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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 2032/01
~~FA~~ No.

(7-5-02 Date of Decision

Pragulla Chandra Mishra ...Petitioner (s)

Applicant in person ...Advocate for Petitioner (s)

V E R S U S

Go I through Secretary ...Respondents
n/o Statistics & Programme ...Advocate for respondents
Implementation

Coram :-

Hon'ble *Dr. A. Veeravalli*, Member (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not ? YES ✓
2. Whether it needs to be circulated to
other Benches of the Tribunal ? NO


(GOVINDAN S. TAMPI)
MEMBER (A)

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2032/2001

NEW DELHI THIS THE 17 DAY OF MAY 2002

HON'BLE DR. A. VEDAVALLI, MEMBER (J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Prafulla Chandra Mishra
S/o Shri. Bhagirathi Mishra
Under Secretary,
Staff Selection Commission,
Min. of Personnel, Public Grievances & Pension
Block No. 12, CGO Complex, Lodhi Road
New Delhi -110003

R/o 103, Vidya vihar,
West Enclave, Pitam Pura,
Delhi - 110034

.....Applicant

(By Dr. Prafulla Chandra Mishra, applicant in person)

VERSUS

Union of India through
The Secretary,
Ministry of Statistics & Programme Implementation,
Sardar Patel Bhawan,
Sansad Mart, New Delhi

.....Respondent

(By Shri K C D Gangawani, Advocate)

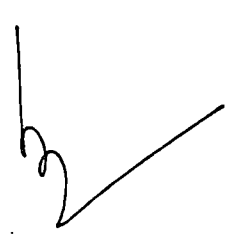
O R D E R

BY HON'BLE GOVINDAN S. TAMPI, MEMBER (A)

Denial of proforma promotion to the applicant, on deputation away from the parent cadre, when his juniors who remained in the parent organisation were granted ad-hoc promotions, is under challenge in this OA.

2. Dr. Prafulla Chandra Mishra, the applicant argued his case, during the oral submissions while Shri K C D Gangwani, learned Sr. counsel appeared for the respondents.

3. Dr. Mishra, joined Grade IV of Indian Statistical Service (ISS), an organised Group "A" Service on 23.4.93, on the basis of Indian Statistical Service Examination, 1993.



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I.S.S. Rules, 1961, govern the administration of this service. In the seniority list of ISS Officers Grade IV (JTS), as on 1.7.96, published vide Deptt. of Statistics letter No. 12012/3/96-ISS dated 23.12.96, (Annexure A3) the applicant is placed at Sl No. 193. The applicant, who was working at Calcutta, was posted on deputation on 3.10.2000; to the Staff Selection Commission at New Delhi. Soon after joining Delhi, as he came to know that promotions in his own cadre were in the offing, the applicant on 25.10.2000, requested for grant of proforma promotion to him and also indicated his readiness to revert to the parent organisation. Still, when the promotions were ordered in terms of Ministry of Statistics & Programme Implementation letter No. 12016/8/98-185 on 17.11.96 (Annexure A-I) from Grade IV to Grade III, he found himself excluded from promotion, while as many as 16 persons placed below him in the seniority list - placed between 195 and 225 - were promoted. Even at the time of his selection for deputation as Under Secretary, he had indicated his preference for promotion in his own cadre and his keenness to continue at Calcutta where he was working. Still, he accepted the deputation post in public interest. And this was, according to him, his undoing as he missed out on promotion in his own cadre, while another similarly placed officer, and also selected for deputation as Under Secretary, was not relieved for taking up the deputation and was consequently granted promotion in the cadre. According to the applicant, in the circumstances of his case, grant of officiating promotion for him, while continuing on deputation was permissible in terms of Note No.32, under FR 22 and the same should have been given. Further, as the impugned ad hoc promotion was being ordered for periods exceeding 90 days


