

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.2752/1999

New Delhi this the 26th day of March, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S.Tampi, Member(A)

Shri V.P.Bakshi,
S/O late Shri O.P.Bakshi,
working as Steno Grade 'C'
Coastal Erosion Dte.Central
Water Commission, Room No.806(N),
Sewa Bhawan, New Delhi-110066
Resident of
D-136, Sector-20, Noida-201301.

..Applicant

(By Advocate Shri K.L.Bhandula)

VERSUS

1. Union of India through
Secretary to the Govt. of India,
Ministry of Water Resources,
Shram Shakti Bhawan, New Delhi.
2. Chairman, Central Water Commission,
Sewa Bhawan, R.K.Bhawan, New Delhi.
3. Secretary to the Govt. of India,
Department of Personnel, Govt. of
India, North Block, New Delhi-110001

..Respondents

(By Advocate Shri S.M.Arif)

ORDER(ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J))

The applicant has impugned the Office Memo. issued by Respondent 3 i.e. the Govt. of India, Ministry of Personnel dated 4.11.1993 (Annexure III) so far as it relates to the employees like him going on deputation. This according to him, should not be complied with retrospective effect and has prayed for a direction to respondents 1 and 2 to re-fix his pay in the grade of Stenographer Grade 'C' at par with the pay given to his juniors from 31.1.1991 when he was promoted to that grade, including arrears of pay with consequential

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benefits. The applicant has also impugned the rejection of his representation by the respondents dated 21.12.1998 (Annexure 1).

(5)

2. The brief relevant facts of the case are that the applicant while working as Steno.Grade 'D' with respondent No.2 on 18.8.1977 proceeded on deputation to Water and Power Consultancy Services (India) Limited (WAPCOS(I) Ltd) as Junior Personal Assistant w.e.f.20.11.1987. This organisation is a public sector undertaking under the same Ministry i.e. Ministry of Water Resources,respondent No.1. His grievance is that on 2.2.1990 and 6.3.1990 his juniors, namely, Smt. Sarita Kashyap and Shri Harish Chander were promoted on ad-hoc basis to the next grade of Steno.Grade 'C' ignoring his claim as he was on deputation with WAPCOS(I)Ltd. Shri K.L.Bhandula, learned counsel has submitted that the respondents could not have promoted his juniors without giving him an opportunity to exercise his option whether to continue on deputation or revert to his parent Department to accept similar ad hoc promotion. He has also submitted that the applicant was repatriated to his parent office on 20.11.1990 and was promoted as Steno.Grade 'C' on ad hoc basis on 31.1.1991. At that time his pay was fixed at Rs.1,700/-P.M. in the scale of Rs.1640-2900(pre-revised) while his juniors were getting Rs.1,760/-P.M. Admittedly, both the applicant and his juniors were promoted as regular Steno.Grade 'C' w.e.f. 22.11.1994.

3. Learned counsel for the applicant has

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raised one main point that the applicant was not informed while he was on deputation with WAPCOS(I)Ltd.that his juniors were being promoted to Steno Grade 'C' on ad hoc basis. He has referred to the case of S/Shri S.L.Dheer and K.S.Bhatia who had also gone on deputation with WAPCOS(I)Ltd.earlier.The other main ground is that even after his return from deputation to the parent Department on 22.11.1990, the respondents promoted him on ad hoc basis as Steno.Grade 'C' nearly two months later on 31.1.1991. Hence this O.A,praying for similar benefits as have been given to his juniors by way of stepping up of his pay and other reliefs as mentioned above.

(b)

4. We have seen the reply filed by the respondents and heard Shri S.M.Arif,learned counsel. He has drawn our attention to the additional reply given by the respondents explaining the reasons why the applicant had not been intimated earlier. According to him, there was no instruction of the Department of Personnel and Training for seeking the willingness of the persons on deputation at that time for their ad hoc promotions in the parent cadre as ad hoc promotions are purely temporary and a stop gap arrangement. He has also submitted that the applicant was working in an identical scale on deputation. Therefore, there was no point in his coming back to the cadre to join the post on ad hoc promotion. Learned counsel has also drawn our attention to the letter dated 10.10.1988 given by the applicant in which he was willing to continue to work as Jr.P.A.in WAPCOS(I) Ltd. from CWC/Respondent 2. He has submitted that the applicant's deputation

