

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 18/2/2001

OA No.46/1995

Sri Narain Saxena s/o late Shri Kunj Bihari Lal Saxena r/o 7-Gha-5, Jawahar Nagar, Jaipur- retired Audit Officer, Accountant General (Audit), Rajasthan, Jaipur.

..Applicant

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi.
2. The Comptroller and Auditor General of India, 10, Bahadur Shah Jafar Marg, Indraprastha Head Post Office, New Delhi.
3. The Accountant General (Audit), Rajasthan, Jaipur.
4. Shri H.P.Saxena r/o C-32, Tilak Nagar, Pratap Marg, Jaipur.

.. Respondents

Mr. S.K.Jain, counsel for the applicant

Mr. R.L.Agarwal, proxy counsel to Mr. Bhanwar Bagri, counsel for the respondents

CORAM:

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

Hon'ble Mr. H.O.Gupta, Member (Administrative)

ORDER

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

The applicant is aggrieved of the order dated 27.9.94 (Ann.A1) whereby his pay has been fixed without



giving him benefit of promotion and seniority with reference to his juniors. In relief, he has prayed for appropriate directions to award him seniority over one Shri U.Ramchandra Rao and thereafter to promote him as Assistant Accounts Officer w.e.f. 8.8.1955 or from the date his juniors were given promotion and also for further promotions upto the Junior Administrative Grade w.e.f. the date Shri U.Ramchandra Rao or junior to the applicant was granted promotion and based on such promotions, he has prayed for proper fixation of pay and for grant of arrears of his salary. He has also prayed for consequential revised pensionary benefits from the date of retirement i.e. 1.8.85 and thereafter. He has further prayed for grant of 18 % interest on all the arrears.

2. The main contention of the applicant is that the respondents have issued the impugned order without giving him the benefit of the order of this Tribunal in TA No.2449/86 decided on 17.5.94.

3. The respondents have contested this application. The applicant has also filed rejoinder in support of his contentions. We have heard the learned counsel for the parties and perused the record.

3.1 In the order dated 17.5.94, passed in TA No.2449/86 by this Bench, this Tribunal has held as under:-

"5. For the reasons mentioned above, we are of the view that the respondents have not taken a correct approach in the matter and we set aside



the order Annexure A-1 dated 23.4.85 and direct the respondents to consider the case of the applicant in the light of Annexure-II, the letter No.762-States/48-49-Pt.II dated 14.11.51 afresh considering him as permanent UDC discharging the duties of Superintendent and considering him that he was employed as Superintendent, may be on officiating or acting basis, and the benefit of the said order dated 14.11.51 may be extended to the applicant in accordance with the rules. The applicant has retired, as such, the respondents are directed to consider the matter afresh within a period of three months."

3.2 In Para 4 of the said order, the Tribunal has also observed that service record read with letter dated 11.8.51 shows that the applicant was employed as Superintendent. It is also seen from the said order that on creation of Rajasthan State as a Part-B State, the applicant was absorbed in the office of Accountant General.

3.3 The learned counsel for the applicant during the course of argument submitted that the applicant was absorbed as Superintendent in the office of Accountant General. He was being employed as Superintendent at the time of absorption as held by the Tribunal. Therefore, seniority and other benefits are required to be granted from the date he was absorbed with the Accountant General. He further submitted that the respondents have only

revised his grade and given him benefit of pay fixation in the post of Superintendent, but he was neither given seniority of the post of Superintendent from the date of absorption nor any subsequent promotions were given to him based on the revised seniority. He further submitted that once an employee has been absorbed in a particular organisation, he has to be absorbed permanently and his seniority has to be counted from the date of such absorption. Many juniors to the applicant were promoted to the grade of Assistant Accounts Officer and thereafter they were further promoted upto the pay scale of Junior Administrative Grade (J.A.G.) but the applicant has been denied such benefits. According to the learned counsel for the applicant, the interpretation of the order of the Tribunal as made by the respondents is not correct since he has been denied the benefits of seniority and promotions for which he was entitled to as per the Tribunal's judgment.

