

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 509/91
~~Transferred Application No.~~

Date of Decision : 6-7-95

H.S. Choudhary Petitioner

Shri S.R. Atre Advocate for the Petitioners

Versus

Union of India & Anr. Respondents

Shri Subodh Joshi Advocate for the respondents

C O R A M :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri P.P. Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal?


(B.S. Hegde)
Member (J)

ssp.

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. 509/91

H.S. Choudhary ... Applicant
v/s

Union of India & Anr. ... Respondents

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri P.P. Srivastava, Member (A)

APPEARANCE : 1) Shri S.R. Atre, counsel for the
Applicant.
2) Shri Subodh Joshi, counsel for the
Respondents.

JUDGEMENT

Dated: 6-7-95

(Per: Hon'ble Shri B.S. Hegde, M(J))

1. The Applicant has filed this O.A. challenging the impugned order of the Respondents vide dated 20-8-1990 (Annexure A-22) wherein the Respondents while denying the benefit of promotion as Senior Clerk w.e.f. 1-10-1962 have stated that seniority as Senior clerk has been given w.e.f. 31-12-1963 and since no juniors have been promoted as Senior Clerks earlier to the Applicant, the question of payment of fixation of pay w.e.f. 1-10-1962 does not arise.

2. In so far as the facts are concerned, there is no dispute that the Respondents have given the seniority as Senior Clerk w.e.f. 31-12-1963 and fixation of pay was given w.e.f. 4-2-1964 at par with his immediate senior P.T. Kulkarni; so the Applicant made representation on 7-1-1971 which has been rejected by the Respondents

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vide their letter dated 11-2-1971 stating that the names of the juniors who are alleged to have been regularly promoted should be quoted, provided they are on Personnel Cadre to enable the Respondents to verify etc. It is true that the Respondents vide their letter dated 14-10-1971, their internal correspondence, have stated that the senior employees who were eligible for promotion to the upgraded post w.e.f. 1-10-1962 as a result of Justice Shankar Saran's Award but could not be promoted from that date on account of delay on the part of Administration in pinpointing posts due for upgradation and/or holding selections or suitability tests for effecting promotions should be allowed proforma fixation of pay right from the date of upgrading of the posts i.e. from 1-10-1962 etc. etc. The Applicant joined as Junior Clerk w.e.f. 17-5-1957 whereas his senior Mr. Kulkarni joined on 14-5-1956. Both were assigned seniority w.e.f. 31-3-1963. Shri Kulkarni was promoted as Senior Clerk w.e.f. 4-2-1964 in Engineering Cadre; afterwards, he opted for Personnel Department after his promotion whereas the Applicant appears for suitability test on 24-11-1963 for those Junior clerks who were seeking promotion as Senior Clerk in Engineering Department before bifurcation as on 1-1-1964. He could not be promoted as Senior Clerk in the Engineering Department earlier before which he opted for Personnel Department and was promoted as Senior Clerk in the Personnel Dept. as on 2-7-1968.

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3. The Respondents in their reply, denied the contention of the Applicant and reiterated that Shri P.T. Kulkarni was promoted as Senior Clerk w.e.f. 4-2-1964 but he was assigned seniority from 31-12-1963 on Engineering clerical cadre. The Applicant was promoted as Senior Clerk w.e.f. 1-10-1974 against clear vacancy in the Personnel Department. The Applicant though qualified in the suitability test as Senior Clerk in Engineering Department on 16-1-1964, he could not be promoted as Senior Clerk earlier before which he opted for Personnel Department and as such he lost seniority while amalgamating the seniority. Had he not opted for Personnel Cadre, he could have been promoted earlier in his parent department i.e. Engineering Department according to his turn at the correct time. However, on his coming to Personnel Cadre, the Applicant could not be assigned upper seniority as Junior Clerk ignoring senior employees of Personnel Department who had entered service earlier. The Respondents have also taken plea that the O.A. is barred by time. The Applicant is not entitled to pay fixation w.e.f. 1-10-1962 and repeated representation, does not give him any cause of action.

4. Heard the learned counsel for the parties and perused the records. On perusal of the record, we find that the rejection of the prayer made by the Applicant was done in the year 1971 and any repeated representation does not give him any cause of action. In this O.A., the Applicant is seeking pay fixation w.e.f. 1-10-1962 which is admittedly barred by time and he cannot re-open the fixation of pay after a lapse of nearly 30 years. Further, keeping in view the Supreme Court

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decision in K.R. Mudgal & Others v/s R.P. Singh 1986 SCC 55 wherein it was held that promotions should not be disturbed after a long lapse of time. Courts should not entertain petitions challenging seniority after inordinate delay.

5. We, therefore, do not find any merit in the O.A. which would need interference at this stage by this Tribunal. It has been mentioned that although the seniority has been given to the Applicant w.e.f. 31-12-1963, the fixation of pay was directed to be made w.e.f. 4-2-1964 but the arrears have not been paid. In the circumstances, if the arrears have not been paid, we hereby direct the Respondents to pay the arrears within a period of 3 (three) months from the receipt of this order. The O.A. is disposed of with this direction, with no order as to cost.


(P.P. Srivastava)
Member (A)


(B.S. Hegde)
Member (J)

ssp.