

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 83/99
T.A. No.

200

DATE OF DECISION

V.C.

27/8

Smt. Shanti Devi and others Petitioner
legal heirs of late Shri Tulsi Ram Sharma

None present for the applicants. Advocate for the Petitioner(s)
Versus

UOI and two others. Respondent

Mr. Bhanwar Bagari. Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.
The Hon'ble Mr. A.K. Bhandari, Administrative Member.

The Hon'ble Mr.

(A.K. Bhandari)
Administrative Member.

(G.L.Gupta)
Vice Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR

O.A. No. 83/59

Date of decision: 22.8.03

1. Smt. Shanti Devi, widow of late Tulsi Ram.
2. Smt. Vijay Laxmi, D/o late Tulsi Ram
3. Smt. Vartika Sharma, D/o late Tulsi Ram
4. Smt. Usha Sharma D/o late Tulsi Ram.
5. Smt. Manju Sharma, D/o late Tulsi Ram.
6. Anil Kumar Sharma, S/o late Tulsi Ram.

legal heirs of late Shri Tulsi Ram, retired Divisional Accounts Officer, O/o A.G. (Accounts and Entitlement) Raj, JAIPUR.

: Applicants.

versus.

1. Union of India through the Secretary to the Government, Ministry of Finance, Central Secretariat, New Delhi.
2. Comptroller and Auditor General of India, 10, Bahadur Shah Jafar Marg, New Delhi.
3. Accountant General(Accounts & Entitlement) Rajasthan, Jaipur.

: Respondents.

None present for the applicants.

Ms. Shalini Sheron, proxy counsel for Mr. Bhanwar Bagari : Counsel for the Respondents.

CORAM.

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.



O R D E R

Per Mr. Justice G.L.Gupta:

This application was originally filed by Shri Tulsi Ram Sharma, on 10.02.99. During the pendency of the O.A Shri Tulsi Ram Sharma died and his legal heirs were brought on record. The reliefs prayed in this O.A are as follows:

- (a) the respondents be directed to fix the applicant in the old selection Grade of Rs.550-800 with effect from any date not later than December 1985, after his Senior Shri Raj Deo Garg was promoted in the old Selection Grade of Rs.550-800 after determining the quota of Selection Grade posts giving effect of Leave Reserve Posts as per provision of Service Rules cited in para (viii, ix, x and xi)of this application.
- (b) the respondents be further directed to promote the applicant in the higher Selection grade of Rs.2000-3200 meant for Divisional Accountants (Group 'B' Gazetted) permitting the procedural benefit given to other Divisional Accountants vide UU Note No. 5 (74) E.III/87 dated 12.01.90 in the Central Government. In any case not later than completing the 3 years qualifying service in the scale below vide item 5 of the guide lines issued for the grant of this scale vide No. F.5(74) E.III/87 dated 15.12.88 i.e. by 01.01.89 in any case.
- (c) the orders issued by the Accountant General (A&E) Rajasthan notifying the fixation in the scales of Rs.1640-2900 with effect from 01.01.86 and that in the scales of Rs.2000-3200 w.e.f. from 01.01.90 be amended and revised accordingly after permitting the relief(s) (as sought for in (a) and (b) above.
- (d) any other relief which this Hon'ble Tribunal in the facts and circumstances of the present case, may deem fit and proper to pass, may kindly be also granted in favour of the applicant.

2. It is averred that late Shri T.R. Sharma was initially appointed as U.D.C.on 19.09.62. He appeared in the competitive examination for the post of Divisional Accountant and was declared successful. He was appointed on the said post and was confirmed on 01.03.76 in the scale of pay of Rs.425-750. He retired from service on 31.12.96.

2.1 The grievance of late Shri T.R. Sharma was that he was entitled



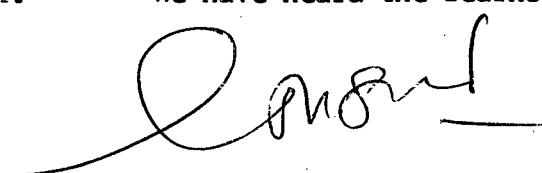
to the selection grade while working on the post of Divisional Accountant from any date prior to December 1985, but the same was not allowed to him. Therefore he filed O.A. No. 1052/92, which was decided on 22.09.93, giving benefit of the selection grade to him in the scale of pay of Rs.1640-2900 with effect from 01.01.86, with all consequential benefits.

2.2 According to applicant he was entitled to the scale of pay of Rs.550-800 from an earlier date, because Shri Raj Deo Garg, was the last person in the seniority list who was granted the benefit of selection grade with effect from 09.08.85. His further case is that he was entitled to the higher scale of pay of Rs.2000-3200 on completion of 3 years qualifying service with effect from 01.01.89, but the same has been given to him with effect from 01.01.90, for which he filed Contempt Petition No. 26/97, but the same was dismissed on 05.02.98, with the observations that it was the subject matter of interpretation and arguments.

