

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :  
AT HYDERABAD.

O.A.No.137 OF 1993.

DATE OF ORDER :- 12TH DECEMBER, 1997.

BETWEEN :

Y. SUBRAHMANYAM,  
Son of Y.S.Prakasa Rao,  
Retired Senior Accounts Officer,  
S.E. Railway (F.A.& C.A.O.(S&C)'S Office).. APPLICANT  
Visakhapatnam.

AND

1. General Manager,  
Garden Reach, Calcutta-43.
2. Principal Financial Adviser and  
Chief Accounts Officer,  
South Eastern Railway,  
Garden Reach, Calcutta-43.
3. Sri M.V. Ramana,  
Senior Accounts Officer (S&C),  
F.A.& C.A.O.(S&C)'s Office,  
South Eastern Railway,  
Visakhapatnam. .. RESPONDENTS

COUNSEL FOR THE APPLICANT : Mr. K. SUDHAKAR REDDY

COUNSEL FOR THE RESPONDENTS : Mr. N.R. DEVARAJ, SrCGSC

CORAM :

HONOURABLE MR. H.RAJENDRA PRASAD, MEMBER (ADMN.) *✓*

HONOURABLE MR.B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

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Caste candidate was promoted against a roster post as Senior Accounts Officer taking into account his ad hoc service as Assistant Accounts Officer against a supernumerary post; that this is again irregular; that the promotion order bearing No.1/8784 through which the respondent No.3 was promoted as Assistant Accounts Officer was regularised only on 16.12.1986.

5. The applicant claims that he was promoted with effect from 30.7.1984 as Assistant Accounts Officer in a regular cadre post vide office order No.1/84/7 dated 16.7.1984 and had completed 3 years of service on 1.8.1987 and had become eligible for promotion to the post of Senior Accounts Officer; that he was not given due promotion as Senior Accounts Officer; that even the persons who were promoted as Assistant Accounts Officers long after his promotion were promoted as Senior Accounts Officers on the plea of completion of 3 years of service as Assistant Accounts Officer and thus ignoring the case of the applicant for no fault of the applicant. It is submitted that the applicant was holding the post of Senior Accounts Officer, Laxmipur which post was down-graded by the Administration and was made to work as an Assistant Accounts Officer with a mala fide intention of depriving him/his legitimate promotion. It is submitted that when the applicant had completed 3 years of service as Assistant Accounts Officer on 1.8.1987 and became eligible for promotion as Senior Accounts Officer, the applicant was deliberately shifted to other posts of Assistant Accounts Officer under F.A. & C.A.O.(S&C) Visakhapatnam and Senior Divisional Accounts Officer, Visakhapatnam etc.; that when the decision was long last taken, to promote the applicant as Senior Accounts

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declared the panel as ultra vires. The respondent No.2 was having all the zone of consideration. The respondent No.2 instead of reverting the respondent No.3 and others consequent upon the decision of the Hon'ble High Court of Calcutta, chose to continue them in Group B cadre as Assistant Accounts Officer by creating supernumerary posts till the zone of consideration fell on the respondent No.3 and others. The zone of consideration for the respondent No.3 fell only during 1986 i.e. after a lapse of nearly about 12 years of irregular continuance of the respondent No.3 as Assistant Accounts Officer. It is submitted that during the said 12 years, the respondent No.3 should have worked as <sup>a</sup> Section Officer but for his irregular promotion and continuance in the said post. It is submitted that the applicant and the respondent No.3 were empanelled in the same panel prepared assigning the panel seniority position to the applicant at S1.No.11 and to the respondent No.3 at S1 No.35 vide order No.1/86/148 dated 16.12.1986(Annexure-AI) issued by the FA & CAO, South Eastern Railway, Calcutta-43. It is submitted that for promotion to the post of Senior Accounts Officer, normal rule is that one should complete 3 years of service as Assistant Accounts Officer irrespective of the panel position; that the respondents 1 and 2 taking advantage of this rule/ promoted the respondent No.3 as Senior Accounts Officer and was allowed to work on ad hoc basis against a supernumerary post of <sup>Senior</sup> Assistant Accounts Officer while actually he should have worked as Section Officer(Accounts). It is stated that the ad hoc service cannot be counted for the purpose of 3 years of service for promotion to the Senior Accounts Officer; that though the respondent No.3 was junior to him being a Scheduled