(b)

has therefore, been extended with the consent of the applicant as per the extant Rules. He has also relied on the judgement of the Hon'ble Supreme Court in **Union of India & Anr. Vs. R. Swaminathan etc.etc.** (JT 1997(8)SC 61) and the judgement of the Tribunal in **N.K.Sood and Ors. Vs. Union of India and Ors**(OA1315/1998) decided on 9.3.2001, copies placed on record. He has submitted that the DOP&T O.M.dated 4.11.1993 which is under challenge by the applicant in the present case has been upheld by the Hon'ble Supreme Court in the aforesaid case of **R. Swaminathan's case**(Supra). He has,therefore, submitted that there is no anomaly in the pay fixation of the applicant in the present case in which case alone it can be stepped- up, as provided in the Govt.of India, Department of Personnel and Training OM dated 4.11.1993. Learned counsel has submitted that with regard to the applicant's claim for promotion on ad hoc basis immediately on his repatriation to the parent Department w.e.f. 20.11.1990, he has submitted that the applicant has accepted the ad hoc promotion w.e.f. 31.1.1991. At this stage the question of promotion cannot be agitated as it is barred by limitation. For these reasons he has prayed that the application may be dismissed.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. In pursuance of the Tribunal's order dated 15.2.2001, the respondents have filed additional reply on 26.2.2001. In this reply they have explained as to

why the applicant, while on deputation to WAPCOS(I)Ltd.had not been informed regarding the ad hoc promotion in the parent cadre, which in the circumstances of the case cannot be held either as un-reasonable, arbitrary or discriminatory to justify any interference in this matter at this stage. The applicant's contention that he became aware of the ad hoc promotion relating to other persons in the parent cadre on 14.10.1997 and he,therefore, filed this application only on 17.12.1999, cannot also be accepted. It is relevant to note that the applicant has been sent on deputation with his full consent to WAPCOS (L)Ltd. which is an office situated also in New Delhi, a few kilometers from his parent Department. Similarly on repatriation of the applicant from deputation to his parent department w.e.f. 22.11.1990, he has been promoted on ad hoc basis on 31.1.1991. We find force in the contention of Shri S.M.Arif,learned counsel that the claim of the applicant for ad hoc promotion with retrospective effect from the date of his repatriation is, therefore, barred by limitation and is a belated claim.

7. Shri K.L.Bhandula,learned counsel has been unable to show us how the judgement of the Supreme Court in **R.Swaminathan's case(Supra)** is not applicable to the facts of the present case. In that case the court has held:-

"According to the aggrieved employees, this has resulted in an anomaly Government Order bearing No.F.2(78)-E.III(A)/66 dated 4th of February 1966, has been issued for removal of anomaly by stepping up of pay of a senior on promotion drawing less pay than his junior.

As the Order itself states, the stepping up is subject to three conditions:

(1) Both the junior and the senior officers should belong to the same cadre and the posts in which they have been promoted should be identical and in the same cadre;

(2) the scale of pay of the lower and higher posts should be identical and; (3) anomaly should be directly as a result of the application of Fundamental Rule 22-C which is now Fundamental Rule 22(1)(a)(1). We are concerned with the last condition. The difference in the pay of a junior and a senior in the cases before us is not a result of the application of Fundamental Rule 22(1)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past. Because of the proviso to Rule 22 he may have earned increments in the higher pay-scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping of the pay of the seniors.

There are also other instances cited in the Memorandum. The Memorandum makes it clear that in such instances a junior drawing more pay than his senior will not constitute an anomaly and therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay.

(Emphasis added)

8. The above referred judgement of the Hon'ble Supreme Court in **R. Swaminathan's case** (Supra) as well as the CAT Full (Hyderabad) Bench judgement in **B.L. Somayajulu & Ors. Vs. Telecom. Commission and Ors** in OA 127/1994 and connected cases (Kalras AT FB Judgements 1994-96 page 189) have also been referred to and followed in **N.K. Sood's case** (Supra). A portion of the provision of FR 22(26(2)(b) has been quoted, which is the Govt. of India Department of Personnel and Training OM dated 4.11.1993 which is under challenge

in the present application. In view of the fact that the Hon'ble Supreme Court in R. Swaminathan's case(*supra*) and the Tribunal in N.K. Sood's(*supra*) have upheld the validity of this provision the claim of the applicant to the contrary is rejected.

9. For the reasons given above we find no merit in this application. The same is accordingly dismissed. No order as to costs.

(Govindan S. Tampi)
Member(A)

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Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)