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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH  
J A I P U R.

OA No.352/1994

Date of order: 6.3.1996

Harish Chandra Mishra : Applicant

Versus

Union of India & Ors. : Respondents

None present for the applicant

Mr.M. Rafiq, counsel for the respondents

CORAM:

HON'BLE SHRIRATTAN PRAKASH, MEMBER(JUDICIAL)

O R D E R

PER HON'BLE SHRI RATTAN PRAKASH, MEMBER(J):

Shri H.C.Mishra has filed this OA under  
'Section 19 of the Administrative Tribunals Act, 1986  
to claim the following reliefs:-

i) That the FPO dated 7.2.1994 or any other order having issued by the respondents to deny the benefit of Group 'B' service & pay fixation may be declared illegal and quashed;

ii) Respondents be directed that the applicant may be treated to have retired from Group 'B' post of Assistant Inspection Engineer in the pay scale of Rs.2000-3500(RP) at pay Rs.3500 + 100/- Stagnation pay as on 30.6.1993;

iii) Respondents be directed that the applicant's emolument for pension and DCEG may be calculated and paid on the basis of the pay as mentioned in para 8(ii) of the relief clause with all other benefits of Group 'B' post after superannuation.

2. Facts leading to this application and as relevant for the disposal of this application are

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that the applicant joined the Railway Service Engineering Department on or about 28.4.1955 and continued to work as Assistant FWI, FWI and as CPWI upto 1986. He was promoted as Assistant Engineer Class-II(Group 'B') Gazetted post vide order dated December, 1986 and posted at Ujjain w.e.f. 5.1.1987.

3. It is the case of the applicant that thereafter he was transferred in the same capacity as Assistant Engineer and posted from Ujjain to Neemuch vide order dated 17.5.1988. He proceeded on leave due to sickness from 12.4.1989 and continued on sick list for quite a long time due to eye trouble. He was declared fit on 13.4.1991. It is also the case of the applicant that he was advised to be continued on leave till such time an alternative gazetted post in non-technical category was found out. On return from sick leave he was transferred and posted as Assistant Inspection Engineer at Shamgarh vide order dated 18.6.1991 (Annex-A-2). He sought voluntary retirement w.e.f. 30.9.1992 because of ill health. However, it was not accepted and he continued to work on the post of Assistant Inspection Engineer Group 'B' in the pay scale of Rs.2000-3500. It is the grievance of the applicant that although he continued to work in Group 'B' Post of Assistant Inspection Engineer since December 1986 till his retirement as on 30.6.1993, but the respondent No.2 has shown the rank of the applicant as CPWI and his pay at Rs.3400/- per month in the PFO as at Annexure A-1. He having been denied the retiral benefits of Class-II gazetted

post has been constrained to file the aforesaid original application.

4. The respondents opposed the original application by filing a written reply to which the applicant has not filed any rejoinder. The stand of the respondents has been that the applicant was promoted on the post of Assistant Engineer (Class II) purely on adhoc basis as a stop-gap-arrangement pending finalisation of the regular panel of Group 'B' Posts of Assistant Engineers vide order dated 16.10.1985 (Annex.R-1). In the same position he was transferred to Ujjain vide Annex.A-2. The applicant having not passed the selection test meant for Group B Posts of the Assistant Engineer held in 1988-89 and 1990-91 and panel notified on 20.2.89 and 20.3.91, <sup>and</sup> the applicant being the junior-most Group 'B' adhoc Assistant Engineer belonging to <sup>g</sup> General community was reverted to Group 'C' post vide order dated 5.8.92 (Annexure R-3). Similarly, all Assistant Engineers working on adhoc basis were also reverted vide order dated 14.9.1992 (Annex.R-4). It has, therefore, been asserted by the respondents that the applicant retired on 30.6.1993 from the post in Group 'C' cadre of CPWI and that he was drawing a pay of Rs.3500/- w.e.f. 1.1.1991 which he was drawing prior to his reversion to Group 'C' post. It has also been averred by the respondents that after reversion the applicant instead of joining as CPWI in Ajmer Division remained under private doctors treatment till his date of superannuation vide order dated 30.9.93 (Annex.R-6). It has, therefore, been insisted that the application <sup>has</sup> no substance and should be rejected.

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5. In this application earlier Shri S.Kumar was the counsel for the applicant but on 31.1.1996 the learned counsel pleaded no instructions, hence notices were issued through registered A.D. to the applicant on 2.2.1996. Almost one month has elapsed but none has appeared on behalf of the applicant, hence arguments on merit were heard.

6. I have heard the learned counsel for the respondent and have gone through the record in great detail. At the outset it may be mentioned that the applicant has approached the Bombay Bench of the Central Administrative Tribunal in an earlier OA No.275/90 H.C.Mishra Vs. General Manager and others, wherein he has sought regular promotion to the post of Assistant Engineer. The aforesaid OA was disposed of vide order dated 1.4.1993 and having found that the applicant has not qualified in the selection test, his OA was dismissed.

7. In the present OA the applicant has neither challenged his order of reversion dated 16.10.86 (Annex.R-1) nor had been able to substantiate that after reversion he continued to hold the post of Assistant Inspection Engineer with the respondents. Without claiming quashing of the order of his reversion and having retired on superannuation on 30.6.1993 vide Annexure R-1 from the post of CPWI (Group 'C') post, his claim for fixation of his pay in the pay

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scale of Rs.2000-3500 (RP) till his date of superannuation is without any substance. Moreover when he has once approached a competent court to claim his regular promotion on the post of Assistant Engineer and having failed to succeed in it, he is not only estopped to claim the relief sought for in this OA based on his alleged status of Assistant Inspection Engineer in Group 'B' Post, <sup>but 2</sup> this OA is also barred by the principle of resjudicata. Moreover there is multiplicity of reliefs claimed in this OA which cannot be permitted to be granted.

8. For all the aforesaid reasons, I find that there is no substance in this OA, which is dismissed with no order as to costs.

*Rattan Prakash*  
6.3.96  
( RATTAN PRAKASH )  
MEMBER (J)