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followed by regularisation, promotes in those cases would grant the benefit of higher pay from earlier dates, while the seniors who are away on deputation, like the applicant would suffer. That being the case, NBR promotion was applicable. Infact, this proposition was approved by the Principal Bench of the Tribunal in QA No. 918/2000, filed by N.K. Sharma and decided on 22.1.2001. Applicant, according to him, should have been granted promotion as his deputation was in public interest and he had expressed his desire to return to the parent cadre to take up promotion. In terms of Rule 8(1)(b)(i) of ISS Rules, 1961, promotion to Grade III, were to be made from Officers in Grade IV, who have completed not less than four years of regular service, in the order of seniority, subject to rejection of the unfit, with the proviso that when a junior is eligible and is considered for promotion, his seniors also should be similarly considered, irrespective of their length of service. Respondents' action in not considering him for promotion, on the ground of his being on deputation, despite his being eligible, has caused loss to him, as he was drawing the basic pay of Rs.9650/- in the scale of Rs. 8000 - 13500/- while his juniors on their promotion have started drawing the basic pay of Rs. 10,000/- in the scale of Rs. 10,000 - 15,200/-. This was clearly an anomalous situation which called for immediate rectification by the Tribunal, in the interest of justice. According to the applicant, the impugned promotion order was violative of Rule 8(1)(b) (i) of the ISS Rules, 1961, as well as of instructions on "proforma promotion" and his deputation had been brought about by the respondents to deny him the benefit of promotion in his own cadre. In view of the above, the applicant prays that he be granted proforma promotion w.e.f.


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17.11.2000, when his juniors were granted ad hoc promotions with full consequential benefits including protection of his grade pay vis-a-vis his juniors in the parent cadre of I.S.S.

4. In their counter affidavit, the respondents point out that the applicant has no legally enforceable right, especially as he had declined to return from deputation and the principle of next below rule was not applicable in cases of ad hoc promotion. While not disputing the facts, as presented by the applicant, the respondents aver that by impugned order dated 17-11-2000, as many as 19 officers of ISS in Grade IV (JTS) had been promoted to Grade III (STS), following the principle of seniority-cum-fitness. These were only ad-hoc promotions ordered purely as a temporary measure and a stop gap arrangement. Forty eight (48) officers who had completed the requisite period of four years of regular service in the feeder cadre, were considered for promotion by non-selection method and twenty three (23) were recommended for promotion. Out of these five (5) persons including the applicant (Dr. P C Mishra), were treated as not being available for ad hoc promotion, being on deputation. However, one of them (Shri Praveen Shukla) had not joined on deputation and was, therefore, promoted. The three others, who were also on deputation returned subsequently and accordingly were granted ad-hoc promotion on 20-8-2001, thus leaving only the applicant on deputation, and who was, therefore, not promoted. It is stated that though officers of the ISS in Grade IV are selected for deputation as Under Secretary in the pay scale of Rs.. 10,000-15,000/-, persons selected for such deputation are released only after getting their consent in writing. This was the position both in



respect of the applicant and Shri Praveen Shukla. However, Shukla's relief was delayed and he declined to take up the post as Under Secretary while Dr. Mishra joined the deputation post. It is true that he filed a representation on 25.10.2000 seeking proforma promotion, but the nodal Ministry - DoPT had clarified on 07.11.2000, that neither the benefit of next below rule nor proforma promotion was permissible in the case of ad hoc promotions. Both the Staff Selection Commission under whom, Dr. Mishra was working on deputation and Mishra himself were accordingly informed of the above on 14.11.2000. There was no hostile discrimination in the case of the applicant, as alleged by him, as only those who returned from deputation and as such became available were promoted. Infact, the applicant is the only person, who did not so return and therefore he was not promoted. There was nothing irregular in the respondents' action. The averments made by the applicant are totally misconceived and have no basis. His representation for grant of proforma promotion was in fact forwarded by the respondents to the DoPT but the same was not forwarded by them as the applicant had not opted to return to the department to take up ad hoc promotion. Ad hoc promotions are ordered to meet administrative exigencies in the absence of regular vacancies and as pointed out earlier, such promotions did not bestow any right on such promotees, either for regularisation or for continuity in service. The fact that a few persons junior to the applicant have been given purely ad hoc promotions does not mean that he has been discriminated or that he has been superseded as alleged. Further, the applicant cannot get any benefit from the decision of the Tribunal in O.A. No. 918/2000 filed by Sh.



