

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR :

original Application No. 269 of 2000

Jabalpur, this the **6th** day of **August** 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Suresh Kumar D.
S/o Shri M.A. Devadasan
Senior Administrative Officer
All India Radio,
Bhopal

APPLICANT

(By Advocate - Shri A. Adhikari)

VERSUS

The Director General
All India Radio,
Akashvani Bhavan
New Delhi - 110001

2. Union of India through
Secretary,
Ministry of Information
and Broadcasting
New Delhi.
3. The Station Director
All India Radio,
Bhopal.

RESPONDENTS

(By Advocate - Shri S.A. Dharmadhikari)

O R D E R

By J.K. Kaushik, Judicial Member -

Shri Suresh Kumar D has filed this original Application under Section 19 of the Administrative Tribunals Act and has prayed for the following reliefs.

"(a) This Hon'ble Tribunal may graciously be pleased to direct the Respondent to promote the applicant as Administrative Officer and Senior Administrative Officer from 6.3.1989 and 24.5.1994 respectively i.e. the dates on which his junior Shri C.L. Thakur was promoted as directed by this Tribunal in its order dated 13.5.1999.

(b) To direct the respondent to make payment of difference of pay and allowances between what he had drawn and what he was entitled to for the period the applicant had actually discharged the duties and responsibilities of the higher post of Administrative Officer i.e. 27.3.92 to 18.11.99.



(c) To allow this application with costs and all the consequential benefits with interest.

(d) To pass such other suitable order(s) as may be deemed appropriate under the facts and circumstances of the case to grant relief to the applicant."

2. The material facts leading to filing of this original Application are that the applicant was entitled to get his promotion to the post of Administrative Officer from 21/07/1989 from which his next junior Shri C.L. Thakur was promoted. He approached this Bench of the Tribunal and filed Original Application No. 562/1990 which came to be allowed vide judgment dated 13/05/1999 and it was directed that the case of the applicant should be considered by the review D.P.C. giving due relaxation from the date he was found suitable for promotion. In pursuance to that judgment of the Tribunal the applicant was ordered to be promoted to the post of Administrative Officer with effect from 21/07/1989 and Senior Administrative Officer with effect from 29/08/1994. He was promoted on these posts on notional basis. It has also been averred that Shri Thakur assumed the charge on the post of Senior Administrative Officer on 29/08/1994, but he was in fact promoted to this post on 24/05/1994 and his late joining cannot effect his promotion from due date. The applicant submitted a representation for change of the date of retrospective promotion as Administrative Officer and Senior Administrative Officer, but the request was turned down.

3. The second grievance of the applicant is that he has not been paid the difference of pay and allowance for the period he has actually worked as Administrative Officer.

 The applicant was physically promoted to the post of

Administrative Officer with effect from 26/03/1992 and he has performed his duties on the said post upto 12/11/1999 before he assumed the charge of the post of Senior Administrative Officer on 19/11/1999. He submitted representations in the matter to make payment of difference of pay and allowance drawn by him and for which he would have been entitled, since he actually worked on the said post. But the same was also turned down on the plea that as per CAT's direction he would not be entitled for arrears of pay for any period.

4. The original Application has been filed on multiple grounds and we shall deal the grounds which are pressed by the learned counsel for the applicant as indicated in the later part of this judgment. The applicant has also filed in the shape of additional document a statement showing the difference of pay which he actually got on post of the Administrative Officer and one he ought to have got after revised fixation.

5. A counter reply has been filed on behalf of the applicant and it has been submitted that the judgment which was passed in the earlier OA No. 562/1990, the complete relief has been granted to him. He has been allowed **notional** fixation of his pay right from the date his next junior was promoted and the arrears of pay has not been paid to him as per the direction of this very Bench of the Tribunal and therefore the original Application is hit by the doctrine of res-judicata and the same deserves to be dismissed on this count alone. As regards the facts of this case it is averred that the applicant

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has been given his seniority, pay and allowances as per the aforesaid judgment of this Tribunal. Since he has been already granted the due promotion and seniority as well as fixation of pay notionally, he does not deserve any relief whatsoever and the Original Application deserves to be dismissed with costs.

6. We have heard the learned counsel for the applicant alongwith the applicant in person (Shri Suresh Kumar D.) as well as the learned counsel for the respondents at a considerable length and have given our anxious consideration and thought to the submissions, pleadings and the records of this case.

7. The learned counsel for the applicant as ~~strived~~ hard to ~~persuade~~ us that the applicant is entitled to both the reliefs. As far as relief No. 1 is concerned it has been submitted that his next junior Shri C.L. Thakur was ~~infact~~ ordered to be promoted from 06/03/1989 but there was delay in his joining and he joined only on 29/08/1989. This delay of his joining should not affect the applicant and had he joined in time the applicant would have got the promotion from that date. Thus the date of promotion of the applicant to the post of Administrative Officer ~~should be~~ made effective from 06/03/1989 instead of 29/08/1989. He had also submitted that the applicant should not suffer for the fault of somebody else.