3.4 The contention of the respondents is that the persons alleged to be junior to the applicant were appointed as Superintendents after training on induction and after passing SAS examination. Unless this examination is passed, a person is not eligible to the post of Superintendent. The powers to waive this examination is with the Comptroller and Auditor General in special cases. The applicant was not qualified S.A.S Superintendent. The applicant was deployed to perform the duties of Superintendent while holding the post of permanent U.D.C. He was allowed a special pay of Rs. 30/- per month for performing the functions of Superintendent. He was



absorbed as permanent selection grade U.D.C. after individual appraisal. He was deployed as officiating Superintendent to cope up the acute shortage of Superintendents in the department. He has now been granted the pay scale of Superintendent from the date of absorption and also paid arrears amounting to Rs. 25611/- on refixation in compliance with the order of the Tribunal. The learned counsel who appeared on behalf of the respondents also submitted that the applicant's case cannot be compared with those who were appointed as Superintendents after having passed the S.A.S. examination. He further submitted that the respondents have correctly interpreted the order of this Tribunal and the applicant's pay has been fixed in the pay scale of Superintendent from the date he was absorbed. He further submitted that the applicant cannot claim seniority and promotion, since there was not direction of the Tribunal in this regard. Moreso, the applicant cannot agitate the promotions made decades back, since he retired in 1985. He also submitted that in the seniority list of Superintendents as published, the name of the applicant did not appear. His name appeared only in the seniority list of UDCs and the applicant never objected to this at that point of time.

3.5 We have given considerable thought to the contention of the rival parties. The order of the Tribunal dated 17.4.94 passed in TA No. 2449/86 has become final as it is admitted by the learned counsel for the parties that no appeal was filed against the said order. Therefore, the only question to be determined in this OA is whether the

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respondents have correctly interpreted the order dated 17.4.94 of this Tribunal and given him the required benefits. The applicant superannuated on 31.7.1985. The applicant was discharging the duties of Superintendent w.e.f. 1.4.50 with effect from the date he was absorbed. This Tribunal has also held that he was employed as Superintendent on absorption. It was also held that the benefit of order dated 14.11.51 may be extended to the applicant in accordance with the rules. The respondents have paid him arrears of pay and allowances of the post of Superintendent. Since the applicant on absorption was employed as Superintendent and he has been paid pay and allowances of the Superintendent from the date of in the respondents department and absorption in a particular grade can only be against a regular/permanent post, the applicant cannot be denied the consequential benefit such as seniority, promotion etc. The requirement on absorption, which is of permanent nature, with regard to passing of S.A.S. examination, would be deemed to have been relaxed under the powers vested with C.A.G. As seen from records, the respondents has shortage in Superintendents cadre. The officiating appointments at that time would be a regular appointment. Since the applicant has not worked in the higher posts from the date his juniors were so promoted, the claim of arrears of pay and allowances of the applicant till he superannuated is not justified.

4.0 Accordingly, this OA is partly allowed. The applicant shall be deemed to have been absorbed in the respondents department as Superintendent. The respondents



are directed to consider the applicant for promotion against higher post from the date his juniors were so promoted by conducting D.P.C. as may be necessary, and, if found fit, in accordance with rules prevailing, he shall be granted notional promotions from the same date in the grades to which his juniors were so granted before he superannuated. He shall not be entitled for arrears of pay and allowances till he is superannuated. The amount of Rs. 25611/- already paid to him as arrears of pay and allowances will not be recovered from him. Based on his revised pay and allowances on notional fixation of pay on promotion as per this order, his retiral benefits and his revised pension shall be worked out which shall paid to him within six months from the date of this order. Keeping in view the facts and circumstances of this case, he shall not be entitled for any interest on the arrears of retiral benefits as prayed by him. However, in case the arrears of retiral benefit, if any, are not paid to the applicant within six months from today, he shall be paid interest at the rate of 9.5 % per annum for the period beyond six months till such benefits are paid.

5.0 No order as to costs.

6.0 The applicant is about 75 years old and the grievance of the applicant is 5 decades old. We hope and believe that this long litigation will come to an end with this order.

(H.O.GUPTA)

Member (Administrative)


(S.K.AGARWAL)

Member (Judicial)