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

% **Date of Decision : 06.02.2019**

+ **W.P.(C) 1236/2019**

SH. SAT PAL

..... Petitioner

Through **Mr. A.K. Bhakt, Adv.**

versus

UNION OF INDIA AND ORS.

..... Respondents

Through **Mr. Arun Bhardwaj, Mr. Nikhil Bhardwaj and Mr. Shaswat Sharma, Advs.**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

VIPIN SANGHI, J (ORAL)

CM APPL. 5601/2019

Exemption allowed, subject to just exceptions.

W.P.(C) 1236/2019

1. The petitioner assails the order dated 20.08.2018 passed by the Central Administrative Tribunal, Principal Bench (CAT) in OA No. 310/2016. The Tribunal had rejected the said OA filed by the petitioner since the same was barred by limitation.

2. The claim of the petitioner was that he was appointed on the post of Cleaner w.e.f. 18.12.1964. Though, he was appointed as Cleaner, he was deputed to perform the duties and the responsibilities of Mistry (Electrician). However, his pay was fixed in the post of Cleaner. His claim was that he was entitled to the next upgradation in the promotional post of Mistry (Electrician) after completion of 7 years continuous service in the pay scale of Rs.260-350, and thereafter he was entitled to next upgradation on the post of Senior Electrician in the pay scale of Rs.380-640. However, the respondents did not consider him for grant of promotion or upgradation till 1981. In 1981, the petitioner was appointed to the post of Mistry Grade-II on the recommendations of the Selection Committee. He was placed in the pay scale of Rs.260-350. He claimed that he was not granted benefits to which he was entitled, such as, benefits under Flexible Complementing Scheme. He sought voluntary retirement from service on 09.09.1992 while discharging responsibilities as Mistry Grade-II.

3. The first OA was disposed of with direction to the respondents to pass a speaking order on his representation. The same came to be issued on 07.12.2015. Thereafter, he preferred the present OA. The Tribunal found the claim of the petitioner to be stale. The Tribunal has also observed that the applicant having accepted the appointment in the substantive post of Cleaner in the pay scale attached thereto on 24.12.1964 and enjoyed three promotions in the hierarchy of Cleaner, and having voluntarily retired on 09.09.1992, cannot now claim appointment as Mistry (Electrician) in the year 1964, with consequential benefits in that hierarchy.

4. The submission of learned counsel for the petitioner is that the

petitioner was appointed as Mistry Grade-II on work-charge basis on 10.06.1981. He places reliance on the office memorandum dated 09.06.2011 issued by the Director General, CPWD to submit that those who completed eight years of service in the category of work charged staff in CPWD were entitled to grant of selection grade in term of the judgment of this court taken note of in the said OM.

5. The petitioner having slept over his rights and approached the Tribunal after over 20 years, cannot expect the respondent to be in a position to effectively answer his claim. The respondent is put to a serious prejudice, since over two decades have elapsed between the time when the petitioner's cause of action arose, and the claim was made. During this period, the records relevant to the subject, as well as the officers who dealt with the petitioner's case and would have been in position to answer his claim, would obviously, not be available. It would not be fair to examine the petitioner's claim only on the basis of one sided documents that the petitioner chooses to produce. The conduct of the petitioner in not agitating his claim contemporaneously raises a strong presumption against him that he had been treated legally and fairly, else he would have raised his grievance then. The claim now raised cannot be granted without examination of facts, such as, the nature of duties actually allocated to him from time to time; the number of sanctioned posts available in the grade of Mistry (Electrician); his relative seniority and merit etc. With passage of time, these aspects are incapable of examination and verification. Reliance placed on OM dated 09.06.2011, even otherwise, is of no avail since the same pertains to CPWD, whereas, the petitioner was serving with CSIR. There is nothing to show that the said

OM was applicable to the employees of CSIR.

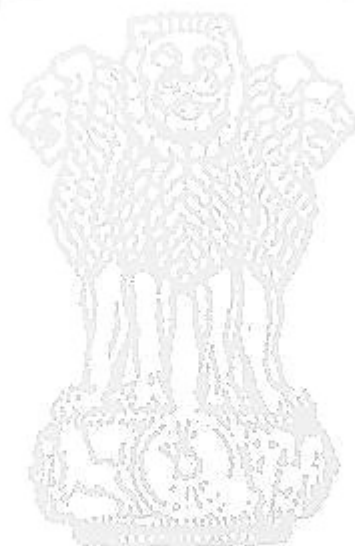
6. We therefore, find no merit in this petition. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

FEBRUARY 06, 2019

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