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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.89 of 1999

Jabalpur, this the 6th day of January, 2003.

Hon'ble Mr. Justice N.N. Singh- Vice Chairman
Hon'ble Mr. R.K. Upadhyaya- Member (Admnv.)

Keshav Prasad,
Resident of "Udenia Sadan",
Shivaji Nagar Colony, Amkho
Pahadia, Gwalior (M.P.)

-APPLICANT

(Applicant-in-person)

versus

1. Union of India through
Comptroller and Auditor General
of India, 10, Bahadur Shah Zafar
Marg, New Delhi-110002.

2. Accountant General (Audit)-I,
Madhya Pradesh, Moti Mahal,
Gwalior-474007 (M.P.)

-RESPONDENTS

(By Advocate- Shri M.Rao)

ORDER

By R.K. Upadhyaya, Member (Admnv.):

The applicant is aggrieved by decision of the respondents on his representation dated 21.9.1997 for stepping-up of his pay with effect from 1.1.1987 as communicated to him vide letter dated 5.3.1998 (Annexure A/9) of respondent No.2.

2. It is claimed by the applicant that after qualifying the departmental examination, he was promoted as Section Officer on 25.6.1981 directly from the post of Auditor, while his junior Shri Jagdish Chandra was first promoted as Senior Auditor (an intermediary post) from 1.11.1986. The intermediary post of Senior Auditor was introduced with effect from 1.3.1984. It is claimed by

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the applicant that it was decided by respondent No.1 by circular dated 20.8.1985 (Annexure A/1) to remove the anomaly in the pay of senior Section Officers ~~arise~~ due to getting the benefit of fixation of pay under FR 22-C (Now FR 22 (I) (A) (1) twice by junior Section Officer. The claim of the applicant is that accordingly he moved a representation on 23.4.1996 (Annexure A/2) for permission to exercise fresh option for getting pay fixed on promotion as Assistant Audit Officer w.e.f. 6.10.1987 under FR 22-C. The respondent No.2 by letter dated 10.9.1996 (Annexure A/3) informed the applicant that the pay fixation anomaly was not agreed by the Headquarters office. Therefore, his claim was rejected. A fresh representation dated 24.12.96 (Annexure A/4) is stated to have been made to respondent No.2. This representation was again rejected as communicated by respondent No.2 vide letter dated 11.4.1997 (Annexure A/5). The claim of the applicant is that he made another representation dated 21.9.1997 (Annexure A/8) to respondent No.1 for re-consideration of his representation. By impugned letter dated 5.3.1998 (Annexure A/9), the applicant has been informed that after consideration of his representation, his application has been rejected by the Headquarters office. Thereafter, the applicant filed a fresh representation dated 18.1.1999 (Annexure A/10), which is stated to have not been rejected so far, and the applicant has filed application before this Tribunal.

2.1 The applicant places heavy reliance on order of this Tribunal on OA No.653/1998 decided on 21.12.2001 in the case of Pramod Kumar Shrivastava Vs. Union of India & another, where this Tribunal partly allowed the O.A."..... with a direction to the respondents to re-fix the pay of

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the applicant with respect to his junior including the fixation as per the date of the next increment of his junior and grant him the actual benefits of the arrears of pay and allowances due based on revised pay fixation with effect from the date of six months after he made an application to the respondents i.e. with effect from 19.7.1993 onwards."

3. The learned counsel for the respondents placed reliance on the written reply, in which it has been stated that the first representation dated 23.4.1996 was made by the applicant, which was rejected by order dated 10.9.1996. Relying on the decision of P.K.Ramachandran Vs. State of Kerala, JT 1998 (7) SC 21, it is stated that law of limitation may harshly affect a particular party, but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. It was, therefore, urged by the learned counsel of the respondents that the claim relates to a period from 1.1.1987^{and} the representation was filed in March, 1996. The claim was highly belated.

