



Central Administrative Tribunal, Principal Bench

O.A. No.1292/2003

New Delhi this the 6th day of January, 2005 ~~November, 2004~~

HON'BLE Mr. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

Jagdish Kumar
S/o Shri Ram Rakha
B-53, Dashrath Puri, Palam Road,
New Delhi-110 045.

....Applicant

By Advocate: Shri S.K. Dwivedi.

Versus

1. General Manager,
Mahanagar Telephones Nigam Limited,
• Khurshid Lal Bhawan, New Delhi.
2. AO (P&A)
Mahanagar Telephones Nigam Limited,
6, Local Shopping complex, Phase-I, Mayapuri,
New Delhi-110 064.
3. Secretary,
Department of Telecommunications,
Government of India,
New Delhi.

....Respondents

By Advocate: Shri V.K. Rao.

ORDER

Hon'ble Mr. Justice M.A. Khan, Vice Chairman(J)

The applicant challenges the order of the respondents dated 6.2.2002 (Annexure P-10) whereby the respondents have declined to accord the benefit of the judgment of the Hon'ble Delhi High Court dated 25.3.1985 in CWP No.129/1980 and further declined to revise his pay in the revised pay scale of Rs.330-480 w.e.f. 12.10.1978.

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2. The facts of the case, in brief are, that the applicant Shri Jagdish Kumar was appointed as Telegraph Man (Indoor) in the Central Telegraph Office of the respondents on 23.8.1960. By Circular dated 20.4.1976, the General Manager, Telephones, New Delhi, invited applications for appointment to the post of Senior Caretaker Grade-I in the pay scale of Rs.330-560 and Senior Caretaker Grade-II in the pay scale of Rs.225-308 from amongst the permanent employees of the Department, who were working in the scales of pay lower than that of the Senior Caretaker, had put in not less than 5 years of regular service and also possessed the qualifications mentioned in the Circular. The applicant and several other employees of the Department applied for appointment in response to the Circular. By Office Order dated 12.10.1976 some of the persons were appointed as Senior Caretaker Grade-I in the pay scale of Rs.330-560. The applicant along with some other officials was also promoted as temporary Senior Caretaker Grade-II in the pay scale of Rs.225-308 with effect from the date they actually took over the charge. The applicant joined the post of Senior Caretaker Grade-II in the pay scale of Rs.225-308 on 12.10.1978. One Shri Bishamber Dayal, who was also appointed as Senior Caretaker Grade-II along with the applicant in the pay scale of Rs.225-308 and had joined the post, to which he was appointed, on 20.6.1978, filed a Civil Writ Petition No.129/1980 under Article 226 of the Constitution of India assailing the Corrigendum dated 14.8.1979 issued by the respondents by which the Office Memorandum dated 12.10.1976 directing that the Office Memorandum dated 12.10.1976 would read as Caretaker in the scale of Rs.225-308 instead of Senior Caretaker Grade-II. He also sought direction to the respondents to give the petitioner scale of pay of Rs.330-480 Senior Caretaker Grade-II in parity with Jai Dayal. The Hon'ble High Court granted the prayer

As per order of the court.

made in the Writ Petition and quashed the Corrigendum Memorandum dated 14.8.1979 so far as it had included the name of the petitioner Shri Bishamber Singh and further directed the respondents to grant him the pay scale of Rs.330-480 attached to Senior Caretaker Grade-II and pay the arrears within 3 months from the date of the order dated 25.3.1985. The applicant on 10.7.1986 sent a representation to the respondents for granting him the pay scale of Rs.330-480 in parity with Shri Jai Dayal and Shri Bishamber Singh since he was a similarly placed person. This was followed by representations dated 25.4.1991, 21.4.199 and May, 2000, but to no effect. The representations of the applicant were ultimately rejected by the respondents by passing order dated 6.2.2002, Annexure P-10 to the OA on the ground that the benefit of the judgment of the Hon'ble High Court could not be extended to him. In the meantime the applicant had retired from service on attaining the age of superannuation on 30.4.2002. He filed the present OA on 12.5.2003.