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representation, a reference was made to the Board for clarification; that the Railway Board in their circular dated 24.4.1978 clarified that there should not be any separate zone of consideration for the candidates belonging to S.C. and S.T. category for selection from Class III to Class II; that the said clarification was placed before the Hon'ble High Court; that the Hon'ble High Court directed the Railway Administration to review the promotions in terms of the clarifications given by the Railway Board in their circular dated 24.4.1978; that in obedience to the circular dated 24.4.1978 and also in compliance of the directions of the Hon'ble High Court of Calcutta, the entire matter was reviewed and the 4 candidates belonging to SC and ST category who were selected for Class II promotion from separate zone were deleted from the panel; that however, those four candidates were allowed to continue on ad hoc basis in Class II posts till their turn came in future in the normal zone of consideration; that the Class III employees belonging to general community who were not called for the test of separate zone of consideration were also given opportunity for selection to Class II post; that the selections were made and the incumbents joined; that as per the order of the Hon'ble High Court, the four candidates who were removed from the panel were allowed to continue in supernumerary posts; that the Hon'ble High Court did not intend to cancel the panel already made; that the entire matter was reviewed by the Railway Board in their letter dated 13.2.1979(Annexure-R/2); that the panel was prepared after the notice of selection was issued in 1977; that therefore the promotion of the respondent No.3 as Assistant Accounts

Officer he was transferred to Laxmipur from Visakhapatnam and again posted as Senior Accounts Officer(Construction) Laxmipur which post he was holding at the time of becoming eligible for promotion i.e. 1.8.1987 (in a down-graded post) and that this down-gradation had impact on his promotional chances; and that thus the respondents ignored his case for promotion.

6. Hence he has filed this O.A. for the following directions:-

- (a) The respondents 1 and 2 to arrange issue of office order promoting the applicant from the date his junior (respondent No.3) was promoted extending the promotional consequential benefits of pay etc. with effect from 4.3.1987 by reviving the down graded post of Senior Accounts Officer(C), Laxmipur, from the date the applicant became eligible for promotion as Senior Accounts Officer with effect from 4.3.1987;
- (b) pay arrears of pay and allowances due;
- (c) Recalculate and arrange payment of pension and the terminal benefits admissible; and
- (d) Interest, costs and such other reliefs.

7. The respondents have filed their counter stating that the selection for the post of Assistant Accounts Officer (Class II) from amongst Class III staff was held between May,1974 and September,1977 on the basis of the Railway Board's circular dated 6.1.1965 (Annexure-R-I) and letter No.E(SCT)T3 CM/13 dated 7.8.1974 as understood by the authorities; that this action was challenged before the Hon'ble High Court of Calcutta that the applicant had also submitted a representation challenging the interpretation of the Railway Board's circular dated 17.8.1974; that on receipt of the said

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Group B vide Railway Board's letter No.E(GP)/75/1/58 dtd 20.6.1980(Annexure-R/XI); that the respondent No.3 was promoted as Senior Accounts Officer on ad hoc basis with Charge allowance and not with actual scale of pay; that the applicant was promoted as AAO on 30.7.1984 vide Office order dated 16.7.1984; that the applicant completed 3 years of service on 1.8.1987 and was promoted as Senior Accounts Officer on 19.1.1989 vide office order dated 7.12.1988 on regular basis; that the promotion of an AAO to the rank of SAO completely depended on availability of vacancies and other conditions judged by the competent authority; that some seniors to the applicant were promoted as and when vacancies arose; and that the respondents have given the names of four officers who were promoted to the post of SAO in page 4 of the counter. It is submitted that the allegation of the applicant that he was not promoted to the senior scale with effect from 1.8.1987 is not correct; that the applicant was promoted as per his turn; that the applicant cannot claim proforma fixation of pay following the date of promotion of the respondent No.3 i.e. 4.3.1987; that the applicant had not completed 3 years of service as on the date when the respondent No.3 was promoted as SAO and that the O.A. be dismissed with costs.