3.1 The respondents have further stated that the case of the applicant was not similar to his junior Shri Jagdish Chandra. Referring to the CAG's circular dated 20.8.1985 read with circular dated 26.7.1985 (Annexure A/1) and (Annexure A/11) respectively, it is stated that the requirement of anomaly is that the junior persons should not have drawn more pay than the senior before introduction of the intermediary post. In the instant case, since the junior official has drawn more pay in the lower cadre

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from 1.1.1973 to 27.5.1977 due to option exercised by him for revised pay-scale of Rs.330-560/- from 1.1.1973 whereas the applicant opted revised scale of pay with effect from 28.5.1977. As such, the applicant is not entitled to set right his pay anomalously. Reliance is placed on the Government of India UO No.A-32022/7/94 dated 22.6.1994 (Annexure R/1), where it has been stated that if the options are different, gain or loss is linked to his option exercised, and an employee with one option has no right to compare himself with an employee, who has exercised the other option. Accordingly, disparity in pay, if any, because of different options, cannot be taken as anomalous.

3.2 At the time of hearing, the learned counsel of the respondents further stated that this is not a case where the applicant has been receiving lower amount of pay and allowances on account of wrong pay fixation, which amounted to continuing grievance giving rise to recurring cause of action in view of the decision of Hon'ble Supreme Court in the case of M.R.Gupta Vs. Union of India & Ors., 1995 (5) SCALE 9.

4. We have heard the learned counsel of both the parties, and have perused the material available on record.

5. It has been pointed out by the respondents that the applicant is not entitled to stepping-up of his pay because of his option to continue in the old pay-scale whereas his junior opted for the new pay-scale. We also find that the decision of this Tribunal in OA No.653/1998 in the case of Pramod Kumar Shrivastava Vs. Union of India & another on which reliance has been placed by the applicant does not apply on the facts of this case, because of unusual delay in making the claim. In the case of P.K.Shrivastava, the

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anomaly was stated to have arisen on 29.7.1987. The applicant in that case was pursuing his grievances as noticed in that order atleast from 19.1.1993. This Tribunal while deciding that O.A. observed that cases of delay, which are not adequately explained are to be rejected forthwith. This Tribunal further noticed that the applicant in that case filed the O.A. on 5.8.1996, which was well within one year of disposal of even first representation. In the typical facts and circumstances of that case, the Tribunal felt that it would be proper and just if the arrears are paid from a date six months after the date of the representation of the applicant, i.e., wef 19.7.1993.

5.1 In the case of E.Parmasivan & Ors. Vs. Union of India & Ors., 2002 (5) SLR 307, the Hon'ble Supreme Court dismissed the claim of the petitioners as barred by limitation, as the applications in Central Administrative Tribunal were filed in 1995 claiming pay fixation ^{on promotion} /in terms of the concordance table dated 12.1.1976. That claim was based on the order of the Principal Bench in certain other cases decided in 1992. In this case, the junior of the applicant has been getting higher pay than the applicant atleast from 1987 or 1988. The applicant for the first time made a representation on 23.4.1996, which was rejected on 10.9.1996. This O.A. has been filed on 08.03.1999. There is no plausible explanation for delay except the claim that this is a case of continuing and recurring cause of action as already pointed out. It is not so because unless an order of pay fixation was passed, the applicant cannot be said to be having a recurring cause of action. The applicant by his inaction has forfeited his claim. Therefore, we do not find it a

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fit case for any interference. Firstly, because of the fact that the applicant himself opted for old pay-scale initially and later on when his junior was promoted to higher post, he did not pursue his pay fixation immediately.

6. In the result, this application is dismissed without any order as to costs.

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(R.K.Upadhyaya)
Member (Adminv.)

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(N.N.Singh)
vice Chairman

'MA'

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पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अर्चयित:-

- (1) कर्मि, उच्च न्यायालय कार प्रशासन, जबलपुर
 - (2) अध्यक्ष पी/पीओ/कु.....के काउंसल
 - (3) प्रवर्धी पी/पीओ/कु.....के काउंसल
 - (4) कर्मि, जे.प्र.अ., जबलपुर न्यायपीठ
- सूचना एवं आवश्यक कार्यवाही हेतु

Applicant
in RAC - not available

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उप-जि.सू.
8/1/03

*Issued
on 8.1.03
BS*