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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.942/2003

This the 27th day of October, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

Jamuna Das Mittal,
Formerly Clerk Grade-I (Retd.),
All India Radio/Prasar Bharti
Resident of House No.217/49,
Mahavir Nagar, Bhuteshwar Road,
Post Office-Krishna Nagar,
Mathura-281004.

... Applicant

(By Shri D. N. Sharma, Advocate)

-versus-

1. Union of India through
Secretary/Chief Executive Officer,
Ministry of Information & Broadcasting,
Prasar Bharti Board, Shastri Bhawan,
New Delhi.
2. Director General,
All India Radio/Prasar Bharti,
Broadcasting Corporation of India,
Akashvani Bhawan, Parliament Street,
New Delhi.
3. Station Engineer,
All India Radio/Prasar Bharti,
Broadcasting Corporation of India,
Vrindaban Road,
Mathura (UP). ... Respondents

(By Shri R.N.Singh, Advocate)

O R D E R (ORAL)

Applicant was promoted as Store Keeper in scale Rs.330-560 w.e.f. 22.8.1978 in the All India Radio (AIR). Later on he served in the same grade on the post of Clerk Grade-I (UDC). In 1983 from amongst 122 candidates, applicant was the only one to have qualified in the departmental competitive qualifying examination held for appointment to the post of Head



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Clerk/Accountant in the AIR. He was not promoted as Head Clerk/Accountant up to November 1988 when the respondents accepted his request for voluntary retirement. According to the applicant he had made various representations to the authorities from 1988 to 2000 for allowing him waiting allowance for qualifying the all India departmental qualifying examination but the benefit of waiting allowance and consequential pensionary benefits were denied to him.

2. The learned counsel of the applicant relied upon Annexures A-4, A-5 and A-6 for grant of special pay of Rs.80/- per month for the first year of waiting and Rs.140/- per month for the rest of the period, as also the consequential benefit of increased pension. However, the learned counsel of the applicant admitted that the AIR did not issue any instructions like Annexures A-4, A-5 and A-6.

3. The learned counsel of the respondents took exception to delay of 15 years in filing the present OA to seek redressal of his grievance by the applicant. The learned counsel stated that applicant has not provided any sufficient cause in the application for condonation of delay in making the present OA. He stated that applicant has stated the following reasons for condoning the delay in filing of the OA:

- (1) his grievance relates to short-payment of pension;
- (2) he had made repeated representations with the authorities; and
- (3) he thought that good sense would prevail upon the authorities and as such he did not file the OA within the prescribed limitation.

4. The learned counsel of the respondents stated that it is not a case of short-payment of pension. He further stated that repeated representations cannot overcome the hurdle of limitation for seeking relief. Waiting for a period of 15-18 years so that good sense would prevail upon the concerned authorities is no good reason for delaying filing of an OA.

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5. True, applicant has caused inordinately long delay in filing the OA. He has also not been able to provide sufficient ground for delay in filing the OA except that denial of correct pension is a recurring cause of action. However, in the present case, if the applicant has been denied correct pension under the relevant rules and instructions, delay in making an application before the Court would not come in the way as a government servant has a right to be paid correct salary and pension. *M. R. Gupta v. Union of India & Ors.*, 1995 (5) SCALE 25 (SC) lends support to this opinion. Accordingly respondents' objection on the ground of limitation is rejected.

6. On merits, the learned counsel of the respondents stated that it is not mandatory to grant special pay to personnel who qualify in the departmental qualifying examination for promotion to the post of Head Clerk/Accountant/Senior Store Keeper. In AIR/Doordarshan, according to the learned counsel, in addition to promotion through departmental qualifying examination, such promotion is granted on the basis of seniority-cum-fitness also subject to availability of vacancy under promotion quota as per recruitment rules. The learned counsel further stated that applicant would have been accorded promotion to the post of Head Clerk/Accountant/Senior Store Keeper on availability of vacancy. However, he lost his claim for promotion on the basis of the result of departmental qualifying examination held in 1983 as he took voluntary retirement w.e.f. 30.11.1988. The learned counsel further maintained that instructions relied upon by the learned counsel of the applicant are not applicable to the case of the applicant as they relate to promotion to the posts of Junior Accounts Officers on passing the JAO (Civil) Examination (Part-II).

7. I have considered the rival contentions.

8. Admittedly, applicant who had been working as UDC in the AIR qualified in the departmental qualifying examination held in 1983 for promotion

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to the post of head Clerk/Accountant/Senior Store Keeper. He was not promoted to any such post till 30.11.1988, i.e., the date of his voluntary retirement.

9. Annexure A-4 dated 28.7.1989 deals with treatment of special pay drawn on passing JAO (Civil) Part-II Examination for purpose of promotion as JAO. Annexure A-5 dated 4.10.1988 deals with qualification pay on promotion to the post of Senior Auditor/Senior Accountant. Annexure A-6 deals with grant of special pay of Rs.80/- per month for the first year of waiting and Rs.140/- per month thereafter to candidates who qualify in the departmental examination for promotion to the grade of JAO and are awaiting promotion as JAO.

10. Applicant was a UDC who qualified in the departmental qualifying examination in 1983 for promotion to the post of Head Clerk/Accountant/Senior Store Keeper. While in terms of Annexures A-4, A-5 and A-6, on promotion to the post of JAO/Senior Auditor/Senior Accountant, special pay is permissible on qualifying the relevant examination and as per Annexure A-6 even special pay is permissible on qualifying the departmental examination for promotion to the grade of JAO while waiting for promotion, no such dispensation has been made available by AIR/Doordarshan to UDCs waiting for promotion to the post of Head Clerk/Accountant/Senior Store Keeper on qualifying the departmental examination. Instructions relating to qualification in the JAO (Civil) Part-II Examination or enhanced qualification for promotion to the post of Senior Auditor/Senior Accountant cannot be stretched for application to promotion to the post of Head Clerk/Accountant/Senior Store Keeper in the AIR/Doordarshan. The learned counsel of the applicant admitted that AIR/Doordarshan have not issued any such instructions regarding grant of special pay while waiting for actual promotion to the post of Head Clerk/Accountant/Senior Store Keeper on the basis of qualifying in the departmental qualifying examination.



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11. In the absence of any rules/instructions issued by the AIR/Doordarshan for according special pay while waiting for promotion on qualifying departmental examination for promotion to the post of Head Clerk/Accountant/Senior Store Keeper, applicant has no right to claim such dispensation.

12. In the light of the above discussion, it is found that the applicant has failed to establish his claim. Accordingly, this OA is dismissed being devoid of merit. No costs.

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)
27. 10. 04

/as/