8. The applicant claims certain benefits on account of the fact that the respondents conferred undue benefits on the respondent No.3 who was junior to him. The applicant in the O.A. has given particulars of his service comparing his case with that of the respondent No.3 to assert that the respondent No.3 was junior to him. The respondent No.3 belonged to the S.C.category.

Officer on ad hoc basis for about 12 years was continued; that the said action was approved by the Railway Board; that the promotion of the respondent No.3 as Assistant Accounts Officer(Con), Bilaspur on stop-gap measure was accommodated against a supernumerary post of Assistant Accounts Officer(Class II) from the date of taking over charge as AAO; that in the order dated 17.4.1980 (Annexure-R/IV) it was clearly stated that the respondent No.3 would continue to act as AAO against a supernumerary post till his turn comes in future in the normal zone of consideration and his name at Sl.No.16 was deleted from the panel dated 6.5.1977(Annexure-R/VI) declared as provisional; that subsequently the respondent No.3 was empanelled for promotion to Group B vide order dated 16.12.1986(Annexure-R/VII); that in supersession of the supernumerary working arrangement made earlier, the respondent No.3 who was allowed to continue to work as AAO purely on ad hoc basis considering his empanelment for promotion as AAO vide order dated 16.12.1986 was continued on regular basis; that the said order was issued in obedience to the orders of the Hon'ble High Court of Calcutta; that the respondent No.3 was promoted as Senior Accounts Officer (S&C), Visakhapatnam on ad hoc basis vide office order dated 3.3.1987 (Annexure-R/x) according to the then existing rules; that the then existing rules provided that the incumbents who had 3 years of service -both fortuitous and non-fortuitous may be posted to look after the duties <sup>the</sup> in senior scale on payment of a charge allowance of Rs.150/-per month in addition to their pay in the Group B post; that the said officers, however, became eligible to draw pay in senior scale after completion of 3 years regular service in

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officials belonging to SC and ST categories were promoted as AAO against the rules and instructions then in force. Even their promotions were contrary to the circular instructions given by the Railway Board in its letter dated 24.4.1978.

12. The respondent No.3 was thus not eligible to be continued as AAO even though he belonged to SC community. The respondents 1 and 2 instead of reverting the respondent No.3 from the post of AAO continued him by creating supernumerary post and provided him the benefit of the next higher promotion though on ad hoc basis. In our humble view, the action of the respondents in continuing the four candidates against the dictum of the Hon'ble High Court of Calcutta and against the circular instructions dated 24.4.1978 of the Railway Board was not proper.

13. Admittedly, the respondent No.3 came to be empanelled for regular promotion vide office order No.I/86/148 dated 16.12.1986(Annexure-A/I to the O.A.) In the said panel the applicant stood at Sl.No.11 whereas the respondent No.3 stood at Sl.No.35. Normally, the panel dated 16.12.1986 was issued in the order of merit. Then meritoriously the applicant stood above the respondent No.3.

14. As already observed, instead of reverting the respondent No.3, the respondents 1 and 2 continued him on ad hoc basis. The continuation of the respondent No.3 in the post of AAO and subsequent promotions on ad hoc basis were contrary to rules. In fact, the Hon'ble High Court of Calcutta in pages 9 and 10 has clearly stated that/<sup>though</sup> the candidates belonging to SC/ST community should be treated as promoted on ad hoc basis, they would not be given seniority and their seniority would be assigned only on

9. The respondents 1 and 2 have not disputed the fact that the applicant was senior to the respondent No.3. During the year 1974 while considering the normal zone of consideration, the respondents ignored certain guidelines issued by the Railway Board and prepared a panel consisting of Class II officials belonging to S.C. & S.T. category. The respondent No.3 was then empanelled for the post of AAO in 1974. This panel was challenged before the High Court of Calcutta in the writ petition. The respondents 1 and 2 have furnished copies of the judgments dated 29.11.1978 in Civil Rule No.5069(W) of 1977 and 23.11.1983 in Civil Rule No.8210(W) of 1983 passed by the Hon'ble High Court of Calcutta.