3. Resisting the OA the respondents had raised the preliminary objection that the application was not maintainable since the applicant had prayed for quashing of the order dated 6.2.2002 which in reality means that he was praying for grant of pay scale of Rs.330-480 w.e.f. 12.10.1978, the date on which he was appointed as Caretaker. Secondly the Tribunal did not have jurisdiction to entertain the OA since the cause of action had accrued 3 years prior to the constitution of the Tribunal. Thirdly the OA was beyond the period of limitation prescribed by Section 21 of the AT Act as much as the applicant was appointed as Caretaker in the pay scale of Rs.225-308 in the year 1978 which he had accepted without a murmur. His first representation was allegedly made in the year 1986. It was contended that the cause of action first accrued to him in the year

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1978 and it was the date from which limitation should start running. The filing of the OA in the year 2003 on the ground that the letter dated 6.2.2002 was issued rejecting his representation now would not give a fresh cause of action to the applicant to file the present application. It was denied that the judgment of the Hon'ble High Court was applicable to the facts of the present OA. Even otherwise the respondents had filed a Review Petition against the order dated 25.3.1985 passed in the Writ Petition, which was disposed off on 24.7.1987 by the Hon'ble High Court observing that there was no permissible ground to review the order upholding the appointment of the petitioner even though assuming that no post of Senior Caretaker was sanctioned in the Memorandum dated 17.9.1976. On merits it was pleaded that the Directorate General of Posts & Telegraphs, New Delhi, in his Office Order dated 1.9.1975 had fixed the standards of sanctioning of the posts of Caretaker as follows:-

- (i) For an office building having a floor area of 20,000 sq. ft. a post of Caretaker in the scale of Rs.225-308 be sanctioned;
- (ii) For building having a floor area of 60,000 sq.ft. and above, the post of Caretaker be sanctioned in the scale of Rs.330-560.
- (iii) An additional post of Caretaker in the scale of Rs.225-308 be sanctioned for an office building/group of buildings having a total floor area exceeding one lakh Sq. feet".

The administration decided to create one additional post of Sr. Caretaker in the scale of Rs.330-560 and 6 additional posts of Caretakers in the scale of Rs.225-308 for Delhi Gate, Jor Bagh, Karol Bagh, Okhla, Chanakyapuri and Haus Khas Exchanges. Pursuant to this decision, Circular dated 29.4.1976 was issued inviting applications. In the Circular the number of posts and the scale of pay was correctly shown but due to accidental omission/typographical error and/or oversight, instead of inviting applications

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for 6 posts of Caretaker, the word "Senior Caretaker Grade-II" was mentioned instead of "Caretaker". In the Office Memorandum dated 12.10.1976 it was clearly mentioned that the applicant had been appointed in the pay scale of Rs.225-308 against the post sanctioned vide Memorandum dated 17.9.1976. It was to correct a typographical error which had crept in the Circular dated 29.4.1976 that the Corrigendum dated 14.5.1979 was issued. The erroneous Circular does not confer any right in favour of the applicant to claim higher pay scale to which he was neither selected nor was appointed. Moreover no post of Senior Caretaker Grade-II in the pay scale of Rs.330-480 was ever sanctioned. Only two categories of posts were sanctioned, one in the grade of Rs.330-480 and other in the grade of Rs.225-308. The applicant was promoted to the post carrying scale of Rs.225-308 and the fact that no post of Caretaker Grade-II had been accepted by the Hon'ble High Court in the earlier litigation on which reliance has been placed by the applicant in the present OA, the claim of the applicant for grant of pay scale in the grade of Rs.33-480 is not tenable. Three OAs No.40/1987, 520/1986 and 1033/1986 were filed in the year 1986-87 involving identical issues but they were dismissed.

4. In the rejoinder, the applicant has reiterated his case and denied the allegations made in the counter of the respondent.

