

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 245 /1997

Date of Decision: 13-12-1998

Shri R. N. Mudgil ..

APPLICANT

(By Advocate Shri Mrs. Meera Chhibber

versus

Union of India & Ors. ..

RESPONDENTS

(By Advocate Shri Rajinder Pandita

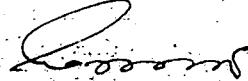
CORAM:

THE HON'BLE SHRI T. N. Bhat, Member (J)

THE HON'BLE SHRI S.P. BISWAS, 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?


(S.P. Biswas)
Member (A)

Cases referred:

1. Raghunath Prasad Vs. Secy. Home (Police) Deptt. Govt. of Bihar & Ors. AIR 1988 SC 1033
2. CSIR & Anr. Vs. KGS Bhat & Anr. AIR 1989 SC 1973
3. Selvaraj Vs. LG, Island of Port Blair & Ors. JT 1998(4) SC 500
4. S.R. Bhanrao Vs. UOI & Ors. 1997(1) SLJ 14
5. Secy-cum-CE, Chandigarh Vs. H. D. Sharma & Ors. (1998)5 SCC 87

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(16)

OA No.245/97.

New Delhi, this the 13th day of November, 1998.

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri R.N. Mudgil,
S/o Shri Ravinder Nath Mudgil,
R/o 18, Kalyanwas,
Delhi-91. Applicant

(through Mrs. Meera Chhibber, advocate)

versus

1. Union of India through
its Lt. Governor,
Raj Niwas, Delhi.
2. Chief Engineer,
Irrigation & Flood Department,
IVth Floor, ISBT Building,
Delhi-6. Respondents

(through Shri Rajinder Pandita, advocate)

ORDER

Hon'ble Shri S.P. Biswas, Member (A)

Applicant, a retired Surveyor under Respondent
No.2, is before us seeking reliefs in terms of:-

- (i) Convening a D.P.C., as if in 1989, for the purpose of granting him promotion as Junior Engineer (JE for short) with all consequential benefits;
- (ii) Granting him arrears of pay differences between the post of Surveyor and JE since he was asked to carry on responsibilities of higher post of JE; and
- (iii) Granting him "In Situ Promotion" (ISP for short)/scale of JE w.e.f. 1993 when he became eligible for the same.

2. The background facts, in brief, are as follows.

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The applicant was initially appointed, as a direct recruit in Group C, in the capacity of Surveyor in 1960 on a work-charge post in the department of Irrigation & Flood, Government of N.C.T. Delhi. He was subsequently regularised in the same post in December 1973 in the pre-revised scale of Rs.110-155. The said scale was revised after 3rd Pay Commission (PC for short) to Rs.260-350 and his pay was fixed at the maximum of the scale i.e. Rs. 350 P.M. on 28.3.75. This scale i.e. Rs. 260-350 was afterwards revised upwards to Rs.950-1400 pursuant to recommendations of the 4th PC. As regards this scale, the applicant also reached the maximum i.e. at Rs.1400/- in 1991. Since 15 years' stagnation became unbearable, he made a representation for promotion as JE. It was at this stage the respondents gave him one stagnation increment of Rs.8/- in 1987. He superannuated from the services of Delhi Government as Surveyor without getting even a single regular promotion.

3. Mrs. Meera Chhibber, learned counsel for the applicant argued strenuously to say that ~~with~~ with the modification of Recruitment Rules for JE effected vide Notification dated 12.6.86, the Surveyors were made as feeder category for the purpose of promotion to JE. This was done as a measure of removing stagnation. The said Recruitment Rules provided that 5% of the posts of JE should be filled up by promotion from amongst the Surveyors. The rules also stipulated that the Surveyors, for the purpose of promotion, under 5% quota need to possess educational qualifications as prescribed for direct recruits or should have 15 years of regular

service in the grade. The counsel submits that on the basis of the requirements thus laid down in the amended Recruitment Rules/1986, the applicant fulfills all the conditions including 15 years of regular service as Surveyor for promotion as JE by 1989. As per applicant, regular vacancies for JE had arisen in 1989 when the respondents had recruited as many as 38 JEs under the quota of "direct recruits". Under the provisions of the modified Recruitment Rules, two posts should have been earmarked from amongst the Surveyors made eligible for promotion against the quota of 5% under new rules.

4. It is also the case of the applicant that he was entitled to ISP in terms of Government of India instructions in O.M. dated 13.9.91.

5. In support of his claim for promotion, the applicant cited judgements of the Apex Court in the case of Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Govt. of Bihar & Ors. (AIR 1988 SC 1033); Council of Scientific and Industrial Research and Another Vs. KGS Bhatt and another (AIR 1989 SC 1973).

6. The applicant has also come out with a claim for higher salary for working as JE since 29.3.93. Denial of payment on this account is in violation of the law laid down by the Hon'ble Supreme Court in the cases of Selvaraj Vs. LG, Island of Port Blair and Ors. JT 1998(4) SC 500 and Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma & Ors. (1998)5 SCC 87, the learned counsel for the applicant contended.

