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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A. No. 1120/92

Dt. of order: 13.9.1994

Alam Chand Jha

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr. Pratap Singh Sirohi

: Counsel for applicant

Mr. Sukhjinder Singh, Executive Engineer, on behalf of  
respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Member (Jud.)

Hon'ble Mr. O.P. Sharma, Member (Adm.)

PER HON'BLE MR. O.P. SHARMA, MEMBER (ADM.).

Applicant Alam Chand Jha has in this application under Sec. 19 of the Administrative Tribunals Act, 1985, prayed that the order/letter dated 28.4.'92 be quashed and the applicant be promoted to the post of Supervisor B/S Gr.I since 1981 and further to the post of Selection Grade since 1988 with consequential benefits. He has further prayed that the respondents may be directed to pay to the applicant the balance of arrears of salary from 1972 to March 1992 as per details given in Schedule-A attached to the application. He has also prayed that the respondents may be directed to comply with the order dated 23.3.'89 passed by the Tribunal by which the judgment and the decree dated 2.7.'83 passed by the learned Additional Civil Judge No. 1 Jaipur city was confirmed.

2. The case of the applicant is that he was initially promoted to the post of Supervisor B/S Gr.II vide order dated 16.11.'72 but the said order was withdrawn by the respondents. He filed a civil suit against the aforesaid action of the respondents in the Court of the learned Additional Civil Judge, Jaipur City, which was decreed in favour of the applicant on 2.7.'83, and the order of withdrawal of promotion was quashed with all consequential benefits. The respondents filed an appeal against the aforesaid judgment and decree of the learned Addl. Civil Judge which was transferred to this Tribunal and was registered as TA No. 2505/86. This TA was dismissed by the Jodhpur Bench of the Tribunal vide order dated 23.3.'89 (Annex.A4) and the judgment

judgment of the learned Addl.Civil Judge was upheld. The applicant was, therefore, entitled to promotion on the post of Supervisor B/S Gr.II since 16.11.'72. The applicant was accordingly promoted to the said post but no promotional benefits were given.

3. Thereafter other persons who were promoted vide order dated 16.11.'72 were again given promotion to the post of Supervisor B/S Gr.I w.e.f. 1981 and person junior to the applicant namely Shri S.M.Gayakvad was also promoted to the said Grade-I since 1981 but the applicant was granted promotion to the said Grade-I post from 1984. This action of the respondents was discriminatory and violative of the order of the Tribunal. Shri Gayakvad was later given benefit of Selection Grade but it was denied to the applicant.

4. Further according to the applicant, as per the order of the Tribunal the total amount of salary with interest as allowed on Provident Fund payable to the applicant upto March '92 worked out to Rs.1,50,426/- as per Schedule-A attached to the application, but he has been paid only an amount of Rs.31,167/-. Vide letter dated 29.4.92 (Annex.A9) the respondents rejected the claim of the applicant for promotion to the post of Supervisor B/S gr.I from the date from which it was granted to Shri Gayakvad on the ground that he had not been selected by the DPC for the said post. It has also been mentioned in this letter that the applicant had not passed the requisite examination for promotion. The applicant is aggrieved by his name not being considered for promotion with effect from the date from which Shri Gayakvad was granted promotion to the post of Supervisor B/S Gr.I and for nonpayment of arrears of pay admissible to him on account of repromotion to Supervisor Gr.II w.e.f. 16.11.'72 with interest thereon.

5. The respondents in the reply have stated that in compliance with the order of the Court the applicant was granted promotion as Supervisor B/S Gr.II w.e.f. 16.11.'72. As regards promotion to the post of Supervisor B/S Gr.I, w.e.f. 1981, they have stated that promotion has been granted to the applicant to the said Grade-I w.e.f. 1984. The applicant was not at par with his junior Shri Gayakvad, because the latter passed the prescribed examination

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in December '76 whereas the applicant had passed it in Dec. 1980. Therefore, Shri Gayakvad was considered for promotion to the said Grade-I by a DPC held in Oct. 1980, and this DPC could not have considered the applicant's case for promotion as he was not qualified. They have further stated that after the applicant's re-promotion to the post of Supervisor B/S Gr.II w.e.f. November 1972 in compliance with the Court's order, the seniority of the applicant has been refixed at Sl. No. 324A in the post of Supervisor B/S Gr.II. Consequently, the name of the applicant came within the zone of consideration for promotion to the post of Supervisor B/S Gr.I for the DPC held in 1980. Since the DPC held <sup>in</sup> 1980, the applicant's name was not considered, a Review DPC was held in July '90 by which the applicant's name was considered. However, on the basis of the grading determined by the DPC the applicant could not find place in the select list, as promotion to the post of Supervisor B/S Gr.I is on the basis of selection. The applicant was however selected for promotion on the said Grade-I subsequently in 1984. As regards Selection Grade, 20% posts are set apart for being filled-up on the basis of seniority. They have added that the amount of difference payable to the applicant works out to Rs. 31,167/- which has been paid to him on 27.3.'92.