5. We have heard the rival contentions of the parties and perused the record..

6. The learned counsel for the respondents has raised a preliminary objection that the present OA is bared by time which is prescribed in Section 21 of the AT Act. He has submitted that the applicant is seeking relief of grant of the benefit of judgment dated 25.3.1985 passed by the Hon'ble Delhi High Court in CWP 129/1980 which order was

passed even before the Tribunal came into existence. He also contended that as ^{per} ~~for~~ the allegation made in the OA, the applicant made first representation in the year 1986 and it was followed by reminders in 1991, 1995 and 2000 but ^{he} did not get any decision on them. According to him, the repeated representations which were not decided by the respondent authorities, would not give fresh cause of action to the applicant to file the OA. The rejection of the claim of the applicant by the respondents by letter dated 6.2.2002 would also not give him a fresh cause of action. He has heavily relied upon the judgment of this Tribunal in **Babulal Ramjibhai Vs. Union of India and Others (1991) 17 Administrative Tribunals Cases 735**. In this case the OA was filed 5 years after the termination of the service and there was no explanation for the delay so it was held that the application was barred by Section 21(3) of the AT Act. It was also argued that the OA for extending the benefit of the earlier judgments to similarly situated employees would also be subject to limitation prescribed under the AT Act.

7. Conversely the learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in **M.R. Gupta Vs. Union of India & Others, 1995 (5) SCC 628**. The applicant had filed an OA for fixation of his pay claiming that it was incorrectly fixed when he joined his service in the Railways in 1978 and he was entitled to fixation of his pay after adding one increment to the pay which he would have drawn on 1.8.1978 in accordance with Rule No.2018 equivalent to Fundamental Rule 22-C. His OA was rejected by the Tribunal holding that the dispute was raised after lapse of 11 years since the initial pay fixation in 1978 and it was hopelessly barred by time. The Hon'ble Supreme Court observed that:-

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“The grievance of the applicant that his pay fixation was not in accordance with the Rules was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules”.

The Hon'ble Supreme Court also observed as under:-

“if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action”.

8. The next case relied upon by the learned counsel for the applicant is **N. Balakrishnan Vs. M. Krishnamurthy 1998 (7) SCC 12**. The Supreme Court on the question of condonation of delay, held as follows:-

“10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

Signature

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, never causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide **Shakuntala Devi Jain Vs. Kuntal Kumari** (AIR 1969 SC 575) and **State of W.B. Vs. Administrator, Howrah Municipality** (1972[1] SCC 366).

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss".

9. In the instant case the applicant is claiming relief of quashing of the order dated 6.2.2002 whereby his claim for re-fixation of his pay in the light of the judgment of the

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Hon'ble High Court was declined. He also prayed for a direction for fixing his salary in the revised pay scale of Rs.330-480 w.e.f. 12.10.1978 in terms of the judgment of the Hon'ble Delhi High Court dated 25.3.1985 passed in CWP No.129/1980. The applicant was, no doubt, appointed as Caretaker Grade-II in the scale of Rs.225-308 in the year 1978 and the judgment of the Hon'ble High Court which granted similar relief of revision of the pay scale from Rs.225-308 to the pay scale of Rs.330-480 was rendered in favour of Shri Bishamber Singh in the year 1985 and the applicant made first representation to his superiors for granting him parity with Shri Bishamber Singh and Shri Jai Dayal whose pay scales have also been revised. The applicant neither made himself party to the case of Bishamber Singh nor did he file an OA before this Tribunal when the respondent-authorities kept mum and did not decide upon his representation for over six months, i.e., within the limitation period prescribed by Section 21 of the AT Act. Moreover the applicant filed other representations in 1991, 1995 and 2000 yet the respondents remained silent and did not decide the representations. It is no doubt true and it has also been fairly conceded on behalf of the applicant that filing of repeated representations would not extend the period of limitation as prescribed by sub-clause (b) of Sub-Section(i) of Section 21 of the AT Act. However, it was contended that the claim of the applicant was finally rejected by the respondents by letter dated 6.2.2002 which gave a fresh cause of action to him. But it was denied that the present OA was filed on 12.5.2003 which is beyond one year from the date of the order prescribed by sub-clause (a) of Sub-Section (i) of Section 21 of the Act.

