

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 17.12.1999

OA No.12/1996

Kanehiya Lal S/o late Shri Ram Lal, Selection Grade Driver, Sub Divisional Engineer SPC Telex, Office of the General Manager Telecom Distt. Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Communications, New Delhi.
2. The General Manager, Telecommunications, Telecom District, M.I.Road, Jaipur.

.. Respondents

Mr. Y.C.Joshi, counsel for the applicant

Mr.V.S.Gurjar, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

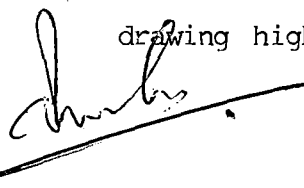
Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays that the respondents may be directed to step-up his pay under FR 22(I)(a)(1) w.e.f. 1.3.1973 at par with the basic pay and emoluments of Shri Bane Singh and that orders at Anns.A4, A5 and A6 be suitably modified accordingly. It has also been prayed that the respondents may be directed to pay an interest at the rate of 12% per annum on the differences between the amount paid to him and the amount due on refixation of his pay as prayed.

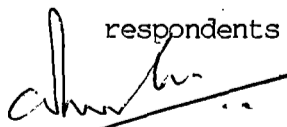
2. The case of the applicant, as briefly stated, is that his juniors i.e. Bane Singh and Bachan Singh (since retired) both Drivers like him are drawing higher pay than the applicant and the applicant is entitled to



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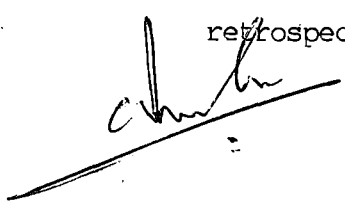
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stepping up of his pay on the date of his appointment (24.9.1970) with reckoning of his military service and from subsequent dates of confirmation, pay revision w.e.f. 1.1.73, the date of promotion under 20% selection grade w.e.f. 1.4.1982 and pay revision w.e.f. 1.1.1986. His total service period in the Army was 5 years 9 months and 6 days and in his Discharge Certificate (Ann.A8) he has been declared fit and his character has been assessed as exemplary. The respondents have not yet given him the benefit of military service in the civil post and not conceded his seniority over Bane Singh and Bachan Singh. It has been stated that the applicant was appointed as Driver on 24.9.1970 in the pay scale of Rs. 110-198 and Bane Singh was appointed on 17.4.1967 and Bachan Singh on 23.8.1967. The applicant was confirmed in the post of Lorry Driver w.e.f. 1.3.1973 as can be seen from Ann.A10 and Circle Gradation lists as on 9.5.1976, 1.1.1982 and 31.7.1994. On implementation of the recommendation of the Third Pay Commission, the scale was changed to Rs. 260-400 w.e.f. 1.1.1973 and he was absorbed in this scale against three posts of the Division made permanent and he was thus duly confirmed/absorbed. Shri Bane Singh was confirmed on 1.3.1974 while Shri Bachan Singh on 1.3.1978. Thus while these two stood senior to the applicant technically, they were in fact junior to the applicant by virtue of reckoning of past military service (Ann.A9) of more than 5 years. Shri Bane Singh was given promotion as selection grade Driver in the pay scale of Rs. 1200-1800 vide order dated 9.8.1991 (Ann.A12) while by the earlier order dated illegible (but appears to be 3.8.1988) the salary of Bane Singh on promotion to selection grade Driver was fixed as per FR 22-C w.e.f. 1.4.1983 at Rs. 370 per month. To save space, time and efforts, the learned counsel for the applicant has given in tabular form certain material dates like appointment, confirmation etc. in respect of the applicant, Bane Singh and Bachan Singh at page 8 of the OA and table of pay scales at different intervals at page 11 of the OA. The applicant has also stressed that as seen from these tables with the absorption of the applicant on 1.3.1978 in the scale of Rs. 260-400, the respondents has wrongly applied FR 23. The applicant has also referred to



