

CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH,
B O M B A Y

Original Application No. 996 of 1993.

Bombay, the 1st day of Jan 1998.

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Ganesh Shripad Wase, Assistant, Directorate of Marketing and Inspection, B.H.O., Nagpur. R/o Plot No. 300 C, Model Town, Opposite V.M.V. & J.M.T. College, Wardhamannaagar, Nagpur.

.....Applicant.

VERSUS

1. Union of India, Ministry of Rural Development, Krishi Bhawan, New Delhi through its Secretary.
2. Joint Agricultural Marketing Adviser, Directorate of Marketing & Inspection, Branch Head Office, New Secretariat Building, Nagpur.

.....Respondents.

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Mr. M.K.Deshpande

.....Counsel for Applicant.

Mr. M.G.Bhangade

.....Counsel for Respondents.

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CORAM :

HONOURABLE MR. M.R.KOLHATKAR, MEMBER (ADMINISTRATIVE)

HONOURABLE MR. A.K.MISRA, MEMBER (JUDICIAL)

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The applicant has filed this O.A. with the prayer that communication Annex.A/1 be quashed and the respondents be directed to grant promotion to the applicant to the post of Assistant w.e.f. 26.6.1984 in the pay scale Rs. 1640-2900 from the date his junior was granted promotion. The applicant has further prayed that his pay be stepped-up equal to the pay of Shri P.M.Meshram from 1.1.1986 onwards as detailed in the Statement Annex.A/11. The respondents be also

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directed to pay the arrears of pay and other allowances as per the fixation alongwith interest @ 12% p.a. on the amount due till the date of payment.

2. Notice of this O.A. was issued to the respondents who have filed their reply. It is submitted by the respondents that Shri Meshram was promoted as Assistant on ad hoc basis w.e.f. 26.6.1984 on the basis of the Seniority list as on 1.1.1983. After the revision of the seniority list prepared on the basis of the instructions contained in D.O.P.Ts O.M. dated 31.5.1984, the applicant became senior to Shri Meshram and, therefore, Shri Meshram was reverted to the post of U.D.C. w.e.f. 26.9.1986. Shri Meshram was again promoted as Assistant w.e.f. 30.10.1986. While calculating his pay, the benefit of services rendered by Shri Mesh Ram earlier in the Assistant grade, was also given to Shri Meshram, as per rules, therefore, the pay anomaly is not due to application of F.R. 22. In this way, applicant is not entitled for stepping-up of his pay as claimed. The respondents have prayed that the O.A. deserves to be dismissed.

3. The applicant has filed rejoinder to the reply of the respondents and respondents have filed sub-rejoinder to the rejoinder of the applicant. In his rejoinder, applicant has reiterated his claim and in the sub-rejoinder the respondents have reiterated their stand taken by them in their reply.

4. We have heard the learned counsel for the parties and gone through the record and also the rulings cited by them.

5. For appreciating the facts as pleaded by the applicant, a statement in a tabular form in respect of applicant and Shri Mesh Ram is given below :-

	Applicant	
	Mr.G.S. Wase	Mr. Meshram
Appointed as LDC (grade 110-180)	11.08.1967	26.04.1973
Confirmed as L.D.C.	01.01.1970	01.04.1976

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Appointed as Steno Grade-III (Grade 330-560)	31.03.1971	-
Appointed as UDC (grade 330-560)	07.04.1980	23.07.1981
Confirmed as UDC	24.07.1983	24.10.1983
Pay fixed at this stage	Rs. 452/-	Rs. 370/-
Promoted as Assistant on adhoc basis (grade 1400-2600) Fixed at Rs.1640/- [Revised grade Rs.1640-2900]	26.09.1986 Next increment due on 1.9.1987	26.6.84 to 26.9.86 Then reverted to the post of U.D.C. On repromotion on 30.10.86 pay fixed at Rs. 1700/-.
Promoted as Assistant on long term basis	01.04.1988	02.01.1989
Promotion as Assistant made regular with effect from (Grade Rs.1400-2600)	12.11.1991	12.11.1991