10. The Hon'ble High Court of Calcutta held the panel as ultra vires and against the rules and directed the respondents in its order dated 29.11.1978 ----- to adhere to the circular instructions given by the Railway Board dated 24.4.1978 and directed that all promotions given from time to time during the pendency of the writ petition should be reviewed in the light of the said circular and necessary action for implementing the circular in respect of such candidates should also be taken by the Railway Board without any further delay. Further, the Hon'ble High Court made it clear that the Railway Administration would be entitled to proceed with the LDCE for promotion of 25% of vacancies in the case of post of AAO prospectively from the date of issue of the said circular dated 3.8.1977 in accordance with the directions contained in the circular dated 224.4.1978.

11. In obedience to the directions given by the Hon'ble High Court, the respondents 1 and 2 reviewed the cases and found in such process of review that four

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16. The applicant was promoted to the post of AAO on 30.4.1987. He was regularised in that post from 12.7.1989 whereas the respondent No.3 was regularised from 12.1.1989.

17. Besides, even though the applicant was working as SAO at Laxmipur, the post was down graded and he was asked to work in the down graded post. Subsequently the said post was upgraded and the applicant was posted to the same post. It is his case that this action of the respondents 1 and 2 was intended to deprive the prospects of the applicant and that he is eligible for promotion. We do not wish to express any opinion whether down gradation of the post held by the applicant at Laxmpur was justified for a brief spell or not. It is the prerogative of the Executive to down grade the post in accordance with the administrative exigencies. We cannot impute any mala fide intention on the part of the respondents 1 and 2. However, we cannot say that thereby <sup>not</sup> the prospects of the applicant were/affected even though he stood senior to the respondent No.3. The applicant prays this Tribunal to give promotion from the date his junior, namely, the respondent No.3 was given benefits. He claims the said benefits from 4.3.1987. It is now to be seen whether on the basis of the aforesaid facts the applicant is entitled to the reliefs claimed in the O.A.

17.A. Admittedly, the respondent No.3 was continued on ad hoc basis since 1974 he became eligible in the line of consideration only on 16.12.1986. Even in the panel list dated 16.12.1986 his serial number stood at 35.

18. The respondents disputing the claim of the applicant for certain reliefs on par with his junior, the respondent No.3, submit that the respondent No.3 was

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their being eligible on future dates. This was contended before the Hon'ble High Court. The Hon'ble High Court held in page 11 of the judgment that the candidates belonging to SC & ST who had been wrongly promoted were promoted on the footing that their promotion was on adhoc basis. In view of the circular dated 24.4.1978 other employees who were affected because of some erroneous promotions already given to the candidates belonging to SC & ST must be considered for promotion. The circular dated 24.4.1978 had clearly instructed to give promotions to all eligible candidates on the basis of the seniority-cum-suitability in terms of the said circular irrespective of the fact that some SC & ST employees had already been promoted erroneously.

15. This aspect of the direction was lost sight of by the respondents while considering the case of the applicant. When the respondent No.3 became eligible in the line of consideration as per the office order dated 16.12.1986 and stood at Sl.No.35, his earlier continuation on ad hoc basis could not have been taken into consideration. His continuation on ad hoc basis was contrary to the circular dated 24.4.1978. When that is so, any employee continuing on ad hoc basis against the rules cannot claim seniority. In spite of the fact that the respondent No.3 continued on ad hoc promotion on and from 16.12.1986 the respondents 1 and 2 regularised the posts held by the respondent No.3. The respondents 1 and 2 submit that the respondent No.3 was paid lower pay with Charge allowance of Rs.150/- per month though he was occupying the post of AAO on ad hoc basis. However, the respondents 1 and 2 promoted the respondent No.3 from 4.3.1987 even though he stood far below to the applicant, in the panel dated 16.12.1986.