10. Faced with this position the learned counsel for the applicant argued that the claim of the applicant in this OA was regarding fixation of his pay in accordance with



the order of the Hon'ble High Court in CWP No.129/1980 and this was a continuing cause of action and since the pension of the applicant is fixed on the basis of the last pay drawn, the payment of the pension which is not correctly fixed, will give a fresh cause of action to the applicant every month the pension is paid. He has contended that the application is within the time prescribed and has heavily relied upon the judgments of the Hon'ble Supreme Court cited by him. He has also argued that it is a case of recurring cause of action arising from the wrong fixation of his salary, therefore, the application is within time.

11. The applicant has retired from service on 30.4.2002. His pension is fixed on the last pay drawn. The applicant has stated that his pay has been incorrectly fixed in the scale of Rs.225-308 and that he having been appointed as Senior Caretaker Grade-II was entitled to draw his pay and allowances in the scale of Rs.330-480. If his claim is accepted, it would be a case of wrong fixation of his salary and consequently the incorrect fixation of pension which would be based on the last pay drawn, which itself was not correctly fixed. Every month when the applicant is paid his pension, which is not correctly fixed, it would give a fresh cause of action to the applicant. For these reasons it was a case of recurring cause of action and the judgment of the Hon'ble Supreme Court in **M.R. Gupta (Supra)** squarely covers his case. The question whether he is entitled to consequential relief of arrears of pay on the basis of revised fixation of pay is a totally different question. It will be subject to limitation. Consequently the contention raised on behalf of the respondents that the OA was barred by time is rejected. It is held that the OA for fixation of his pay in the revised scale of pay of Rs.330-480 cannot be held to be barred by time as prescribed under Section 21 of the AT Act.

12. As regards the argument that the limitation would also apply to a case where the enforcement of a judgment is prayed there is no quarrel to the proposition of law. But in the present case the applicant is not claiming the relief of enforcement of the judgment like the one which the applicants in the case of **Babulal Ramjibhai** (Supra) were praying for. The facts of that case are distinguishable and do not apply to the present case.

13. No other argument as to the maintainability or jurisdiction was raised on behalf of the respondents at the time of hearing.

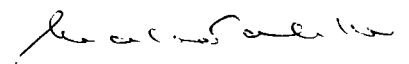
14. Coming to the merit of the case the learned counsel for the respondents candidly submitted that the facts of the present case and the case of **Shri Bishamber Singh**, petitioner in CWP No.129/1980 are similar. Both the applicant and **Shri Bishamber Singh** were appointed to the post of Senior Caretaker Grade II in response to the advertisement issued by the respondents on 20.4.1976. Both were appointed in the pay scale of Rs.225-308. Both were similarly placed persons. If it is so, the judgment in CWP No.129/1980 dated 25.3.1985 would cover the present case also. However, the learned counsel of the respondents has submitted that the respondents had filed an application for review of the judgment before the Hon'ble Delhi High Court which was disposed off vide order dated 24.7.1987 (Annexure R-I to the counter). It is argued that the Hon'ble Court had observed that there was no post of Senior Caretaker Grade-II sanctioned in the Memorandum dated 17.9.1976. A perusal of the order does not support this contention. The Hon'ble Court has not decided that the post of Senior Caretaker Grade-II was not sanctioned by Memorandum dated 17.9.1976. The Review Petition was

Perusal of the order

dismissed, inter alia, even assuming that no post of Senior Caretaker was sanctioned by Memorandum dated 17.9.1976.

15. The learned counsel for the respondents has further argued that the judgment of the Hon'ble Delhi High Court in CWP No.129/1980 (Annexure P-4) is per incurium since certain facts and documents were not placed before the Court. It is argued that the department had fixed the standard of sanctioning of posts of Caretaker vide letter dated 1.9.1975 in accordance with which a post of Caretaker was sanctioned in the pay scale of Rs.220-308 with an office building having a floor area of 20,000 sq. ft. and post of Caretaker in the scale of Rs.330-560 was sanctioned for a building having a floor area of 60,000 sq.ft. and above and further, additional post of Caretaker in the scale of Rs.225-308 was sanctioned for office building/group of buildings having a total floor area exceeding one lakh sq.feet. It is argued that pursuant to this decision, one post of Senior Caretaker was sanctioned in the pay scale of Rs.330-560 and 6 posts of Caretaker in the scale of Rs.225-308 were sanctioned. According to him, the applications for appointment to the post of Senior Caretaker and Caretakers were also invited by Circular dated 29.4.1976 as a consequence to the above decision. He submitted that in the Circular there was some accidental omission/typographical error and/or by oversight the applications were invited for 6 posts of Senior Caretaker Grade-II instead of the Caretaker.