2.3 It was prayed that the applicant may be promoted to the scale of Rs.2000-3200, meant for Divisional Accountants Group 'B' gazetted with effect from 01.01.89.

3. In the counter, the respondents have resisted the claim of late Shri T.R. Sharma on various grounds including that of limitation and resjudicata. It is denied that any vacancy was available on the post of Divisional Accountant prior to 01.01.86. It is stated that for promotion to the Selection Grade Divisional Accountant in the scale of Rs.2000-3200, 3 years experience on the post of Divisional Accountant in scale Rs.1640-2900 was required and as late Shri T.R. Sharma was not eligible to get the Selection Grade Divisional Accountant post on 01.10.88, he could not be promoted in the year 1989 and he was given promotion with effect from 01.01.90.

4. We have heard the learned counsel for the respondents and perused



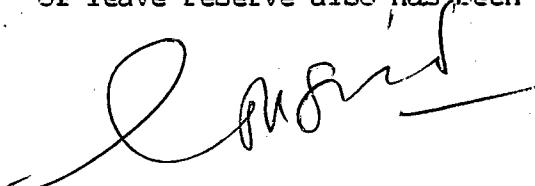
the documents placed on record.

5. Ms. Shalini Sheron, learned counsel for the respondents contending that the O.A should be dismissed as barred by the principle of resjudicata, pointed out that in the earlier O.A. late Shri T.R. Sharma, had claimed identical reliefs and this Tribunal on adjudication did not agree with the submissions of late Shri T.R. Sharma, that he was entitled to the benefit of higher scale of pay of Rs.550-800 from a date prior to 31.12.85. She also pointed out that the applicant could not be granted the higher selection grade of Rs.2000-3200 as on 01.01.89, he was not eligible.

6. We have given the matter our thoughtful consideration. In the earlier O.A filed by late Shri T.R. Sharma, the reliefs claimed were as follows:

- (a) the respondents be directed to fix the applicant in the old selection grade of Rs.550-800 with effect from any date not later than December 31, 1985, after his senior Shri Raj Deo Garg was promoted in the old selection grade of Rs.550-800.
- (b) the respondents be further directed to fix the applicant in the selection grade of Rs.1640-2900 provided under the Revised Pay scales with effect from the January 1, 1986.
- (c) that the respondents be further directed to promote the applicant in the higher selection grade of Rs.2000-3200 meant for Divisional Accountant (Group B gazetted) with effect from January 1, 1989.
- (d) that the order dated 04.01.87 of respondent No. 5 be quashed and set aside to the extent it fixed the pay of the applicant in the scale of Rs.1400-40-1600-50-2300-EB-60-2600 instead of Rs.1640-60-2600-EB-75-2900 and the said order be ordered to be amended fixing the applicant in the above grade of Rs.1640-2900 with effect from 01.01.86.

6.1 It is manifest that the relief claimed at clause (a) in the instant O.A was the relief claimed at clause (a) of the earlier O.A. Similarly the reliefs claimed at clauses (c) and (b) of the instant O.A were the reliefs claimed at clause (b) and (c) of the earlier O.A. It may be that new ground, that the quota of selection grade posts should consist of leave reserve also has been added to clause (a) in the instant O.A. But



on this new ground this O.A cannot be entertained. Late Shri T.R. Sharma could have based his claim for the grant of Rs.550-800 from any date not later than 31.12.85 on this ground also. If it was not done by him it will be covered by the principle of constructive resjudicata.

6.2 Apart from that, it is evident from the reply filed by the respondents that there was no leave reserve post available during the relevant period and only one selection grade post was available as on 31.12.85, which was kept vacant for Shri R.C. Dadhich, whose confidential report for a particular year was not available.

6.3 It is also seen that in the seniority list the position of late Shri T.R. Sharma was at Sl. No. 51, whereas the last person who was granted the selection grade prior to 01.01.86 was Shri R.L. Garg at Sl. No. 44, from August 1985. It is not the case for late Shri T.R. Sharma that any person junior to him was given the benefit of selection grade from an earlier date. Thus no case for the grant of scale of pay of Rs.550-800 to late Shri T.R. Sharma, prior to 01.01.86, is made out.

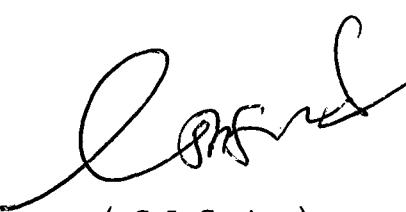
6.4 The same is true for the next grade. It is seen that late Shri T.R. Sharma was granted the scale with effect from 01.01.90. He could not be given the benefit of that scale from 01.01.89, since by that date he had not completed 3 years service for the grant of Rs.1640-2900

7. Having considered the entire material on record, we do not find any merit in the instant O.A and dismiss it.

8. No order as to costs.

~~XALJSIV~~
(A.K. Bhandari)

Administrative Member.


(G.L.Gupta)

Vice Chairman.