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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXX~~ No.1249 of 1995 Decided on:

R.K. GautamApplicant(s)

(By Shri R.L. Sethi Advocate)

Versus

U.O.I.Respondent(s)

(By Shri N.S. Mehta Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter
or not?

2. Whether to be circulated to the other
Benches of the Tribunal?

(K. MUTHUKUMAR)

MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1249 of 1995

(11)

New Delhi this the 7th day of November, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri R.K. Gautam
R/o A-2/64 Janak Puri,
New Delhi-110 058.Applicant

By Advocate Shri R.L. Sethi

Versus

Union of India through
The Foreign Secretary,
Ministry of External Affairs,
South Block,
New Delhi-110 001.Respondents

By Advocate Shri N.S. Mehta

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant retired as Under Secretary under the respondents on 31.1.1994. He is aggrieved by the letter of the respondents dated 22.2.1995, Annexure A-1, by which he was informed that as a result of the promotion order issued by the respondents letter dated 20.12.1994, Annexure A-2 by which he was promoted to the Grade-I in officiating grade of IFS 'B' with effect from

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9.12.1987 as a result of the review of panels undertaken by the respondents, does not entitle him to any payment of arrears in terms of para 18.4.3 of the rules of review DPCs and that refixation of pay in his case would not result in any enhancement of retirement benefits which are to be computed on the basis of average emoluments actually drawn during the last 10 months under Rule 34 of the CCS (Pension) Rules, 1972. In this application, the applicant has prayed for a direction to the respondents to refix his pay with effect from 9.12.1987 consequent on the order of promotion issued vide Notification dated 20.12.94 and also for payment of pay and allowances and revision of pension consequent on the revised pay and also for payment of penal interest on the delayed payment.

2. The main ground on which the applicant challenges the impugned order is that the said order is not in accordance with the principles of natural justice, equity and good conscience. He contends that the order dated 20.12.1994 by which he was promoted with effect from 9.12.1987 does not specifically bar the_U benefits of fixation of pay and other benefits flowing from such refixation. There was also no mention in the

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order that he would be entitled to only notional refixation. The said order also discriminates between serving officers and retired officers and while his juniors who have been promoted and have been serving have been allowed refixation, the applicant has been discriminated against.

He also alleges that the refixation of pay as a result of promotion ordered by the respondents retrospectively with effect from 9.12.1987 is a valuable legal right which cannot be abridged without due process of law.

3. The respondents on the other hand contend that the panel for promotions for the years 1983-92 had to be reviewed due to various judicial pronouncements and consequently on the basis of such a review, the applicant alongwith 22 others who were officers of the integrated Grade-II and Grade-III of the IFS, were promoted to officiate in Grade I of IFS 'B' with effect from 9.12.1987. The respondents rely on the provisions of para 18.4.3 for procedure for Review DPC, Annexure R-1 and maintain that financial benefits in respect of officers promoted on the basis of the aforesaid order would be admissible only with effect from date of review DPC meeting. 29.7.1994 For this purpose, he also relies on para 17.10 of the rules of promotion, Annexure

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R-3, Since the review panel was finalised by the Review DpC only on 29.7.1994 even though the promotions had been ordered with effect from 9.12.1987 even in respect of serving officers, they contend that the applicant cannot claim arrears of pay. They also contend that the applicant had retired even as early as on 31.1.1994 and, therefore, by the issue of the order dated 20.12.1994 appointing him to Grade-I w.e.f. 9.12.1987 would never result in any benefit in terms of enhanced retirement benefits as pension is calculated on the basis of average emoluments actually drawn during the last 10 months as per Rule 34 of the CCS (Pension) Rules, 1972. They, therefore, contend that the applicant has no case. The respondents also rely on the case decided by the Apex Court - **Paluru Ramakrishnaiah and Others vs. Union of India and Another, 18 (2) SCC 541**, in which it was held that back wages for the period for which a person actually did not work, would not be payable.

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4. I have heard the learned counsel for the

parties and have carefully perused the record.

5. It is an admitted position that the panels

for promotion to Grade-I had to be reviewed and

accordingly, the applicant along with others were

promoted with effect from 9.12.1987 although the

order for such promotion after such a review was

issued on 20.12.1994. The result of this order

would be that as on 9.12.1987, the applicant should

have been treated as an officer in Grade-I general

category of IFS 'B' with effect from 9.12.1987

because of the review. The promotion order had

to be given retrospective effect. Any such order

giving retrospective promotion would naturally

give rise to the pay refixation under FR 27.

Even in para 18.4.3 of the Review DPC rules relied

upon by the respondents also provide as follows:-

"on promotion if the officers placed
junior to the officer concerned have
been promoted, he should be promoted
immediately and if there is no vacancy
the juniormost person officiating in
the higher grade should be reverted to
accommodate him. On promotion his pay
should be fixed under FR 27 at the stage
it would have reached, had he been promoted
from the date the officer immediately
below him was promoted but no arrears
would be admissible."

When such a promotion though retrospectively made would have resulted in the refixation of pay of the officer, had he remained in service on the date of issue of that order promoting him retrospectively, the fact that the applicant had retired by the time this order was issued, should not be a reason for denying the benefit of refixation of pay even though such refixation may not give him any actual financial benefits. It is contended by the respondents that the refixation of pay does not give him any actual or financial benefits for two reasons:-

- (i) There is no provision for payment of arrears; and
- (ii) Even after such refixation, he would not be entitled to revision of pension as he had not drawn the last pay following such refixation of pay during the last 10 months. While this may be so in the case of the applicant, it will not be correct to say that he is not even entitled to refixation of pay at all even though it may so happen that in this instant case, refixation does not result in any financial benefits including pensionary benefits. On the other hand, the applicant's contention that the order does not indicate that there is no bar for allowing for refixation of pay as there is no such mention in the Notification dated 20.12.94 is also not

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tenable as the respondents are to be guided by the rules of promotion and rules of fixation thereon consequent on the review of such promotions for whatsoever reason. The order says that the applicant was appointed w.e.f. 9.12.1987 to the Grade-I of IFS 'B' by the impugned order w.e.f. 9.12.1987 when the applicant was in service, he could not have performed the duties of the post, as such promotion was ordered only on 20.12.1994, therefore, the promotion had to be considered as a notional promotion. The contention of the respondents that he would not be entitled to any arrears in terms of para 18.4.3, cannot be held to be unjustified. But even then, the applicant could be entitled to a formal order refixing the pay of the applicant as a result of this promotion w.e.f. 9.12.1987 which has to be issued even if such refixation may be considered as notional, because the applicant was in service on the date of such promotion.

6. In the light of the above, the application

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is partly allowed to the extent that the respondents are directed to issue a formal order refixing the pay of the applicant w.e.f. 9.12.1987 in the Grade-I of IFS 'B' within a period of 2 months from the date of receipt of a copy of this order, and it is open to the respondents to notify in the said order the effect ~~of~~ such refixation of pay in accordance with the rules.

The application is disposed of with the above direction. There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

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