

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1960 of 2002

New Delhi, this the 12th day of February, 2004

HON BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON BLE MR. S.K. NAIK, MEMBER (A)

Shri A.A. Shiromany
12/704 East End Apartments,
Mayur Vihar,
Phase-I, Delhi-110 096.

...Applicant

(By Advocate: Shri Shyam Babu)

Versus

Union of India
Through
The Secretary,
Ministry of Information &
Broadcasting,
Shastri Bhawan,
New Delhi-110 001.

-RESPONDENTS

(By Advocate: Shri R.P. Aggarwal)

O R D E R

By Hon ble Mr. Kuldip Singh, Member (Judl)

Applicant has filed this OA seeking the following reliefs:-

(a) Call for the records of the case and declare that the pay of the applicant in JAG Group 'A' of CIS be fixed w.e.f. 2.1.1978 at par with his immediate junior Shri R.K. Mathur. Further, to declare that the pay of the applicant at the time of his retirement on 31.1.1989 ought to have been fixed in the pay scale of Rs.4900-7000 at Rs.6,500/- at par with his immediate junior Shri R.K. Mathur.

(b) To further declare that the applicant is entitled to have his pension etc. fixed at par with Shri R.K. Mathur, his immediate junior.

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(c) Give further directions that the petitioner is entitled to have the benefit of refixation of his pay at par with his immediate junior Shri R.K. Mathur with all arrears of pay and allowances with appropriate rate of interest thereon.

(d) Give direction to fix the pension of the applicant at par with his immediate junior Shri R.K. Mathur with all benefits of arrears with appropriate rate of the interest thereon.

(e) Further direct the respondents to give due seniority to the applicant as per the directions of the Central Administrative Tribunal, New Delhi in OA 698/1996 with all consequential reliefs.

2. Facts as alleged by the applicant in brief are that the applicant was appointed to Grade-I of the Central Information Service (hereinafter referred to as CIS) w.e.f. 7.3.1969 and one Shri R.K. Mathur was appointed in Grade-I of CIS w.e.f. 29.10.1968. On 2.1.1978 the petitioner was appointed to JAG grade of CIS Group 'A' in the scale of Rs.1500-2000 in compliance of the order given by the Tribunal in OA 698/96 and petitioner was placed at S.No.170A between A.N. Bhardwaj and R.K. Mathur in the list of JAG Officers. Mathur was regularised in the JAG grade of CIS on 2.1.1978 itself. The pay of the applicant was fixed at Rs.1500/- and that of Shri Mathur was fixed at Rs.1620/- though applicant was senior to Shri Mathur. It is also submitted that the applicant retired w.e.f. 31.1.1989 and the applicant s

pay was fixed at Rs.5100/- in the pay scale of Rs.4900-7000 and Shri R.K. Mathur, his immediate junior retired w.e.f. 30.4.1989 and his pay was fixed at Rs.6500/-. It is also submitted that after the retirement of the applicant w.e.f. 31.1.1989 the applicant was reemployed with the Collected Works of Mahatma Gandhi and he had filed an OA 698/96 for counting his service rendered by him in CIS taking into account his past service rendered by him in a Project called Collected Works of Mahatma Gandhi Project. The OA was allowed and respondents were directed to take into account the service rendered by the applicant in the said project. Then the date of officiating appointment was given to the applicant w.e.f. 7.3.1968 instead of 11.5.1977 and then the applicant was appointed to JAG his name was fixed between Bhardwaj and Mathur. Thus it is clear that the Mathur was junior to the applicant but then stated that Mathur is getting more pension than the applicant. The representation was made but still his pay and pension was not revised.

3. A CCP was also filed but the same was dismissed directing the applicant that if he was aggrieved by the order dated 25.9.2001 he may file a fresh OA, so it is how the present OA has come.

4. The respondents are contesting the OA. Respondents admitted that the applicant was appointed to officiate as Editor in the Project called Collected Works of Mahatma Gandhi which was subsequently integrated into the Publications Division of Ministry of Information & Broadcasting on 4.5.1977 and though the applicant was

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inducted into Grade-I of the Central Information Service (CIS) w.e.f. 3.6.1978 but his date of induction was 11.5.1977 as per the direction given in the OA. The applicant filed another OA 698/96 seeking a direction that the benefit of the judgment of the Hon'ble Supreme Court in Dhasmana's case and this Tribunal in Rajni Singh's case decided by this Tribunal be extended to the applicant. OA was allowed with the directions that the seniority of the applicant should be determined by taking into account the service rendered by him in the Collected Works of Mahatma Gandhi Project. Accordingly, the seniority was redetermined and the applicant was given seniority w.e.f. 17.3.1968 so the facts more or less are admitted to that extent.