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N. K. Sharma, which he has relied upon, as the said case stood on an altogether different footing. While in Shri Sharma's case the issue for determination was the grant of parity in pay, for the applicant who was on deputation vis-a-vis a junior who was promoted earlier in the parent cadre, what is being agitated in this OA is the ad hoc promotion granted to certain juniors in the parent cadre, without promoting the applicants, as he was on deputation. Respondents point out that the applicant was also amongst those who were considered for promotion but he was not promoted, as he was not available, being on deputation. He cannot have any grievance as he had remained under deputation on his own volition and would get all his dues on his promotion on his repatriation from deputation. The applicant's contention that by placing his services to Staff Selection Commission on deputation, his rightful claim for promotion was denied, has no basis, as he had taken up the said post only on his volition and the cadre controlling authority had not forced him to go on deputation. Therefore, his allegation that he had been discriminated is baseless and improper, more so as the respondents had themselves recommended his case to DoPT but the latter had turned it down, as not being covered under the extant rules and instructions. Thus, the respondents have acted properly and their action did not warrant any interference by the Tribunal, according to them.

5. In the rejoinder, Dr. Mishra asserts that he was compelled to go to Delhi on deputation and had at that time itself, he had requested for proforma promotion. No decision on his representation dated 25.10.2000, was communicated to him, before the impugned promotion orders were issued on

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17.11.2000; Staff Selection Commission where he was working on deputation also had not received such a communication and if he had received the same, he would have immediately reverted to his own organisation and taken the promotion. The applicant's matter should have been sent as a special case for clearance by DoPT, which was not done. It was also wrong on the part of the respondents to have equated him with three others on deputation, as they were still in the same Ministry, while the applicant was in a different organisation and a different Ministry. Applicant also states that once a decision was taken to accord him a special status by way of NBR, there was no need whatsoever for reference to DoPT. His case was adequately protected in terms of Tribunal's decision in OA No. 918/2000, filed by N K Sharma. The applicant also affirms that he did not receive the respondents letter dated 4.11.2001, though he knew through SCC about DoPT's decision but after the OA was filed. Never having offered the promotion to the applicant, the respondents were presently attempting to mislead the Tribunal by stating that the applicant had declined to return. Further the applicant's juniors who have been promoted on ad hoc basis, would not be put to any loss and as and when the regularisation comes it will be as a continuation of the present arrangement, which has been in vogue for quite sometime.

6. During the oral submissions, both Dr. Mishra and Sh. Gangwani, reiterated their respective pleas. While the applicant insisted that he was entitled for proforma portion or promotion under NBR, when his juniors were promoted, on ad-hoc basis, in the parent cadre, learned Sr. counsel for the respondents pointed out that having declined to return to

the parent organisation, in time for promotion, the applicant cannot advance any claim for proforma promotion in law. He also stated that, if the applicant still choose to return to the parent organisation, he would be promoted to Grade III but from that future date and not from 17.11.2000, as is being claimed, as it was the decision taken in respect of all others, who have returned from deputation. He has also produced photocopy of the Peon Book, showing the despatch of respondents' OM No. 12019/6/2000-ISS dated 14.11.2000. However, these have been categorically denied by the applicant. As during the oral submission on 5.3.2002, it was pointed out by the learned counsel for the respondents, that all the 19 persons (including 16 persons, who are junior to the applicants) were promoted only against purely temporary vacancies, a fact disputed by the applicant, the respondents were directed to indicate the correct position by filing another affidavit, which they did on 4.4.2002. It was submitted that as against '208' net sanctioned posts in Grade IV of ISS, '214' persons were working and, therefore, no regular promotions could have been made. Nineteen promotions ordered were therefore only ad hoc and temporary in nature. It is also on record that four persons on deputation including the applicant, were also among those considered for promotion, but were not actually promoted being away on deputation at the relevant time. Further, respondents' letter dated 4.10.2001, was given to and was received by the applicant on 20.12.2001, a fact confirmed by the applicant himself but with the rider that the same was received only after the OA has been filed by him on 10-8-2001. Learned Sr. counsel also pointed out that when the promotion is ordered regularly, the applicant would get all the benefits including

monetary benefits vis-a-vis, the juniors who have already been on ad-hoc promotion. However, according to the applicant, only seven posts could have been regarded as temporary posts, and the remaining were permanent and he was, therefore, indeed entitled for consideration for promotion against one of those regular or permanent posts.