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In the case of Suraj Bhan Sharma v. Union of India, reported in (1988)6 ATC 368, the Delhi Bench of this Tribunal defined the fortuitous promotion and observed in paras 4 and 5 of the order as follows :

"4. A fortuitous promotion is defined as one being officiating promotion as a local arrangement in leave or other short vacancies where it is administratively inconvenient to post the person eligible for such promotion. In the present case the vacancy was a regular vacancy due to the retirement of an officer and, therefore, cannot be termed as fortuitous. It is the case of the applicant as mentioned in para 3 of his plaint that he was the seniormost officer in the grade at that time and that has not been denied by the respondents in their written reply. It is also not the case of the respondents that some one senior to the applicant had actually been given the benefit of the NBR and on that account the applicant was not entitled to such a benefit.

5. It is quite clear that the junior of the applicant Shri Prem Narain was appointed to act in the next higher scale of Rs.700-900 on an ad hoc basis, but this was not a fortuitous promotion. The vacancy was regular due to retirement of an officer and when a senior person is not given a promotion as he was working outside and someone junior to him working in the regular line gets such a promotion even though ad hoc, he would be entitled to NBR benefit specially as the junior did not revert. As such it is held that the applicant would be entitled to next higher grade of Rs.700-900 with effect from 1-5-1977, the date from which Shri Prem Narain was given this benefit and not from 1-2-1978, the date his immediate junior Shri D.R.Chawla was promoted regularly. Whether the promotion is regular or officiating or ad hoc is not the relevant factor in equity in allowing NBR benefit. The relevant point is that the vacancy was regular and a junior got the benefit of higher pay and continued to get it. It is, therefore, directed that the respondents should refix his pay accordingly and give all the consequential benefits, including encashment of leave salary and pension."

19. In the case of P. Suseela and others v. Union of India and others, reported in (1988)8 ATC 213, the Cuttack Bench of this Tribunal considered the effect of fortuitous promotion and formed an opinion that the senior person who was ignored is entitled to stepping up of pay and that F.R.30(1)-next below rule, would be applicable. The Bench considered the Railway Board's

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continued on ad hoc basis and he was paid only the Charge allowance of Rs.150/-per month with his usual pay; that the respondent No.3 was given the post of AAO only from 4.3.1987. We feel strange that continuing the respondent No.3 in higher post on ad hoc basis was irregular. The effect of ad hoc appointment and its continuance for an indefinite period has been considered by the Madras Bench of this Tribunal in the case of N.Ramalingam v. Union of India and others, reported in (1993)24 ATC 336. In the concluding para, the Bench has been pleased to observe as follows :

" Ad hoc appointments can be made only in specific situations, on which there are general instructions of the Government. In this case, the recruitment rules were there, the quotas had been prescribed, and admittedly, eligible candidates were also available, but still the respondents had resorted to ad hoc appointment without any reason can only be termed as capricious or whimsical, and cannot be upheld, as it is bound to lead to unnecessary heart-burning, disputes, litigation and waste of time and money all round. In the present case, respondents 1 to 4 have not given any reason at all why they could not make a regular selection for the post of Supervisor(Technical) when all the requirements for such appointment existed. Thus the indefinite ad hoc appointment of respondent No.5, also, cannot be upheld, as there might be a possibility of the rights of the other eligible candidates having been ignored. We, therefore, consider that the authorities concerned must make regular appointment to the said post in which respondent 5 has been allowed to officiate in ad hoc capacity, and that this must be done very expeditiously, in order that no injustice is possibly caused to persons eligible for regular appointment. Even the present ad hoc incumbent will have the grievance that his appointment is not regular even though he is fully eligible for the same. If the authorities concerned do not make regular appointment in terms of the recruitment rules within a reasonable time, it would only imply that they are not interested in making regular appointment under the recruitment rules, in which case there would be no justification at all to continue the ad hoc appointment to the said post."

