

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 7103/2000**

% Date of Decision: 07.07.2011

P.C. GUPTA

... Petitioner

Through: None.

Versus

UNION OF INDIA & ANOTHER

... Respondants

Through: Ms.Geetanjali Mohan, Advocate
with Mr. Ketan Madan, Advocate for
respondents.

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI

HON'BLE MR. JUSTICE M.L.MEHTA

- | | |
|---|----|
| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | No |

A.K. SIKRI, J. (Oral)

1. Nobody appears on behalf of the petitioner and we find from the record that this Writ Petition was earlier dismissed for non-prosecution on 01.09.2009. It was restored on an application moved by the petitioner thereafter. In these circumstances, instead of dismissing the petition for non-appearance again, we have decided to proceed with

the matter on merits with the help of learned counsel for the respondent.

2. The issue involved in this writ petition is in a narrow compass. The petitioner, an employee of Central Railway, was promoted as Telecommunication Inspector Grade-III in the year 1974. Thereafter he was promoted in T.C.I. Grade-II in the year 1983 and thereafter as T.C.I. Grade-I with effect from 3.5.1987 along with Shri B.R. Lodh and Shri R.K. Sharma. He was shown as senior to the said two persons.

3. It appears that there was some discrepancy in the said post as had arisen in different regions of the Central Railway. As the promotions to the said post are centralized and it was taking some time, to cope up with the work, the railway decided to make ad-hoc promotions on local officiating basis. Because of this reason, Shri B.R. Lodh and Shri R.K. Sharma were given officiating promotion in their respective basis of work pending regular promotion process. All the three persons namely the petitioner as well as Shri B.R. Lodh and Shri R.K. Sharma were thereafter given regular promotion as T.C.I. Grade-I.

4. It so happened that pending these regular promotions, earlier in the year 1985, Shri B.R. Lodh and Shri R.K. Sharma were given officiating promotion on local basis pending regular promotions. The applicant at that time i.e. in the year 1985, was working in a particular

station (Jhansi) and as there was no such post available, the applicant was not given local officiating promotion.

5. Naturally, because of local officiating promotions accorded to other i.e. to Shri Lodh and Shri Sharma as TCI Grade-I in the year 1985, they were also given higher scale of the said post. On this basis, the petitioner made a grievance that his juniors started drawing higher salary and therefore, he should also have been upgraded. He represented in this regard in the year 1987 which remained un-replied. Thereafter, he approached Central Administrative Tribunal in the year 1996 by means of an application under Section 19 of the Administrative Tribunal Act claiming this relief. The application was contested by the respondents by raising preliminary objection that it was barred by limitation on the ground that higher scale was granted to the two other officials way back in the year 1987 and the petitioner had approached the Tribunal much belated. It was also pointed out that in fact representation of the petitioner was rejected vide letter dated 27.04.1994 and from this date also the petitioner did not approach within stipulated period of one year which is the period prescribed under Section 21 of the Administrative Tribunal Act. On merits also the case of the petitioner was contested stating that when local officiating promotion was given to the two officers that would not justify stepping up of pay of the petitioner.

6. It is significant to mention here that the aforesaid two officials were posted in Jhansi Division as a result of de-organization which came under Central Railway whereas the petitioner at that time was posted in Mathura Junction which came under Northern Railway. Higher posts i.e. TCI-Grade-I were available in Central Railway because of which the aforesaid two juniors could get promotions on officiating basis and no such post was available in Northern Railway.

7. The Tribunal accepted both the contentions and dismissed the OA of the petitioner as time barred as well as on merits. Challenging the order of the Tribunal, the present Writ Petition is preferred by the petitioner. After perusing the impugned order, the pleadings and also after considering the submissions of learned counsel for the respondents we are of the opinion that the impugned order passed by the Tribunal does not suffer from any infirmity and is without any blemish and is right in holding that the OA filed by the petitioner was time barred. As per the petitioner's own averments he came to know about the higher pay granted to his juniors on officiating promotion in the year 1987. Even the representation filed by him was rejected on 27.04.1994. As per Section 21 of Administrative Tribunal Act, limitation of one year is provided from the date of rejection of the representation. However, the OA was filed by the petitioner much after the expiry of one year. The case is squarely covered by the ratio

of judgment of the Supreme Court in **S.S. Rathore Vs. State of M.P.**, (1989) 4 SCC 582 .

8. Even on merits we do not find any justification in the demand raised by the petitioner. The issue is now authoritatively determined by the Supreme Court in **UOI Vs. Sushil Kumar Paul**, (1998) 5 SCC 268 as well as **UOI Vs. O.P. Saxena**, (1997) 6 SCC 360. Taking note of these two judgments, the Tribunal has discussed the case in the following words:

*“5. The applicant has tried to derive benefit from the order in the case of S.R. Srivastava (supra) but much development has taken place in the administrative law on the point since then. The said order has been superceded by horde of judgments. The ratio of Full Bench of the Tribunal in the case of **B.L. Somavajulu & Ors. Vs. The Telecom Commissioner & Another**, OA 1412/93 decided on 20.11.1996 is very clear in the kmatter. In a similar case in **Union of India Vs. Sushil Kumar Paul** (1998) 5 SCC 268: 1998 SCC (L&S) 1336: AIR 1998 SC 1925 where stepping up of pay was claimed with reference to the pay of a junior, whose pay had risen since he had the benefit of ad-hoc officiation on lower post as well as promotion post before regular promotion, the Tribunal’s directions for stepping up the senior’s pay overlooking the Govt. of India, Department of Personnel and Training’s OM dated 04.11.1993 on the subject were held to be not sustainable by the Hon’ble Supreme Court. Their Lordships in that case applied their earlier decision in **Union of India Vs. O.P. Saxena** (1997) 6 SCC 360: 1997 SCC (L&S) 1667.*

6. It is not uncommon that in a vast organization like the Railways in order to meet administrative exigencies local arrangements have to be made by according ad-hoc promotions to certain officials, which may be followed by regular promotion. The

senior officials posted in other areas cannot be allowed the benefit of stepping up of pay to the level of the pay of the junior officials who received the said advantage on account of ad-hoc promotion as there was no provision of law/rules entitling them to the same advantage."

9. Even a Division Bench of this Court in identical circumstances in a decision dated 28.01.2010 (in Writ Petition (C) No.6048/2008 titled as R.P. Arora Vs. UOI & Ors.) refused to grant higher pay relying on the principle that stepping of pay would not be applicable.

10. We do not find any merits in this Writ Petition which is dismissed.

**A.K. SIKRI
(JUDGE)**

**M.L.MEHTA
(JUDGE)**

JULY 07, 2011
awanish