7. Besides, the respondents' having recommended to the DOP&T on 02.07.2001, that the applicant has to continue on deputation and should be given NBR promotion, cannot adopt a different standard later. In terms of Govt. of India OM No.39 below FR22, the respondent was competent to grant the applicant higher pay under NBR and the same should be permitted against vacancies in the cadre, exceeding 90 days. Besides, whenever anyone is prevented from officiating in his turn in a post on a higher scale or grade borne on the cadre, he could be granted proforma officiating promotion, if that be more advantageous to him. Contention of the respondents that proforma promotion is granted only against regular promotion of the junior or against promotion on regular posts was, therefore, incorrect. Officiating promotion included adhoc promotion and therefore proforma officiating promotion should have been given to the applicant when his juniors were granted ad hoc promotion in the parent cadre. In support of his plea, the applicant also relied upon the decisions of the Hon'ble Supreme Court in a few decisions like Narender Chadha Vs. UOI & Ors. [(1986) ATR SC 49], Direct Recruitment Class-II Engineering Officers Association Vs. State of Maharashtra & Ors. [1990 (2) SCC.715], Rudra Kumar Sain Vs. UOI & Ors. (2002 (2) SCSLJ 188) and H.C.Bhatia Vs. UOI (CAT Principal Bench, New Delhi [1992(3) AISLJ.377] The applicant

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pleads that in the above circumstances, his request for proforma promotion should have been accepted, instead of being rejected.

8. We have carefully deliberated upon the rival contentions and considered the facts brought on record. Shorn of frills, the point for determination in this OA is the eligibility of a senior officer on deputation, for being granted NBR promotion (proforma), when his juniors are granted adhoc promotion in the parent cadre. Basic facts are not under dispute. The applicant, Dr. Mishra, belonging to Indian Statistical Service, Grade-IV and working at Calcutta, was posted on deputation to Staff Selection Commission as Under Secretary in Delhi in October, 2000. Within a month, thereafter, 19 persons, including 16 persons junior to the applicant were promoted to Grade-III of the Service, on adhoc basis in the scale of Rs.10,000 to Rs.15,200/-. Applicant who continues on deputation seeks nbr (proforma) promotion, on his deputation post so that he is not at a disadvantageous position, vis-a-vis, his junior colleagues, who stayed back in the parent cadre. ^{and were promoted} He has also stated that while taking up the deputation, to which he was sent on public interest, he had indicated his preference for promotion in his own cadre. According to the respondents, as nineteen officers including sixteen of the applicant's juniors were promoted to Grade-III only on adhoc basis and by way of a stop-gap arrangement, issuance of proforma promotion orders to the applicant did not arise, especially as he had not opted to come back to the Deptt. in response to their OM dated 14.11.2000, issued in response to his representation dated 25.10.2000. Respondents, however, have not been able to prove that their

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OM dated 14.11.2000, was in fact served on the applicant or was received by him, before the date of promotion of his juniors i.e. 17.11.2000. There is nothing on record to show that the applicant did not want to take up his promotion in his own cadre and desired to be under deputation, as the respondents have sought to project. Facts indeed, indicate otherwise. The applicant has been agitating for his rightful promotions and placement in service, from the very beginning of his career and such an individual cannot be expected to sit back when the issue of his legitimate promotion in his own cadre was to come up. It is seen, that as soon as he was selected for deputation as Under Secretary in Staff Selection Commission, he had addressed Director (ISS) a letter No. 1/US(PCM)/SSC/2000 dated 25.10.2000 (Annexure-A-6), relevant portion of which reads as under :-