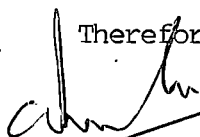
DOPT OM No. 22036/1/92-Estt.(D) dated 30.11.1993 (Ann.A14) regarding promotional scheme for Staff Car Drivers and stated that though these orders have come into effect w.e.f. 1.8.1993, the respondents have till date not implemented it. However, in this same berth, it is stated that for the purpose of present OA, the applicant "is not primarily agitated and has reproduced the broad spectrum of the scale for a panoramic view only if the Hon'ble Tribunal desired to pass appropriate directions to the respondents to ameliorate the lot of Staff Car Drivers in Telecom Department." At another place in the OA, it has been stated that "though the petitioner in the present OA does not have any grievance over their (meaning Shri Bane Singh and Bachan Singh) promotion and is rather happy for it. The only grievance of the petitioner has qua both Bane Singh and Bachan Singh who are junior to the petitioner in terms of (i) date of appointment - reckoning of past military service of 5 years 9 months and 6 days (ii) date of confirmation and (iii) date of promotion, relates to that the petitioner was illegally subjected to draw less pay than his juniors despite the senior right from the year April, 1967 (petitioner recruited on 24.9.1970) 1970, 1973, 1983, 1986 and till date he has not been given the benefit of stepping up of pay under FR 27." The applicant has also enclosed the Circle Seniority list of Drivers as on 9.5.1976 (Ann.A19), as on 1.1.92 (Ann.A20) and as on 30.1.94 (Ann.A 21) to prove that he was senior to Bane Singh and Bachan Singh (since retired) in view of his earlier confirmation. Other documents annexed with the OA have also been perused by us.

3. The respondents have filed a reply contesting the averments made by the applicant. They have also filed a preliminary objection in which they have pressed dismissal of the OA on account of it being hopelessly time barred and not disclosing any cause of action which accrue in favour of the applicant. It has been stated that the controversy being agitated pertains to the year 1973, more than 23 years ago, and the applicant did not raise any objection/grievance at the relevant time. He is now seeking retrospective revival of the cause of action of the alleged grievance and



on this count also the OA merits rejection straightway, The application is not maintainable in view of the specific provisions as will be evidenced from a combined reading of Section 20 and 21 of the Administrative Tribunals Act, 1985. They have also stated that the contents of the reply submitted to the Misc. Application for condonation of delay may also be treated as part and parcel of their reply. As regards the fact of the case, they have stated that the applicant was appointed on the post of Driver on 24.9.1970 in the pay scale of Rs. 110-180 and his pay was fixed at Rs. 110 per month. The military service of the applicant has been added in his civil service only for the pensionary benefits. The alleged junior namely Bane Singh and Bachan Singh, both Drivers, were drawing more pay than the applicant on 24.9.1970 and Bane Singh was drawing Rs. 122 p.m. on 24.9.1970. The applicant was confirmed in the cadre of Driver in Kota Division in the above mentioned pay scale w.e.f. 1.3.1973. Thereafter he was transferred to Jaipur Division and under para 38 of P&T Manual Vol.4, the applicant was again confirmed in Jaipur Division w.e.f. 1.3.1978 in the pay scale of Rs. 260-400. It has also been contended that as per rule i.e. Department of Telecommunications (for short, DOT) No.4/7/92 Estt.(Pay.I) dated 4.11.1993 "if a senior is appointed later than junior in the lower post itself whereby he is in receipt of lesser pay than his junior in such a case also senior cannot claim parity in the higher post though he may have been promoted earlier to the higher post" and thus the applicant is not entitled for stepping up of pay on merits also. The same circular provides that stepping up of pay of seniors in pay scale to that of juniors is generally considered if anomaly should be directly as a result of application of FR 22-C and, therefore, on this count also the applicant is not entitled for stepping up of pay specially the applicant was drawing less pay on the date of his appointment in the cadre of Driver than pay of Bane Singh and Bachan Singh. The case of the applicant cannot be equated with the above named two Drivers who were initially appointed in the higher cadre and were drawing more pay from time to time in the cadre of Driver.