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Accidental; undersigned; adventitious. Resulting from unavoidable physical causes.

The meaning of 'fortuitous event' is as follows:

An event happening by chance of accident. That which happens by a cause which cannot be resisted. An unforeseen occurrence, not caused by either of the parties, nor such as they could prevent.

Apart from the dictionary meaning of 'fortuitous' the Hon'ble Supreme Court have been pleased to define the meaning of 'fortuitous'. It has been decided in the case of P.S.Mahal v. Union of India which has been relied upon by the Central Administrative Tribunal, Delhi Bench in the case of K.N.Mishra v. Union of India. In his judgment Hon'ble Chairman of the Central Administrative Tribunal has quoted the observations of Their Lordships of the Hon'ble Supreme Court in the case of P.S.Mahal which is at page 391. It runs thus :

If a vacancy arises on account of an incumbent going on leave or for training or on deputation for a short period, it would be a fortuitous or adventitious vacancy and the quota rule would not be attracted in case of such a vacancy.

So far as the case of K.N.Mishra is concerned the Delhi Bench was dealing with a case of fixation of inter se seniority between the promotees and the direct recruits and therefore, the question of quota rule or rota rule came up for consideration by the Bench. It has no bearing to the facts of the present case. But we confine ourselves to the observations of Their Lordships of the Hon'ble Supreme Court in regard to the definition of the word 'fortuitous'. Nothing was placed before us to indicate if the Railway Board has in its manual defined the word 'fortuitous'. Even if the Railway Board would have given its definition, the verdict of the Hon'ble Supreme Court is the last say in the matter and is bound to be relied upon. Admittedly, the vacancies which were filled up by respondents 6 and 7 were regular vacancies and they continued to occupy those posts for about 4½ years which by no stretch of imagination could be conceived to be 'fortuitous'. If it is not fortuitous then clarification issued by the Railway Board quoted above has full application to the facts of the present case and therefore the claim is bound to be allowed."

20. Thus in view of the principles enunciated in the

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letter No. PC-60/PP/1 dated 28.3.1961 and PC-80/PP/1-2 dated 25.5.1962 and observed that the senior who was ignored was eligible for stepping up of pay. In paras 5 and 6 the Tribunal observed as follows :

"5. Admittedly, the applicant is senior to respondents 6 and 7. Further admitted case is that respondents 6 and 7 were given the higher post and consequently higher scale of payt vide order dated 27-6-1979 to be given effect to from 17-6-1979. Admitetedly, respondents 6 and 7 continued to remain in the said posts as ad hoc appointees till 1-1-1984 as an interim arrangement and thereafter the applicant and respondents 6 and 7 were given regular promotion to the post of Inspector Grade I after necessary formalities according to Rules had been completed. Therefore, it can be safely concluded that respondents 6 and 7 being admittedly junior to the applicant continued to receive higher scale of pay in the next higher post from 17.6.1979 till 1.1.1984 and this continued for about 4½ years. In these circumstances, the case of the applicant is that he is entitled to step up in his pay as he is admittedly senior to respondents 6 and 7. Stepping up of the pay in such a situation of a particular officer is permissible according to the Circular of the Railway Board which was rightly and fairly not disputed at the Bar especially in view of the clarification given by the Railway Board in its letter No. PC-60/PP/1 dated 28.3.1961 and PC-80PP/1-2 dated 25.5.1962 contained in Annexure-C which runs thus :

Whether it would be permissible to step up the pay of a senior employee in terms of Board's letter of 35.5.1962, if the promotion of the junior employee is in a leave/short-term vacancy.

Clarification : The benefit of stepping up of the pay of the senior employee can be given except in a case where the junior gets a fortuitous promotion.

6. In view of the aforesaid clarification issued by the Board the sole point that needs determination in this case is as to whether the promotion of respondents 6 and 7 is fortuitous or not. In case it is held to be fortuitous the application is bound to be dismissed. In case, it is held that the appointment was not a short-term one and hence not fortuitous, the applicant is certainly entitled to the relief claimed by him. Therefore, this Bench is called upon to decide the definition of the word 'fortuitous'. We had an occasion to peruse the dictionary meaning of word 'fortuitous'. In Black's Law Dictionary, 5th Edition, the word, 'fortuitous' means,

Happening by chance or accident.  
Occurring unexpectedly, or without known cause.