From the foregoing statement, it appears that there was no controversy between the applicant and Shri Meshram regarding pay upto the date of promotion of Shri Meshram. It is alleged by the applicant that Shri Meshram was given adhoc promotion ignoring the claim of the applicant. When the applicant came to know of this, he represented against illegal promotion of Shri Meshram vide his representation dated 13.07.1986 and stressed his claim for promotion. As a result of applicant's representation, Shri Meshram was reverted from the post of Assistant to the post of U.D.C. telegraphically with effect from 26.9.1986 and the applicant was promoted with effect from 26.9.1986 in the vacancy caused due to the reversion of Shri Meshram, as stated above. This fact and the fact of subsequent promotion of applicant and Shri Meshram is also borne out by the statement shown above.

6. It is alleged by the applicant that inspite of the fact that earlier promotion of Shri Meshram was found erroneous and he ^{was} reverted to the cadre of U.D.C., on repromotion the pay of Shri Meshram was fixed with effect from 30.10.1986 protecting his previous pay which he was drawing on the promotional post of Assistant. Thus, Shri Meshram started getting more pay than the applicant due to wrong promotion in

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the post, due to wrong protection of his previous pay of promotional post and due to fixation of pay in the revised new pay scale, ranging from Rs. 62/- to Rs. 200/- per month and the applicant is consequently suffering financial loss althrough this period. The applicant has claimed benefit of stepping up of pay on the basis of pay fixation of the said Shri Meshram and has demanded arrears of pay, as described above.

7. On going through the application, we find that the representation of the applicant claiming that Shri Meshram be reverted retrospectively, i.e., with effect from 26.6.1984 and removal of pay anomaly with effect from 1.1.1986, was rejected by the respondent authorities vide its communication dated 4.12.1990 (Annexure A/13). Thereafter, the applicant did not approach the Tribunal. He made a subsequent representation dated 13.7.1991 (Annexure A/14) giving a comparative statement of his pay with the pay of Shri Meshram. When the applicant did not hear anything in response to this representation, he made another representation to the National Commission on SC/ST on 25.12.1992 (Annexure A/15). This representation was also rejected. From the record, it appears that the pay of Shri Meshram was initially fixed with effect from 1.1.1986 vide order dated 11.6.1991 and against this pay fixation, applicant made a representation on 13.7.1991 (Annexure 14). In our opinion, if the applicant was not communicated any decision as per the time limit described in the Act, the applicant ought to have approached immediately to the Tribunal instead of making repeated representations to the concerned authorities. In other words, the applicant instead of making another representation to the National Commission should have filed an O.A. in the Tribunal within ^{one and 1/2} year from the date of his making earlier representation dated 13.7.1991. This is a settled position of law that repeated representations would not enhance the period of limitation. The applicant was aggrieved by the order of fixation of the said Meshram dated 11.06.1991, therefore, this action for seeking redressal should have been accordingly regulated within the time frame. But the applicant did not do this.

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8. It may be pointed out here that the applicant's earlier representation in respect of reverting Shri Meshram from retrospective date, ~~was~~ decided by the concerned authorities vide communication dated 4.12.1990 (Annexure A/13). Therefore, in these circumstances, the applicant should have immediately approached to the Court for redressal of his grievance but he continued to represent his cause. As alleged by the applicant himself, the anomaly of pay has arisen because of not reverting Shri Meshram retrospectively, therefore, if the pay of Shri Meshram was fixed protecting his earlier pay, no fault can be found therein. Neither the controversy can be said to be due to F.R. 22. The applicant in the instant case, has prayed for the relief of promotion with effect from 26.6.1984. In his O.A., applicant himself admits that he came to know of promotion of Shri Meshram after the circulation of the seniority list. In our opinion, in any case he came to know of this as early as 13.7.1986 when he made the representation stressing his claim for such promotion vide his representation dated 13.7.1986 (Annexure 6). In response to this representation, applicant was given promotion and Shri Meshram was demoted with effect from 26.9.1986. But at that time, applicant had not stressed his claim for demoting Shri Meshram with retrospective effect and even if it had stressed his claim for such relief and the same was not accepted by the authorities, the applicant had not come before the Tribunal for seeking redressal on this point. Therefore, after the pay fixation of Shri Meshram in the year 1991, the applicant cannot be heard to say that Shri Meshram was not demoted retrospectively with effect from 26.6.1984. For seeking relief for promotion with effect from 26.6.1984, applicant has come to the Tribunal too late because making representations after representation will not help him so far as the limitation is concerned. In view of this, applicant's claim for promotion with effect from 26.6.1984 is utterly belated and time barred and in any case it suffers from serious laches.