16. It is argued on behalf of the respondents that the applicant was appointed in the pay scale of Rs.225-308 in 1978. He accepted this pay scale and continued to draw his salary in the scale throughout his service till his retirement in the year 2002. Therefore, the applicant has no right to turn around and claim higher scale of pay of Rs.330-480. The learned counsel for the respondents has also argued that realizing the mistake in the





Office Circular and in the appointment letter the respondents had issued the Corrigendum dated 14.5.1979 (Annexure R-3) by which the designation of the appointees was corrected as Caretaker in place of Senior Caretaker Grade-II.

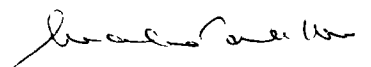
17. Memorandum dated 29.4.1976 (Annexure R-2) by which applications for appointment to the post of Senior Caretaker Grade-I and Senior Caretaker Grade-II in the pay scale of Rs.330-560 and Rs.225-308 respectively were invited had enumerated the number of vacancies in the post of Senior Caretaker Grade-I and Grade-II available. There was one vacancy of Senior Caretaker Grade-I and total number of six vacancies in the post of Senior Caretaker Grade-II. The appointment letter dated 12.10.1978 (Annexure P-2 to the OA) also averred that the officials were selected for appointment as Caretaker Grade-II and were promoted to officiate as Temporary Caretaker Grade-II, of course, in the pay scale of Rs.225-308. In the Central Civil Services (Revised Pay) Fourth Amendment Rules, 1974 published in the Gazette dated 5.3.1974, which came into force from 1.1.1973 (Annexure P-1), after S.No.20 and the entries relating thereto, following was inserted:-

1.	2.	3.	4
20-B	Senior Caretaker	130-5-175-EB-205-7-21	330-8-370-10-400-EB-480
28.	Caretaker-cum-Khansama	105-3-135	225-5-260-6-290-EB-6-308
28.	Cash Oversear	105-3-135	225-5-260-6-290-EB-6-308"

18. This Rule⁴ prescribed the post of Senior Caretaker in the scale of Rs.330-480 and Caretaker-cum-Khansama in the scale of Rs.225-308. The Rule did not prescribe any post of Senior Caretaker Grade-I or Senior Caretaker Grade-II nor did the Rules provide for

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the post of Caretaker simplicitor. Yet the Office Circular dated 29.4.1976 (Annexure R-2 to the counter), was issued inviting applications for appointment to the post of Senior Caretaker in the scale of Rs.330-560 and Senior Caretaker in the Grade-II in the scale of Rs.225-308. The eligibility condition of the Senior Caretaker Grade-II was similar to the eligibility conditions of Senior Caretaker Grade-I except that the candidate who did not possess the minimum educational qualification prescribed for Grade-I preference was to be given to those possessing the additional qualifications like Matriculation or Diploma in Sanitation or Public Hygiene or training or experience of fire fighting or previous experience as a Caretaker of a large building. The designation of the post, vacancies of which were advertised and the pay scale were specifically mentioned in the Circular. The respondents have failed to produce any record showing that the Office Circular dated 29.4.1976 had inadvertently or by mistake/typographical error has mentioned the designation of the post of Senior Caretaker Grade-II instead of Caretaker. The respondents, of course, filed copy of the Corrigendum dated 14.5.1979, which partly modified the order dated 10.5.1976 and it was provided that the appointment of 6 officials, whose name appear in the Corrigendum, would be read as "Caretaker in the scale of Rs.225-308" instead of "Senior Caretaker Grade-II". Concededly, this Memorandum was issued much prior to the appointment of the applicant as Senior Caretaker (temporary) Grade-II by order dated 12.10.1978 (Annexure P-2). Secondly the Corrigendum (Annexure R-3 to the counter), would further reveal that it applied to 6 persons, who were appointed as Senior Caretaker Grade-II in 1976 even prior to the issue of Circular dated 29.4.1976 inviting applications for filling up the vacancies of Senior Caretaker Grade-II. No Corrigendum has been issued for correcting the





appointment of the applicant. The name of the applicant does not figure in it and, in fact, the applicant has not been appointed against the vacancy in Senior Caretaker Grade-II by that time.