"Although I had not applied for this post, the cadre has posted me here transferring me from Calcutta. I have come to learn that a promotion list in Grade-III of ISS is going to be issued by you. I had already informed you that if promotion was to be made, I might not be posted to the US Post. As you are aware I have been waiting for this promotion since last two years. Therefore, I request you to consider my case for promotion to STS level, even on adhoc basis, which is being continued indefinitely, beyond 90 days, so that I will be able to draw my grade pay+deputation allowance here. Otherwise, it will be a great financial loss to me, for which I am not responsible, despite being violative of the provisions regarding proforma promotion. I am also ready to go back to my cadre on promotion, which is my rightful privilege." (emphasis supplied)

This letter has admittedly been received by the respondents, who have responded by their OM dated 14.11.2000 (Annexure-A-3) stating that "Next below rule relating to proforma promotion is not applicable in case of adhoc promotion. In case Sh. Mishra is interested in getting posted to a cadre post on adhoc promotion to Grade-III of

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ISS, he may have to revert from deputation and report for duty to the cadre for his adhoc promotion and subsequent posting". Applicant asserts that this OM has not been received by him. Respondents were also not able to show that the said OM has in fact been served on him. (emphasis supplied) That being the case, the respondents cannot ^{argue that} "having declined to return from deputation, the applicant cannot ask for adhoc promotion while on deputation." The hurry with which the applicant was selected and appointed on deputation post, transferred from Calcutta to Delhi and relieved to join the deputation post, when the promotions in the cadre were in the offing and (which was very much in the knowledge of the respondents) appears rather strange. More so, as the relief of Sh. Pravin Shukla, another person indentically placed like the applicant and selected for deputation also as Under Secretary, has been delayed so that he could decline the deputation and be granted the promotion in the cadre itself, which facility was denied to the the applicant. In the circumstances, we have to record that the applicant's grievance that the respondents were less than fair to him, is not without any basis.

9. Having said this, we still cannot uphold the plea of the applicant for proforma (nbx) promotion for him while still remaining on deputation, as the same is not covered by the Rules. It has been made clear by the respondents that the impugned order dt.17.11.2000, promoting 19 persons, including 16 persons junior to the applicant, was issued on a purely temporary and ad-hoc basis, with no entitlement for the promotees to have a benefit of seniority or right of regularisation on account of the ad-hoc promotion. The

promotions also have been, as stated above, described as stop gap arrangements which could be withdrawn or cancelled at any time without notice. It, therefore, follows that no right is created in favour of those juniors who have continued in the parent cadre and were given ad hoc promotion vis-a-vis, the applicant, who has moved out on deputation, even if, not on his own volition. Rule 8 (1) (b) (i) of the Indian Statistical Service Rules, 1961 does provide that all vacancies in Grade III shall be filled by promotion from amongst Grade IV Officers who have completed not less than four years of service on regular basis in that grade and that promotions shall be made in the strict order of seniority, subject to rejection of the unfit. The rule further goes on to state that if any junior officer in Grade IV is eligible and is considered for promotion all officers senior to him in that grade shall also be considered for promotion. What the rule provides for, is the consideration for promotion of all the persons eligible and in the zone for promotion in their turn. The right which accrues in this connection is the right for consideration. And the said right is recognised as a fundamental right. As far as the applicant is concerned, it cannot be his case that he has not been considered for promotion. The respondents have indicated that out of 48 eligible persons who were considered for promotion, 23 persons were found fit for promotion but promotion orders have been issued only for 19 persons, as the four others, including the applicant, were not available for promotion, being on deputation. The applicant has not been divested of his Constitutional right for consideration for promotion, on account of his being on deputation, but the recommendations of the DPC had not been given effect to, as he was not

