna Sharma v. Union of India & Others, 1987(2) A.T.J. 255. It is a judgment of the Ahmedabad Bench of the Tribunal. In that case disciplinary proceedings were initiated against the applicant on 17.9.1973 and after inquiry the proceedings were dropped on 22.2.1978. On 10.5.1985 he was given proforma promotion with retrospective effect from 16.7.1974 without allowing him arrears on

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account of the promotion. His pay was re-fixed from 26.7.1978 on the basis of his retrospective promotion. However, monetary benefits of promotion from 16.7.1974 to 26.7.¹⁹⁷⁸~~1989~~ were denied to him on the ground that he had not worked in the higher post during that period. The Tribunal held that this was not right because that would amount to denying benefits due to the applicant because of the promotion which was delayed for no fault of his. Hence the respondents were directed to grant pay and allowances from 16.7.1974 to 26.7.1978 to the applicant. In our view this judgment also supports the applicant's claim.

10. Lastly Mr. Deo submitted that the application is barred by limitation. It is true that the order denying arrears to the applicant was passed on 3.7.1985 and the applicant did not make representation against that order till 18.2.1988. The applicant urged before us that he could not make representation earlier because of ignorance of the correct legal position. According to him he read about the correct legal position in February, 1988 issue of Swamy's News and made a representation immediately thereafter, i.e. on 18.2.1988, and when this was rejected on 9.8.1988 he promptly filed this application on 30.8.1988. In our view ignorance cannot be a ground for not making the application in time. In this case the cause of action had arisen on 3.7.1985, i.e. within three years prior to the constitution of this Tribunal on 1.11.1985. Section 25(3) of the Administrative Tribunals Act, 1985 empowers us to condone the delay. Considering all

the facts and circumstances of this case, we condone the delay in making this application.

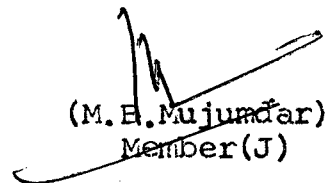
11. In result, we pass the following order:-

O R D E R

The respondents are directed to pay arrears of pay and allowances to the applicant for the period from 25.9.1981 to 2.6.1985, within three months from the date of receipt of a copy of this order. The applicant's request for paying interest to him on the arrears is rejected. Parties to bear their own costs.



(P.S. Chaudhuri)
Member(A)



(M.B. Mujumdar)
Member(J)