19. The applicant is claiming parity with Shri Bishamber Singh who got the benefit of the order of the Hon'ble Delhi High Court in CWP No.129/1980 and was placed in the higher scale of pay of Rs.330-480 although he was initially appointed as Senior Caretaker Grade-II in the scale of Rs.225-308. It is not disputed on behalf of the respondents, that the applicant is similarly situated person and his case is identical to that of Shri Bishamber. An Application was filed by the respondents for review of the judgment dated 25.3.1985, which was rejected. There is no other facts or document apart from the Corrigendum which was placed or urged before the Hon'ble High Court while arguing the main application or review application. The Corrigendum (Annexure R-3) is not a relevant document since it did not cover the applicant. The designation of the applicant was not corrected.

20. Moreover, according to the Corrigendum, the appointees to the post of Senior Caretaker Grade-II were treated to be the appointees to the post of Caretaker. As a matter of fact, there was no post of Caretaker sanctioned in the respondents-department. The Rules, Annexure P-1, do not show that any post of Caretaker simple existed. In fact, the post prescribed by the Rules was Caretaker-cum-Khansama in the pay scale of Rs.225-308. The applicant was not appointed to the post of Caretaker-cum-Khansama. He was appointed to the post of Senior Caretaker Grade-II in the scale of Rs.225-308. The Rules, of course, did not provide for the post of Senior Caretaker Grade-I and Senior Caretaker Grade-II nor did they prescribe their separate pay scales. There was only the post of



Senior Caretaker in the scale of Rs.330-480. The applications were invited for Senior Caretaker Grade-I in the scale of Rs.330-560 and the Senior Caretaker Grade-II in the scale of Rs.225-308. Even the scale of Senior Caretaker Grade-I Rs.330-560 did not find mention in the Rules nor was the sanction order by which the post of Senior Caretaker Grade-I in the scale of Rs.330-560 created was produced. Consequently it has to be held that the applicant was appointed in the vacancy of Senior Caretaker Grade-II and as per the Rules, Annexure P-I, the pay scale of Senior Caretaker was Rs.330-480. One of the official who was temporarily promoted to work as Senior Caretaker Grade-II along with the applicant has already been held to be entitled to the scale of Rs.330-480 by the Hon'ble Delhi High Court in CWP No.129/1980 (Annexure P-4). After the dismissal of the Review Application filed by the respondents, the orders has attained finality. The applicant would also be entitled to have his salary fixed in the scale of Rs.330-480 for parity reasons.

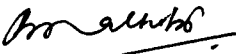
21. Having regard to the above discussion, the OA is partly allowed. It is directed that the respondents shall fix the pay of the applicant notionally in the scale of Rs.330-480 as on the date of his joining on the post of Senior Caretaker Grade-II. The respondents thereafter shall also notionally determine the emoluments which the applicant would be getting on the date of his retirement on 30.4.2002. The respondents shall then fix the pension which the applicant is entitled to get on the basis of the emoluments as permissible under Pension rules. The applicant shall be paid his pension so fixed from the date of his retirement. The above directions shall be complied with by the applicant within 4 months from the date on which this order is communicated to the respondents. The arrears of pension, which is computed on the basis of last emoluments



notionally determined in accordance with the above direction, from the date of retirement to the date of payment along with consequential retirement dues determined on the basis of last pay notionally drawn, shall be paid to the applicant within the aforesaid period of 4 months.

22. However, the claim of the applicant for arrears of salary from 1978 to the date of his retirement, suffers from patent latches and in the peculiar facts and circumstances he would not be entitled to it.

23. The application stands disposed off with the above directions. Parties to bear their own costs.


(S.K. MALHOTRA)
MEMBER (A)


(M.A. KHAN)
VICE CHAIRMAN (J)

Rakesh