

93

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1904 of 2001

New Delhi, this the 3rd day of ~~September~~^{Member}, 2003

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)
HON'BLE MR.R.K. UPADHYAYA, MEMBER (A)

Dr. Ajit Kumar Ray
S/o Late Manmohan Ray
R/o D-18 Devnagar,
New Delhi-110 005.

...Applicant

Applicant in person.

Versus

1. Union of India
Through the Secretary,
Ministry of Agriculture,
Department of Agriculture and Co-operation,
Krishi Bhavan,
New Delhi.
2. Dr. G.R. Saini,
Economist/ESA,
143, Vaishali,
Pitampura,
Delhi-110 034.
3. Dr.V.N. Mishra
Economist (now designated as Adviser)
Krishi Apartments,
Vikaspuri,
New Delhi-110 018.
4. Dr.M.S. Bhatia
Economic Adviser (now Adviser)
234, Neelkantha Apartments,
Sector-13 Rohini,
Delhi-110 085.
5. The Secretary,
Ministry of Finance,
Department of Economic Affairs (IFS Cadre),
North Block,
New Delhi. Respondents

(By Advocate: Shri N.K. Aggarwal)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 whereby he has impugned the order of the respondents dated 14.9.2000



(2)

whereby the representation of the applicant has been rejected. In this OA the applicant prays for upgradation of his pay scale with all consequential benefits from the scale of Rs. 14300-18300 to Rs.18400-22400 from the date the other Economists (Senior Economists) were upgraded in IES, i.e., 12th December, 1991. The second relief the applicant is asking for to allow at least two promotions as per Supreme Court judgments and Third Pay Commission's Report as the applicant is without any avenues of promotion in his whole career.

2. For the first relief the applicant is seeking parity with other Senior Economists who are in the cadre of Indian Economic Service. The applicant submits that Recruitment Rules for the post of applicant and one Dr. G.R. Saini were same at the time of recruitment which was made through UPSC and it is also stated that the qualification and experience of the applicant is better and he was senior as compared to Shri G.R. Saini as to other Economists. However, the applicant has been treated in a hostile manner in violation of Articles 14 and 16 of the Constitution of India.

3. It is an admitted case of the applicant that he and Dr. Saini were appointed against isolated posts of Economists and two posts have been encadred in Indian Economic Service. The post of Economists in IES were upgraded by the respondents and were redesignated as Senior Economists. The applicant, Dr. G.R. Saini, Dr.



(23)

V.N. Mishra and Dr. M.S. Bhatia held the same post of Economists although designation of these posts have been changed twice due to upgradation.

4. It is further submitted that the duties, responsibility and functions of all the Economists remained same even after upgradation so the applicant claims that he should also be given the same pay scale as given to Dr. Saini and other whose posts have been encadred in Indian Economic Service.

5. The stand of the department is that two posts of Economists in the department of Agriculture and Co-operation under the Department of Economists and Statistics which were encadred into IES were later upgrade at Senior Economists at the time of cadre review of IES in 1991 and redesignated as Adviser by the Department of Economic Affairs being the cadre controlling authority.

6. Of the two posts one post was held by Dr. Saini who was appointed on 21.12.1978 and the other post was held by Dr. S.P. Pant which was vacated on 30.4.1991. These two posts were encadred in the Grade-I of the Indian Economic Service Rules, 1961 whereas the applicant was recommended by the UPSC on 22.10.1982 for recruitment to the post Economist DE&S and on 3.7.82 as reserved for SC candidates. It is further stated that the Recruitment Rules for the post of IES is distinct and separate from the posts held by the applicant so the post of the applicant could not be encadred.



(2b)

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

8. As regards encadrement of the post of applicant is concerned, the learned counsel for the respondents pointed out that the case of the applicant for being encadred was considered but the applicant could not make out so the post held by the applicant could not be encadred. It may be pertinent to mention over here that applicant had filed a separate OA 1907/2001 for encadrement of his post wherein he has sought a direction from this Tribunal that respondent No.1 should notify the encadrement of the applicant in Grade-I of Indian Economic Service with all consequential benefits on the basis of the said rules. The said OA had been dismissed so this court is not required to go into the details with regard to the encadrement of the applicant in Indian Economic Service since that matter stands closed as per the decision in the earlier OA. Now since the applicant is holding an isolated post which is not in the cadre of Indian Economic Service, the applicant wants comparable status but the claim of the applicant for upgradation of his scale with his counter-parts who are in regular Indian Economic Service cannot be considered as the applicant stands on totally different footing so he cannot claim upgradation of the pay scale.

9. The next relief sought by the applicant is that he should be allowed at least 2 promotions as per Supreme Court judgment and Third Pay Commission's report as the applicant is without any avenues of promotion in his whole career.

K

(2)

10. As regards third relief is concerned, the respondents had also disposed of his representation on this aspect. As regards the grant of two promotions parallel to the ACP are concerned, it is quite clear that the applicant is already in the scale of Rs.14300-18300 so ACP scheme is not applicable to the post which the applicant is holding as such the same is beyond the purview of the ACP.