available for promotion, being away on deputation. The decision taken by the respondents in this connection, cannot be assailed in law though they could have been more transparent in their action and explained the position to the applicant well in time, instead of taking a rather intransigent attitude. The applicant was at considerable pains to show that ad-hoc promotion, officiating promotion and regular promotion, all amounted to one and the same situation and, therefore, the respondents should have granted him promotion, on ad-hoc basis and permitted him to continue on deputation so that he could get the benefit of both the raise in basic pay as well as in deputation allowance. This argument does not merit endorsement, as would be borne out from the relevant Rules on the subject. Notes 32 to 39 under FR 22, deal with proforma promotion/~~ad-hoc~~ promotion. The intention underlying the rule is that an officer out of his regular line, should not suffer by forfeiting the officiating promotion, which he would otherwise have received, had he remained in the original line. When an Officer working in a post, is for any reason prevented from officiating in his turn in a post on higher scale or grade borne on the cadre of the service to which he belongs, he may be authorised by special order of the appropriate authority, proforma officiating promotion in to such scale or grade and thereupon be granted the pay of that scale or grade if that be more advantageous to him, on each occasion, on which, the Officer immediately junior to him in the cadre of service, draws officiating pay in that scale or grade. Proforma promotion is to be adopted strictly on "one for one principle". One of the basic principles underlined in this regard is that all the seniors and at least one junior officer should have been

regularly promoted in the cadre besides satisfaction of the "one for one principle". This benefit should be allowed only in respect of promotions made in the cadre to vacancies of more than 90 days duration and that the initial vacancy as well as subsequent vacancies should each be of more than 90 days duration. It is evident, therefore, that vacancies mentioned are regular vacancies and not those for filling which purely temporary, adhoc as well as stop gap arrangements are ordered. The above instructions taken together, seek to safeguard the interest of the individuals on deputation, like the applicant in this OA, but the same ~~do~~ not rule out the cases where on account of specific exigencies of service, Administration has to resort to a few ad-hoc promotions, purely in temporary capacity and as a stop-gap arrangement. Therefore, the ad-hoc promotion of any junior remaining in the parent cadre, on account of the non-availability of the senior continuing on deputation, cannot be considered as the senior's supersession, as complained by the applicant. It is true that the junior ad-hoc promotee gains a small advantage i.e. drawal of higher basic pay and allowances vis-a-vis the senior. This, however, is a temporary phenomenon and when on a subsequent day, regular promotions are ordered, the senior would be entitled to all the benefits including fixation of pay in the higher scale, from the date on which the junior is given the same. Therefore, a deputationist like the applicant is not really at any loss, by grant of ad-hoc promotions to the juniors.

10. The applicant has relied upon a few decisions of the Hon'ble. Supreme Court and the Tribunal, as according to him,

they support his case. We do not, however, share this view. The main premise on which the above decisions run, is that when an individual has been working for a long and uninterrupted period in a particular post, though on adhoc or officiating basis, such continuous officiation cannot be held to be a mere temporary, local or stop-gap arrangement, even though the relevant order may state so and that the said officiating service shall also be counted for the purpose of reckoning the seniority for further promotions etc. (Narender Chadha Vs. UOI & Ors.; Direct Recruitment Class II Engineering Officers Association Vs. State of Maharashtra & Ors.; Rudra Kumar Sain Vs. UOI & Ors. - all from Hon'ble Supreme Court and H.C.Bhatia Vs. UOI & Ors. - from Principal Bench of the Tribunal (supra)]. The above orders, however, do not come to the assistance of the applicant, as they do not lay down any proposition that ad-hoc promotion is the same as regular promotion with all attendant consequences, as the applicant would like us to believe. What the above decisions lay down is that long and uninterrupted ad-hoc service rendered in a post, for the selection to which proper procedure and due consultation have taken place, would be counted for the purposes of seniority, when the ad-hoc appointment is made regular. Applicant's case does not fall within the parameters of these decisions. Further, Tribunal's decision dated 22-1-2001 in OA No.918/2000 filed by N.K.Sharma also is not relevant in this context, as the said order deals with the stepping up of pay of a senior, who was on deputation vis-a-vis his junior, whose pay was fixed in the parent cadre, at the higher stage on regularisation, following a long period of ad-hoc service. Applicant has not yet reached that stage as yet and his cause

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cannot derive any support from the above decisions. On the other hand, we have come across the decision dated 20.11.2001 passed by the Ernakulam Bench of the Tribunal in OA no.202/2000 in the case of P.R. Unnikrishnan Nair Vs. Chief General Manager, Telecom (ATJ 2002 (1) 419). Relevant portion of the said order reads as below :-

"3. We have carefully gone through the pleadings and materials placed on record and have heard Shri Vishnu S Chempazhanthiyil, learned counsel for the applicants and Smt. P. Vani, ACGSC learned counsel for the respondents at considerable length. The instruction at Annexure A10 only says that when regular JTS officers promoted on adhoc basis to STS and again to JAG on local officiating basis, their pay should be fixed with reference to their pay in JTS and restricted under FR 35. This instructions are in consonance with the provisions contained in FR 22(1)(a) (1) which reads as follows:

FR 22(1)(a)(1) where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more. (emphasis added).