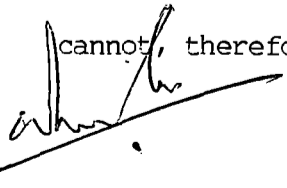
Therefore, the claim of stepping up of pay is not tenable under FR 22-C.



4. The applicant has also filed a rejoinder which has been kept on record and has been perused by us.

5. We have heard the learned counsel for the parties and have carefully gone through the records.

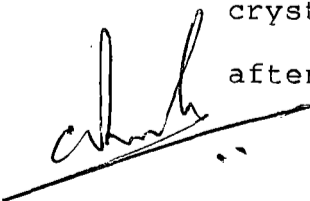
6. The issue that we have to get over with initially is whether the Original Application is barred by limitation as provided under Section 21 of the Administrative Tribunals Act. The learned counsel for the applicant contended that the OA is not hit by limitation and the applicant has filed the Misc. Application No.10/96 only as a matter of abandoned caution. The applicant came to know that his juniors were drawing more pay than him only on or about 13th December, 1994 when the Chief General Manager Telecommunications published the Circle Gradation list for the first time. He also asserted that the applicant is seeking relief for stepping up of his pay equal to that of his juniors Bane Singh and Bachan Singh since 1.3.1973, the date of his confirmation and it is a continuing grievance right up till date. In support of his contentions he has cited the case of Madras Port Trust Vs. Hymanshu International reported in AIR 1979 SC 1144; Tapas Ghosh Vs. Union of India reported in (1995) 29 ATC 474 and Jaswant Sugar Mills Ltd. Vs. Badri Prasad and Ors. reported in AIR 1961 SC 513. We find that these cases are distinguishable in view of the facts and circumstances involved in each of the cases. The learned counsel for the applicant also contended that the applicant is also entitled to stepping up of his pay on account of the principles of equal pay for equal work in support of his contention he cited Randhir Singh Vs. Union of India and Ors., AIR 1982 SC 879, Shyam Babu Verma and Ors. Vs. Union of India and Ors. (1994) 27 ATC 121 and P. Savita and Ors. Vs. Union of India and Ors., AIR 1985 SC 1124. We feel that the cases cited above are distinguishable because in the present case the applicant, Bane Singh and Shri Bachan Singh were all Drivers and because of their earlier date of appointment, Bane Singh and Bachan Singh got higher pay than the applicant. The applicant cannot, therefore, invoke, the doctrine of equal pay for equal work.



7. On the other hand, the respondents have mentioned that the principle of "delay deprives of remedy" is applicable with full force in the facts of the present case. The applicant has admittedly approached the Tribunal after a lapse of 23 years of the alleged cause of action. The learned counsel for the respondents has cited the case of B.S.Bajwa and Anr. Vs. State of Punjab and Ors. JT 1998 (1) SC 57. It is undisputed that on his discharge from the Army the applicant had entered in the civil service on 24.9.1970 whereas Bane Singh and Bachan Singh had done so in the same grade of Driver on 17.4.1967 and 23.8.1967. The applicant claims that he should be given benefit of his Army service from 17.6.1959 to 22.3.1965 i.e. a total of more than 5 years. The respondents on the other hand have stated that the benefit of Army service has been extended to the applicant for pensionary benefits and the applicant has not quoted any specific rule under which his past services in the Army should have also been counted in his civil service. The applicant's case for being senior to Bane Singh and Bachan Singh and consequently for stepping up of his pay to the level of these alleged juniors is based only on arguments of counting of past Army service which is not reckonable under any rule. Opening up a matter of seniority after 23 years is not permissible and any such plea is hopelessly hit by limitation. It has been contended that the law is well settled in this regard.

