

Central Administrative Tribunal
Principal Bench

O.A. No. 2417 of 1995

New Delhi, dated this the ⁷22nd MAY, 2000

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. Kuldip Singh, Member (J)

Shri T. Rafeeq Ahmed,
Section Officer,
O/o Chief Engineer (Civil),
Dept. of Telecom,
5-1-885, Koti,
Hyderabad-95.

... Applicant

(Applicant in person)

Versus

The Secretary to the Govt. of India,
Dept. of Supply,
Ministry of Commerce,
Nirman Bhawan, 'C' Wing,
New Delhi-110011.

.. Respondent

(By Advocate: Shri R.V. Sinha)

ORDER

Mr. S.R. Adige, VC (A)

Applicant seeks ad hoc proforma promotion as Section Officer w.e.f. 2.5.90 on which date his junior Shri K. Ray was promoted to that grade on ad hoc basis while applicant was away on deputation, with consequential benefits.

2. This O.A. was dismissed for default on 11.1.2000.

3. Meanwhile applicant had filed M.A. No. 136/2000 on 11.1.2000 in which he had prayed that he be granted the same relief as has been granted to the applicant in O.A. No. 3/85. Somehow that M.A. No.136/2000 was not brought to our notice, when the case came up for hearing on 11.1.2000.

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4. Subsequently on 20.1.2000, after noting that previous notices had been directed to be issued to applicant at his Hyderabad address to enable him to make his submission, we directed issue of notice on M.A. No. 136/2000. Applicant as well as Respondent's counsel Shri R.V. Sinha appeared in response the notice and made submissions. Respondents' counsel took the stand that the O.A. already stood dismissed by order dated 11.1.2000 and applicant had not filed any M.A. for recall of that order and without such recall this O.A. could not be heard.

5. Applicant on the other hand explained the reasons why he could not appear when the case came up for hearing on 11.1.2000, and prayed that the order dated 11.1.2000 be recalled, and the matter be decided on merits.

6. In the light of applicant's submissions we are satisfied that the order dated 11.1.2000 ~~is~~^{warrant} recall and the O.A. be decided on merits.

7. Accordingly we recall our order dated 11.1.2000.

8. Applicant's contention is that he joined Government service as an Assistant in CSS cadre of Dept. of Supply on 6.6.81 and was confirmed on grade of Assistant w.e.f. 6.6.83. After working in

Supply Dept. for about 1½ years he was transferred to DGS&D, an attached office of Supply Dept. While working in DGS&D he was selected for appointment as A.O. in P.I.B., Hyderabad on deputation basis and was relieved of his duties in DGS&D on 15.1.90. While he was working as A.O. in P.I.B., Hyderabad, Shri K. Ray who was junior to applicant as Assistant in CSS Cadre of Supply Dept. was promoted as S.O. w.e.f. 2.5.90. Applicant states that before promoting his junior Shri Ray as S.O. on ad hoc basis w.e.2.5.90, respondents did not inform him that his turn for promotion as S.O. on ad hoc basis had come and that if he were interested in his promotion as S.O. he could seek repatriation to his parent Dept.

9. Applicant further states that while working as A.O., P.I.B., Hyderabad, he was included in the Select List (Seniority Quota) 1990 in the S.Os Grade of CSS Cadre of Supply Department. Subsequently he was granted proforma promotion in S.O's grade w.e.f. 3.2.92, the date of promotion of his immediate junior vide order dated 20.5.92

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(Annexure 3). He states that Shri K. Ray was also promoted as S.O. on regular basis w.e.f. 3.2.92.

10. Applicant states that it is only upon reporting back to his parent Dept. of Supply in May, 1995 that he learnt that during his deputation in P.I.B., Hyderabad, Shri K. Ray had been promoted as S.O. on ad hoc basis w.e.f. 2.5.90 and this ad hoc promotion was followed by regular promotion on 3.2.92. Applicant states that he represented to respondents for grant of pay fixation in the grade of S.O. w.e.f. 2.5.90 i.e. the date his junior Shri K. Ray had been given the benefit, but upon receiving no reply he filed this O.A.

11. Respondents in their reply while not denying the ^{material} ~~essential~~ facts in the O.A. contend that applicant is not entitled to the reliefs claimed, as the benefit of proforma promotion under 'Next Below Rule' is not available to the senior who is away on deputation at the time of ad hoc promotion of his junior. It is argued that ad hoc promotions are made against vacancies to enable carrying on of the functions of vacant posts for which officials duly approved for appointment in accordance with prescribed rules/procedures are not available for a

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given period, and since applicant was on deputation in P.I.B., Hyderabad no option was required to be called for from him. It is further contended that a person on deputation is required to be considered for promotion only when his turn comes for regular promotion in his parent cadre under N.B.R.

12. We have given the matter our careful consideration.

13. In this connection applicant has invited our attention to C.A.T., P.B. order dated 1.5.86 in O.A. No. 3/85 Satish Kumar Vs. Secretary, Ministry of Human Resources Development & Others in which the Bench addressed itself to the question whether for short vacancy the incumbent who was on deputation was to be considered by his parent office. The Bench observed that applicant in that O.A. was not deprived of the seniority and on his reversion to his parent office, his inter-se seniority vis-a-vis those who had officiated in the higher grade of Assistant would not stand disturbed, but even so, denial of highest pay as given to his juniors and benefit of increment in the higher grade would certainly result in permanent financial disadvantage to the applicant at least for so long as he continued in the grade of Assistant. Thus it was held to be discriminatory and violative of Articles 14 and 16 of the Constitution. Accordingly, in that

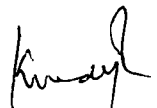
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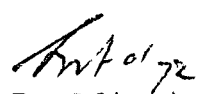
case respondents were directed to fix the pay of the applicant in the scale of Assistant from the date of his reversion to his parent office at the stage at which his immediate junior was drawing pay by virtue of officiating in the said grade, with the date of next increment being also fixed as that of his immediate junior. It was made clear that applicant would not be entitled to any arrears of pay for the period prior to his reversion to his parent office.

14. Nothing has been shown to us to establish that the aforesaid order dated 1.5.86 in Satish Kumar's case (supra) has been stayed, modified or set aside, and we accordingly direct respondents in the present case also to fix applicant's pay in the pay scale of S.O. from the date of his reversion to his parent office from the date his immediate junior was promoted. However, applicant will not be entitled for the benefit of arrears of pay for the period prior to his reversion to his parent office.

15. These directions should be implemented within three months from the date of receipt of a copy of this order.

16. The O.A. succeeds and is allowed to the extent as directed in Paragraphs 14 & 15 above. No costs.


(Kuldip Singh)
Member (J)


(S.R. Adige)
Vice Chairman (A)