8. Now advertting to the second prayer, the learned counsel for the applicant has submitted that the applicant has physically worked on the post of Administrative Officer

from 26/03/1992 to 18/11/1999 but he has not been paid the due salary for this post. Despite the fact that he has physically rendered service and shouldered higher responsibilities required for the said post, the applicant is fully entitled the actual arrears of dues of this post. He has also submitted that there is no question of any res-judicata in respect of either of the reliefs since in the first case the question of date of promotion was not **in issue** or determined and as far as the next relief the same was not the subject matter of the earlier OA and has arisen only since his earlier OA was allowed and the question of payment of dues of pay was consequent to the revised pay fixation.

9. On the other hand the learned counsel for the respondents has **strenuously** opposed both the claims of the applicant and has reiterated the facts and grounds of defence mentioned in the reply. It has been submitted that the earlier order has been fully complied with and the applicant has been given his due benefits at par with his next junior and the original Application is hit by doctrine of res-judicata as well as no cause of action survives to him.

10. We have considered the rival contentions and submissions made on behalf of the parties. As far as the first relief is concerned, we are not impressed with the submissions of the learned counsel for the applicant that as Administrative Officer date of promotion of the applicant should be given effect to from 06/03/1989 instead of 29/08/1989, for the simple reason that as per the ^{next} below rule a senior gets

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his seniority over the next junior and all other benefits at par with his next junior. The same has been granted to the applicant and thus this relief cannot be granted to the applicant.

11. As regards the second relief we have to struggle very hard so as to reach to the crux of the matter and heart of the actual controversy. We frankly confess that with the conjoint reading of the judgment of this Bench of the Tribunal and its implementation, action and pleadings we were dismayed. But after consistent hammering by the learned counsel for the applicant and also the applicant himself we tried to carry out an incisive analysis in the matter and finally we could find and sense the actual controversy. The actual controversy as regards the applicant's relief is that the applicant performed the duty physically on the post of Administrative Officer with effect from 26/03/1992 to 18/11/1999 and he was given fixation in the normal course at Rs. 2,000/- in the scale of Rs. 2,000-3,200/- and consequential increments thereon. He in fact physically worked on the post and shouldered the responsibilities of the said post and entailing duties of higher importance. The case of the applicant is that had the applicant been promoted from due date i.e. from 21/07/1989 his pay on the post of Administrative Officer as on 26/03/1992 would have been 2,120/- but he has got the actual payment on the basis of Rs. 2,000/-, since he was deprived of the due fixation at the relevant time and thus difference of two increment was continued till Annexure A/2 had been passed i.e. on 12/11/1999. Thus for all these period he got less payment.

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12. This claim he could not have made at earlier date, since his fate regarding the very promotion from back date was in ~~doldrums~~. In this view of the matter the judgment of this Bench of the Tribunal in earlier case that he should be given notional fixation would not come in the way of the applicant, since this very issue was not there in that case. Looking the controversy from another angle once the applicant's position is that the applicant has physically carried out his duties on the promotional post i.e. Administrative Officer from 26/03/1992 to 18/11/1999 there is no reason to deny him the actual pay. The principle of no work no pay as laid down in FR-27(A) apply only when the person does not shoulder the duties and responsibilities of the higher post. Thus the applicant cannot be denied the due arrears on the post and for the period during which he actually shouldered the higher responsibilities. Thus in our considered opinion the second prayer made in the original Application is well founded and the applicant cannot be denied of his due difference of the salary in the garb of judgment passed in the earlier CA, since the same could govern the controversy which was involved in the particular case and not the controversy foreign to the case. Thus the contention of the respondents that he is not entitled for any difference of arrears on account of working on the higher post stands repelled and cannot be concurred by us.

13. In the premises, the original Application deserves to be partly allowed. The respondents are directed to make payment of difference of pay and allowances between what

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he has drawn and what he was entitled as per the revised pay fixation vide letter dated 13th December 1999 (Annexure A/10) on the post of Administrative Officer during the period from 26/03/1992 to 18/11/1999 within a period of 3 months from the date of receipt of copy of this order. Other reliefs are declined. However there shall be no order as to costs. O.A. stands disposed of accordingly.

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member

Dr. Kaushik
(J.K. Kaushik)
Judicial Member

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(1) *A. Adhikari - DOL*
(2) *S. D. Bharmalikar - SDP*
(3) *Shri. D. D. Joshi - DDP*
(4) *Shri. D. D. Joshi - DDP*

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