5. However, as regards the fixation of pay in comparison with Shri Mathur is concerned, the respondents submit that the date of promotion of the applicant to JAG of CIS was antedated to 2.1.1978 as per the DPC held in UPSC on 2.1.1978 with reference to his junior officer viz. Shri R.K. Mathur. However, subsequently in 1987 the Tribunal delivered a series of judgments in the case of S.C. Kacktwana and Others, K.L. Wadhwa and Others, S.K. Nayyar and Others, V.K. Arora and Others, V.K. Roy and Others directing the respondents to allow the benefits of ad hoc officiating service followed by regularisation in a grade to those and other similarly circumstanced officers of CIS/IIS. The Government filed an appeal before the Hon'ble Supreme Court but no stay was grant so the orders passed by the Tribunal were implemented subject to the outcome of the SLP. Consequently, review DPCs were also held and the date of

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promotion of Shri Mathur in JAG of CIS was ante-dated to 7.9.1975 and he was further promoted to SAG (Level-II) subject to the outcome of SLP. SLP was finally disposed of as per Order Annexure R-I. The respondents took the advice of the Ministry of Law/Learned Attorney General on the correct interpretation of the judgment, who opined that the rights that have accrued to the respondent employees who were before the Hon'ble Supreme Court in Kacktwana and Arora's cases should not be disturbed irrespective of the position in law. The benefit of ad hoc officiating service extended to the employees in Kacktwana and Arora's cases cannot be extended to employees whose seniority inter-se has not been finally determined and who were not parties before the Hon'ble Supreme Court in Kacktwana and Arora's cases. It also opined that the seniority of persons who had already retired should not be disturbed.

6. Shri Mathur who had been appointed as SAGE Grade 'A' by a review DPC held in 1988 in compliance of the Tribunal judgment in Kacktwana and Others. Since the benefit of ad hoc service to those who were before the Supreme Court and those who had already retired were retained, Shri Mathur though was not a respondent before the Hon'ble Supreme Court but still the benefit of ad hoc service granted to him could not be withdrawn since he had already retired on 30.4.1989 so a limited protection was given to those employees also who had retired but same benefits cannot be granted to the applicant, at this stage, as not given in the case of other IIS officers as he was not a respondents in the above mentioned SLP.

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before the Hon'ble Supreme Court. Thus there is no merit in the claim for further for further promotion to SAG with reference to junior.

7. As regards the grant of parity in pay to the applicant with reference to Shri Mathur respondents pleaded that as per the extant orders of DOP&T the pay of the senior can be stepped up to the level of junior provided such senior can be stepped upto the level of junior, provided such senior had been drawing more pay than his junior in the lower scale. Since Shri Mathur retired on 30.4.1989, efforts had been made by the Pay and Accounts Officer, IRLA to retrieve the old records relating to the pay given to Shri Mathur on 26.1.1978 and prior and subsequent to that. However, the relevant records are not available with them, therefore, no correct comparative statement can be drawn up of the pay drawn by the applicant vis-a-vis Shri Mathur prior to 2.1.1978 in the Grade-I of CIS.

8. It is further submitted that since Shri Mathur was promoted to JAG on ad hoc basis w.e.f. 8.1.1976 and continued as such till his regularisation on 2.1.1978, therefore, he drew pay in the JAG grade w.e.f. January, 1976. On the other hand the applicant was inducted into Grade-I of CIS w.e.f. 3.6.1978 when Shri Mathur had already been promoted to JAG on ad hoc basis vide order dated 8.1.1976. Though the date of induction of the applicant to Grade-I was revised later on in pursuance of the order passed by the Tribunal in OA 532/1987 but the

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applicant could get the JAG grade only w.e.f. 2.1.1978 as such there is no case for stepping up the pay of the applicant vis-a-vis his junior.

9. We have heard the learned counsel for the parties and gone through the records of the case.

10. The main plea of the respondents in resisting the claim of the applicant for stepping up of the pay in comparison to the junior is based on the judgment given by the Hon'ble Supreme Court in the case of Union of India Vs. Shri S.C. Kacktwana and Others which is Annexure R-1. The operative part of the judgments reads as under:-

We have heard and perused the impugned judgment of the CAT and the fact, most of the respondents have already retired, and further we do not find any justifiable reason to interfere with the findings recorded by the CAT conferring benefit to the respondents. This is not a fit case to exercise our discretion in this record. Thus we dismiss these appeals. However, we make it clear that we are not adjudicating any question of law arising out of this decision and leave the question open. In case any law has been declared in any other case without prejudice of the right if any of the appellant, the decision of this case would not come in its way, but so far right of respondents it shall not be disturbed. Any arrears payable to the respondents in pursuance to the judgment of the CAT shall be paid to them, if not already paid, but without interest".

11. The reading of the above quoted operative portion would go to show that the benefit of ad hoc promotion was available to the respondents and some retired persons as the Apex Court did not find it fit to interfere with the findings recorded by the CAT conferring benefit to the respondents (before Supreme Court) but the claim of the applicant for his pay parity with Mathur who was given the benefit of ad hoc service for the purpose of his promotion to the post of JAG had

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also retired by that time so a special protection under the orders given by the Hon'ble Supreme Court was available to Shri Mathur otherwise his pay would have not been fixed higher than the applicant. It is not a case of the applicant that he had also worked on ad hoc basis in JAG grade and he was also entitled to the benefits of the judgment given in Kactwana's case which benefit has been enjoyed by Shri Mathur as he had already retired and since retired persons were also protected under the orders of the Apex Court for having availed the benefits of ad hoc service so they were given the benefits. As the applicant is not similarly situated as Shri Mathur is situated so applicant cannot compare his pay with Shri Mathur.

12. OA is thus without any merits and the same is hereby dismissed. No costs.

J. N. NAIK
(S.K. NAIK)
MEMBER (A)

Kuldip Singh
(KULDIP SINGH)
MEMBER (JUDGE)

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