11. The applicant has also claimed that as he has been treated in a hostile manner as those Economists who had been upgraded were also initially recruited like the applicant but they had been encadred and the Indian Economic Service has granted them upgradation and the same should have been given to the applicant. The counsel for the applicant submitted that it is a case of invidious discrimination because benefit has been given to others whereas the same has been denied to the applicant and in support of his contention he has referred to the judgment in the case of K. Padmigiran and Others Vs. U.O.I & Others, AIR 1989 (2) CAT 422.

12. However, in our view the comparison with the members of the Indian Economic Service cannot be made by the non-members. Direction on the basis of doctrine of equal pay for equal work can be issued if all the persons are situated in the same manner and benefit has been given to some whereas others have been denied the same benefit. The basic case of the applicant was for encadrement of the post held by the applicant and thereafter applicant could have claimed that he had been

A

(92)

discriminated and deprived of the benefits given to those officers who had been encadred then probably the applicant would have pleaded an invidious discrimination also but since the applicants case for encadrement already stands rejected so that make a distinction between those officer with whom, the applicant is comparing himself so it not a case of invidious discrimination.

13. The next contention raised by the applicant is that the applicant is entitled to 2 promotions and in support of his case the applicant has heavily relied upon Raghunath Prasad Vs. The Secretary, Home (Police), Department, Government of Bihar and Others reported in JT 1988 (1) SC 22 wherein it has been held as follows:

"Promotional opportunities - Combined police force in the State of Bihar separated in May, 1970 into two cadres - Wireless Wing and the general section - Right to exercise option not available to the appellant who joined the wireless organisation in 1972-73 - No promotional opportunities available in the wireless organisation - Promotional opportunities must in every wing of public service for efficiency and excellence - State of Bihar directed to provide at least two promotional opportunities to the officers of the wireless organisation within six months".

14. After referring to the above, the applicant submitted that promotion is one of the service conditions so the applicant should at least be provided with 2 promotions in his entire career.

15. We have gone through the judgment of Raghunath Prasad (Supra) relied upon by the applicant. We find that it was a case of combined Police Force of State of Bihar which was separated into two cadres - Wireless wing and the general section the applicant thereafter had



29

joined the Wireless organisation and wanted to switchover to general police cadre as according to the applicant there was no promotional avenues available in the wireless section and since no option was given at the time of separation so the appeal was dismissed. However, the court had observed that there should have been promotional prospects available with reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organisation within six months from today by appropriate amendment of Rules. In case the State of Bihar fails to comply with this direction, it should be within 2 months thereafter, give afresh opportunity to personnel in the Police Wireless organisation to exercise option to revert to the general cadre and that benefit should be extended to everyone in the wireless organisation.

16. So relying upon the same the applicant submits that he should also be given two promotional opportunities. As far this judgment is concerned, we find that this is not applicable to the present facts of the case as the applicant when joined the service knew fully well that he has joined the service on an isolated post where there are no promotional avenues available. Besides that the department had considered his case for

K

encadrement in the Indian Economic Service so that he could get promotional avenues in accordance with the Indian Economic Service but the applicant has not been found fit so his post could not be encadred.

17. For the purpose of encadrement and upgradation the applicant has relied upon the OM dated 6.2.1996 which is alleged to have been issued for encadrement of 2 posts and the duties, responsibilities and functions of these two posts, as per statement of the Department of Agriculture and Co-operation were same and after upgradation of these two posts from Economist to Sr. Economist (SAG) level, their duties, responsibilities and functions remained unchanged. The said certificate is alleged to have been issued by one Juglal Singh and the applicant has heavily relied upon this to claim upgradation. However, the respondents pleaded that this document is a forged one and it has never been issued by the person concerned shows to have signed the same. The respondents in their reply have also stated that the signature of Shri Juglal Singh appearing on the OM was not signed by Shri Juglal. The applicant has an audacity to produce on record some opinion of the hand writing expert to show that OM dated 6.2.1996 is signed by the same person who had signed the OM dated 6.2.1996 and the sample signature and the disputed signature tally with each other.

18. We have gone through the same and have carefully examined the report of the hand writing expert.



(13)

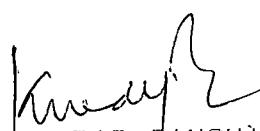
19. First of all we may mention that the applicant has withheld the data e.g. photographic enlargement and negative on the basis of which expert has compared the sample signature as well as the dispute signature. However, on comparing by naked eye we find that the disputed signatures do not tally with the sample signature at all because in the letter "j" there are two loops on the upper portion and lower part in the disputed signatures both these loops are missing significantly in the disputed signatures. There is lot of difference in the natural flow of writing in disputed and sample signatures also.

20. We may also mention that in the other OA which was decided by Court No.1 the court had observed that the applicant has placed on record a letter dated 12.5.1991 to induce the court as the case of the applicant for encadrement had been recommended but the respondents took objection that the letter is a forged one. Thereafter the applicant had not bothered to file any rejoinder. The said letter had been issued with the same motive to hoodwink the court.

21. It appears that the applicant is such a case who wants to induce the court to give him benefit on the basis of forged documents which is not permissible as such OA has no merits and the same has to be rejected. Accordingly, the OA is bereft of any merit and the same is dismissed. No costs.


(R.K. UPADHYAYA)
MEMBER (A)

Rakesh


(KULDIP SINGH)
MEMBER (JUDL)