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denied by the respondents. The applicant served the Railway Administration till his retirement on 1.12.1990. Between 4.3.1987 and 1.12.1990 he did not protest against the promotion of the respondent No.3. It is only after his retirement he submitted a representation and a legal notice during the year 1991. He filed this O.A. on 22.1.1993 long after his retirement. Thus we feel that there is latches on his part. He has not approached the proper judicial forum for his remedy at the appropriate time. Hence, we feel it proper to restrict the pecuniary relief to be granted to 22.1.1992, a year prior to filing of this O.A. Since the respondent No.3 was promoted on regular measure to the post of SAO on 4.3.1987, the pay of the applicant in the cadre of S.A.O. should be notionally fixed from 4.3.1987 onwards and the monetary benefits i.e. the difference of pay on such fixation of pay would be paid to the applicant only from the date when he shouldered the higher responsibilities.

24. On the basis of such refixation of his pay, in the post of S.A.O., his pension be redetermined and the pensionary benefits shall be paid to the applicant only from 22.1.1992 onwards i.e. from one year prior to the filing of this O.A. The applicant is not entitled to CVP and leave encashment on account of refixation of his pay as they are one-time payments.

We make it clear that the applicant is not entitled to any other reliefs claimed by him in this O.A.

25. Hence, we issue the following directions :-

(a) The pay of the applicant in the post of Senior Accounts Officer shall be notionally fixed from 4.3.1987, the date on which his junior- the respondent No.3, was promoted to that post, and monetary benefits shall be paid

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cases referred to above and in view of the fact that the respondent No.3 was admittedly junior to the applicant herein was continued in the post of AAO for nearly about 12 years and he was regularised in the said cadre on 4.3.1987 even though in the panel list dated 16.12.1986 the respondent No.3 stood far below to the applicant. The applicant is, in our opinion, is justified in demanding at least, the fixation of his pay/ on par with his junior with effect from 4.3.1987.

21. The applicant was promoted to the post of AAO on regular basis on 30.7.1984. On completion of three years i.e. on 1.8.1987 he was not given the promotion to the post of Senior Accounts Officer. Further the post held by him at Laxmipur was down-graded and he was allowed to continue in the down-graded post. As already observed, we feel that the applicant suffered mental agony and humiliation when his junior-the respondent No.3 continued on the promotional post without any kind of hindrances.

22. The applicant retired from service on 1.12.1990. At that time he was holding the post of Senior Accounts Officer. Before granting the reliefs claimed by the applicant, we feel/ proper to consider whether there is any kind of laches on his part.

Admittedly the respondent No.3 was continued on ad hoc basis in the promotional posts since 1974. The Select panel was published on 16.12.1986. The respondent No.3 was promoted on 3.3.1987 as SAO and was regularised on 12.1.1987. The applicant was promoted to the post of AAO on regular basis from 30.7.1984 vide Office order No.1/84/7 dated 16.7.1984. He was promoted as SAO on 19.1.1989 on regular basis.

23. The applicant was fully aware that his claim was

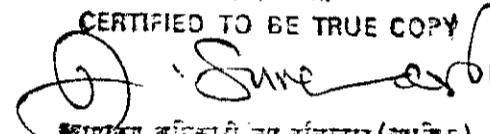
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to the applicant from the date of his shouldering the higher responsibilities.

(b) On the basis of such fixation of pay, the pension of the applicant be redetermined as per rules.

(c) The respondents shall refix the pay and pension of the applicant as per rules within four months from the date of receipt of the copy of this order.

26. With the aforesaid directions, the O.A. is disposed of. No order as to costs.

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 Central Administrative Tribunal  
 हైదరाबाद ब्यांचॉर्ट  
 HYDERABAD BENCH

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