6. The learned counsel for the applicant stated during the arguments that the DPC held in 1980 for the post of Supervisor B/S Gr.I did not consider the name of the applicant because he had not passed the requisite examination. It was no fault of the applicant that he could not pass the requisite examination at the relevant time. In such circumstances, the applicant could not have been ignored for promotion to the said Grade-I. In this connection he cited the judgment of the Hon'ble Supreme Court reported at AIR 1989 SC 1133, details of which are not however available because the learned counsel for the applicant did not have the book with him. As regards the applicant not being selected by the Review DPC held in July 1990 in Grade-I, he stated that this is in fact not a selection post. His case is that if the applicant was found suitable for promotion to the post of Grade-I in 1984, there was no reason why he should not have been granted promotion w.e.f. 1981. He has also claimed

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all consequential benefits on account of grant of repromotion to the post of SupervisorB/S Gr.II w.e.f. 16.11.'72 with interest, in view of the judgment of the Hon'ble Supreme Court in <sup>Nalini</sup> <sub>L</sub> *Nareni Kant Sinha Vs. State of Bihar & Ors.* 1993 AIR SC 1358 in which the Hon'ble Supreme Court directed grant of payment of interest on arrears of pay in similar circumstances.

7. We have heard the learned counsel for the parties and have gone through the records. The proceedings of the Review DPC held in July '90 for the post of SupervisorB/S Gr.I were produced before us and have been perused.

8. There is no dispute about the date from which repromotion was granted to the applicant in the post of SupervisorB/S Gr.II. Nor there is any dispute about the seniority in the post of Grade-II, after necessary repromotion was given and seniority of the applicant in Grade-II post was refixed. The dispute is about the date of promotion to the post of SupervisorB/S Gr.I, fixation of seniority in the Grade-I post, Non-grant of Selection Grade and non-payment of full arrears with interest consequent upon regrant of promotion in Grade-II w.e.f. 16.11.'72.

9. As regards promotion to the post of SupervisorB/S Gr.I, initially the applicant's name was not considered because he id not have the requisite qualification for the post. We have perused the Review DPC proceedings of July 90 by which the applicant was not again found fit to be included in the select panel. This time the applicant was not ignored for promotion on the ground that he had not passed the requisite examination. Exclusion of the applicant from the select panel is on the ground that he was not high-up in merit. The respondents have contended in their reply that the post of SupervisorB/S Gr.I is a selection post and the applicant's counsel has not been able to show any rule or instruction to suggest that in the year 1980 to which the DPC relates, this was a non-selection post. From 1984 the applicant has been granted promotion to the post of Grade-I. We are unable to appreciate the argument of the learned counsel for the applicant that if he had been found fit for promotion in 1984, why he should have not been granted promotion

(V.A.)

w.e.f. 1980. In the post of Supervisor/E Gr.II in the revised seniority list, the applicant has been shown at a place higher than Shri Gayakvad and he was also within the zone of consideration for promotion to the post of Grade-I when the Review DPC was held. On a perusal of the record, we have satisfied that the applicant's name did not find place in the select panel for valid reasons.

10. As regards grant of Selection Grade to the applicant, he would be entitled to it on the basis of his seniority position in the post of Grade-I and the respondents would no doubt consider his name in accordance with his seniority.

11. As regards the consequential benefits on repromotion to the post of Supervisor/E Gr.II w.e.f. 16.11.'72, it is the respondents' contention that they have correctly worked out the amount payable to the applicant. However, we direct the respondents to recheck the calculations once again with reference to the details provided by the applicant in Schedule-A in the applicant. If any amount remains payable, ~~it~~ should be paid to the applicants within 3 months from the date of the receipt of a copy of this order.

12. As regards claim for interest it has emerged that the withdrawal of the promotion of the applicant to Grade-II earlier granted w.e.f. 16.11.'72 was irregular. The applicant was, therefore, wrongly denied payment which was legitimately due to him had he continued in the said Grade-II post without any interruption. In the circumstances, we direct that the respondents shall pay/interest to the applicant @ 9% per annum on the amount worked out on the basis of the period for which the amount due to the applicant remained unpaid, within a period of 6 months. The amount of interest payable to the applicant shall be on the amount of Rs.31,167 already paid to him and any additional amount that may become payable to the applicant on the basis of rechecking of the calculations by the respondents.

13. The Q.A. is disposed of accordingly with no order as to costs.

(O.P. Sharma)  
Member(A).

C.K.Kyle  
(Gopal Krishna)  
Member(J).