8. We have considered this question in the light of some recent judgments of Hon'ble the Supreme Court of India. In B.S.Bajwa and Anr. Vs. State of Punjab and Ors. (supra) the Apex Court has held as under:

"During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the right inter se had crystallised which ought not to have been re-opened after the lapse of such a long period....It is well

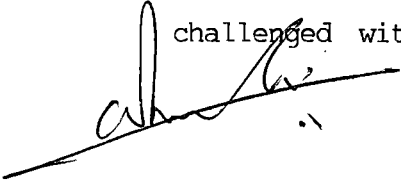


settled that in service matters the questions of seniority should not be re-opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable."

In Bhoop Singh Vs. Union of India and Ors. reported in AIR 1992 SC 1414, the Three Judge Bench of the Apex Court including Hon'ble Justice A.S.Anand as he was then. The Bench speaking through Hon'ble Justice J.S.Verma has, inter alia, held as under:

"Accepting the petitioner's contention that the petitioner is entitled to the relief of reinstatement like the others dismissed with him and then reinstated and the question of delay or laches does not arise would upset the entire service jurisprudence. It is expected of a government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. The impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant.....Secondly inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. Art.14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claim on that basis must itself be founded on equity and not be alien to that concept."

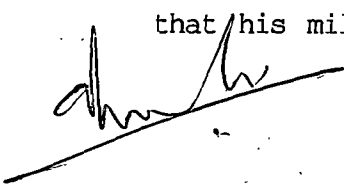
9. It is also well settled in law that the question of seniority cannot be raised after a unreasonable delay and that if the seniority is not challenged within one year of publication of the seniority list, the



Courts/Tribunals should not entertain any case. It is also a well settled principle of service jurisprudence that things settled for a long time should not be unsettled.

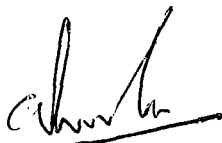
10. The entire case of the applicant being based on his claim of seniority over Bane Singh and Bachan Singh. We feel that the claim, being made after a long delay of 23 years is hopelessly barred by limitation.

11. Even on merits, the Application does not succeed because of the fact that the applicant joined in the civil department much later than Bane Singh and Bachan Singh and they were, therefore, getting higher pay than the applicant. There is nothing wrong in a senior getting higher pay than junior. The applicant was naturally getting less pay than Bane Singh and Bachan Singh and was also not shouldering higher duties and responsibilities than his seniors. He cannot, therefore, invoke the provisions of FR 27 or FR 22(I)(a)(1). FR 27 relates to cases where advance increments can be sanctioned whereas FR 22(I)(a)(1) (old FR 22-C) requires that a person must officiate in a post which should have a higher pay scale as also should carry responsibilities and duties of a higher order. As regards the contention of the applicant that he got confirmed earlier than Bane Singh and Bachan Singh, the respondents have clarified that the applicant was confirmed in the cadre of Driver of Kota Division in the pay scale of Rs. 110-180 w.e.f. 1.3.1973 but on his transfer to Jaipur Division under Para 38 of the P&T Manual, Vol.IV, fresh confirmation orders were issued confirming the applicant in Jaipur Division w.e.f. 1.3.1978. Thus even on merits, the applicant has not been able to substantiate his claim that he is entitled to have his pay stepped up to the level of Bane Singh and Bachan Singh under the provisions of FR 27 or FR 22 (I)(a)(1). In any case, the claim of the applicant was primarily based on counting of his military service of 5 years 9 months and 6 days but he has quoted no rule under which this can be done, whereas the respondents have clearly stated that his military service has been counted towards pension but cannot be

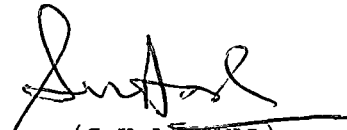


counted for giving him seniority. Any action to make the applicant senior to these two colleagues of his after almost 29 years without even having them as respondents and allow the applicant pay higher to them will "dislocate the administrative set up after it has been functioning on certain basis for years" (extract from the judgment of the Apex Court in Bhoop Singh case (supra)).

12. In view of above discussion, we have come to a considered view that this Original Application is hopelessly time barred and is accordingly dismissed with no order as to costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member