4. Annexure A12 order is only an order issued by the Chief General Manager Telecom directing the lower formations to give effect to Annexure A10 order. We do not find any infirmity with the Annexure A10 order and the order at Annexure A12. The legal validity of a general order is not to be tested on the basis of what effect it would have on individual officers but on the basis of the rules under which the instructions have been issued. Since Annexure A10 has been issued in complete agreement with FR 22(1)(a)(1) and FR 35 we are of the considered view that there is no reason for interference.

5. In the light of what is stated above, finding wrong with the impugned orders, we dismiss the application leaving the parties to bear their own costs."

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The above decision also supports the respondents case.

11. The next limb of applicant's plea is that on account of the adhoc promotion granted, his juniors were drawing the higher basic pay, while he was made to draw a lesser basic pay, while on deputation. As pointed out above, this is a purely temporary phenomenon. The respondents have also fairly indicated that once the promotions are made regular, the applicant would be assigned his proper position and placement with all consequential benefits. Once the same is done and the attendant monetary benefits are granted, the applicant would not have any ground for any grievance. The above reasoning of the respondents is fortified by the decision by the Hon'ble Apex Court in the case of UOI Vs. R. Swaminathan (AIR 1997 SC 3554) is somewhat similar circumstances. Para 12 of the said order states as below:-

"12. The aggrieved employees have contended with some justification that local officiating promotions within a circle have resulted in their being deprived of a chance to officiate in the higher post if such chance of officiation arises in a different circle. They have submitted that since there is an All India seniority must prevail even while making local officiating appointments within any circle. The question is basically of administrative exigency and the difficulty that the administration may face if even short-term vacancies have to be filled on the basis of All India seniority by calling a person who may be stationed in a different Circle in a region remote from the region where the vacancy arises and that too for a short duration. This is essentially a matter of administrative policy. But the only justification for local promotions is their short duration. If such vacancy is of a long duration there is no administrative reason for not following the all India seniority. Most of the grievances of the employees will be met if proper norms are laid down for making local officiating promotions. One thing, however, is clear. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements. The employees,

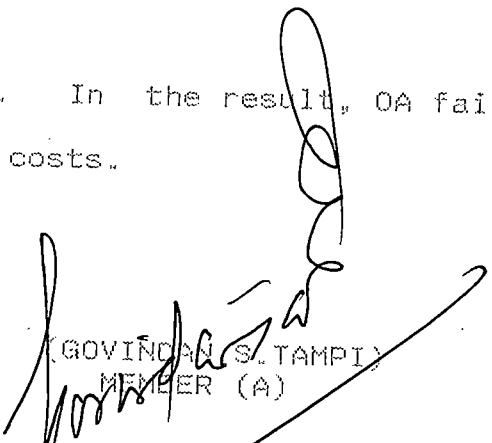
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who have not officiated in the higher post earlier, however, will not get the benefit of the proviso to fundamental Rule 22."

12. In the above circumstances, the applicant's plea for grant of proforma promotion, while still continuing on deputation, vis-a-vis his juniors remaining in the parent cadre and promoted on ad-hoc basis cannot be endorsed on merits. At the same time, we are constrained to observe that the applicant has been dragged into this litigation, only on account of the unhelpful attitude of the respondents, who had instead of acting as the modal employer, had dealt with the applicant one of their own men in an unsympathetic manner, for no discernible reason. This was clearly avoidable.

13. In the result, OA fails and is accordingly dismissed. No costs.


(GOVINDAN S. TAMPLI)
MEMBER (A)

A. Vedavalli
17/5/2002
(DR. A. VEDAVALLI)
MEMBER (J)