9. So far as stepping up of pay is concerned, following rulings can be usefully quoted :

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- (i) 1996 (2) ATJ 104 - G. Peter vs. Union of India & Others;
- (ii) 1996 (2) ATJ 869, Mrs. Sulochana Radhakant Shinde vs. Union of India & Others ;
- (iii) 1997 (1) ATJ 1 - B.L. Somayajulu and Others vs. The Telecom Commission and others.

In G. Peter's case (supra), it was held by one of us that "stepping up of pay - Junior was selected earlier for promotion as UDC and was put on probation - Applicant not challenged the promotion at that stage - Regular promotion made - Junior getting more pay - Applicant cannot claim stepping up of pay after two years on the ground that he was not given an opportunity."

In B.L. Somayajulu & Others vs. The Telecom Commission & Others (supra), it was held by the Full Bench of the Central Administrative Tribunal, Hyderabad, as under :


- (A) Pay-stepping up of - Stepping up can be granted only where there is a provision in law in that behalf, and only in accordance with that.
- (B) Pay-stepping up of - A claim for stepping up can be made only on the basis of a legal right and not on pervasive notions of equity or equality, un-related to the context of statutory law.
- (C) Pay-stepping up of - Every claim must be based on an enforceable legal right - A right arises by conferment and not by comparison.
- (D) Pay - Stepping up of - Held a jurisdiction in equity does not inhere in the Tribunal.
- (E) Constitution of India Article 14 - Pay - Stepping up of - If wrong fixation of pay in the case of a junior is to bring about a corresponding fixation in the case of a senior by applying the principle of equality - Held that would be an instance using Article 14 to perpetuate illegality.
- (F) Pay - Stepping up of - If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a junior - Without challenging the wrong - He cannot acquiesce in a wrong, and make a gain from that wrong by a comparison.
- (G) Special Leave Petition - Stepping up of - Orders of Tribunal granting stepping up of pay on considerations of equity - Rejection of S.L.Ps against the orders of the Tribunal - Held such

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rejection does not mean affirmation of the legal principle decided in the order sought to be appealed against.

10. While applying the principles laid down in these rulings in the instant case, it appears that applicant did not challenge adhoc promotion of Shri Meshram soon after Meshram's promotion order or when the representation relating to Meshram's promotion was not decided within a reasonable time by the concerned authorities. Therefore, if subsequently, the pay of Shri Meshram was fixed protecting his earlier pay of the promoted post, the applicant cannot make any grievance on getting less pay. Therefore, the claim of the applicant is not supported by any law and the relief as claimed cannot be granted. In the instant case, the anomaly has not arisen because of application of F.R. 22 and, therefore, the stepping up of pay cannot be granted to the applicant invoking the rule of comparison of senior vs. junior. The contention of the respondents that Shri Meshram was promoted according to the in force seniority list and by subsequent revision of seniority list, the applicant became senior, therefore, the pay of Shri Meshram was correctly protected and fixed, has not been controverted by the applicant. Hence also he is not entitled to claim stepping up of his pay. For all these reasons, the applicant cannot be granted any relief, in our opinion.

11. From the foregoing discussions, we come to the conclusion that the present application is devoid of merits and is liable to be rejected. The O.A. is accordingly rejected with no order as to costs.


(A.K. MISRA)
Member (J)


(M.R. KOLHATKAR)
Member (A)

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