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7. Shri Rajinder Pandita, appearing on behalf of the respondents, argued that the application is hopelessly barred by the law of limitation. The O.A. is not maintainable because of delays and laches. The ld. counsel further submitted that the D.P.C. was held on 8.8.90 for the purpose of giving promotion to the post of JE from amongst the eligible Surveyors on the basis of seniority-cum-fitness. However, no final action could be taken due to reduction by the Government in the sanctioned strength of JE from 12 to 7 posts under the control of the concerned circle of the Department. The respondents would further submit that the applicant was given a chance only to look after the duties of JE vide orders dated 16.4.93 but w.e.f. 29.3.93 and since it was only an order of promotion on purely stop-gap and ad-hoc basis, the applicant was not eligible for any extra remuneration for working as JE. As per respondents records, the applicant never agitated the issue of ISP and that the aforesaid Scheme of ISP was not applicable to the applicant since Surveyors have the chance/avenue for promotion to the post of JE.

8. In the maze of aforesaid claims and counter-claims, we are of the view that the fate of this OA hinges on the determination of the following issues:

- (i) Does the applicant have a case for atleast one regular promotion in the entire service of 37 years;
- (ii) Was he entitled for ISP with effect from 1.4.91 when the Scheme came into operation and considered?

(iii) Did the respondents ever consider the applicant's case for promotion in view of the law laid down by the apex court in the case of Raghunath Prasad and Bhat (supra) or in terms of ISP?

(iv) Can the applicant's claim for higher salary for officiating in JE's post with effect from 29.3.93 be sustained in terms of law?

(v) Are the claims of applicant hit by law of limitation?

9, What is not in dispute is that the applicant did not get even one promotion on regular basis from 1962 to 31.1.97 when he superannuated. It is also not in dispute that the applicant reached the maximum of the scale of pay after implementation of 3rd PC's recommendations in the scale of Rs.260-350 and again after 4th PC in the scale of Rs.950-1400. The seniority of the applicant is not in question, nor his eligibility for consideration of promotion as JE. Nor there was any case pending against the applicant that could debar him from the said consideration.

10. In the case of Raghunath Prasad Singh (supra), it has been held that:-

"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."

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In the aforesaid case, the Apex Court directed the State of Bihar to provide atleast two promotional opportunities to the officers of the State Police in the Wireless Organisation.

We also find a similar view having been taken by the Hon'ble Supreme Court in the case of K.G.S. Bhat(supra). Their Lordships held that:-

"The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well.

.....

"The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors"

The 5th PC in Volume I (Chapter 22) of its report has equally highlighted the need for providing atleast 2/3 promotions in the service career of a person holding a civil post. We do not find any whisper, what to speak of considering officially applicant's case for promotion in terms of the aforesaid law laid down by the apex court.

11. Main conditions for granting promotion under ISP scheme, as in OM dated 13.3.93, are as follows:

"(i) employees who were directly recruited to a Group 'C' or to Group 'D' post;

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(ii) employees whose pay on appointment to such a post is fixed at the minimum of the scale; and

(iii) employees who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post."

We find that the applicant fulfills all the conditions of ISP. It is for the administrative Ministry/department to identify such posts which do not have promotional avenues in the Ministry/department/organisation under its control, collect all the relevant details and approach the concerned Financial Adviser. Every subordinate authority are required to make a reference to Ministry of Finance through the administrative Ministry concerned with the specific comments of Financial Adviser concerned. This Scheme came into operation from 1.4.91. The respondents cannot escape responsibility by saying that the applicant never applied for the same. Having failed to offer regular promotion in 1990, the respondents should have considered promoting applicant atleast with effect from 1.4.91 under ISP Scheme. Admittedly, applicant was a Group 'C' official and was also eligible for ISP. As per details in the OM dated 13.3.93, respondents ought to have but never initiated any action invoking the provisions of the aforementioned OM to effect atleast one regular promotion to the applicant herein. Respondents' submission that the applicant never applied for ISP or that the Scheme is not applicable is only an afterthought.

12. We shall now examine if the applicant was ever considered for promotion. To ascertain this, we had called for the departmental file/records and it is seen

that there was a special drive to complete backlog promotions in respect of SC/ST candidates. Interviews were held on 30.8.89 and the posts of JE reserved for SC/ST were duly filled up. That apart, "further recruitment of general and SC/ST categories were made in 1988-89 which is clear from the seniority list of JEs enclosed as Annexure A-5". The applicant has alleged of not being considered in 1989 against the two posts that should have been earmarked for general category. Respondents processed the case of 3 general category candidates wherein applicant was the senior-most. The Chairman of the DPC - Secretary(I&F) - by his order dated 27.7.90 decided to have a formal meeting of the DPC on 8.8.90 at 3 PM. No further development took place thereafter. As per records, clearances were obtained from all concerned for the purpose of promotion for all the three including the applicant. However, the matter did not proceed further in view of disbandment of ND Circle in the year 1989 and reduction in sanctioned strength of JE in I&P Division from 12 to 7. The DPC proposed did not, therefore, take place. The ^{having} applicant's claim, therefore, of ~~being~~ ignored for the ^{purpose} ~~of~~ ^{long} consideration of promotion cannot be entertained. This, however, does not absolve the respondents of their obligation of considering the applicant's case under ISP scheme as mentioned in para 11 above.

13. We also find that the applicant has claimed the higher salary of JE for having carried out the responsibilities from September 1993 onwards. In respect of the payment of the higher wages, the decision

of the Hon'ble Supreme Court in CA-1737/89 is squarely applicable to the facts and circumstances of the present case. In that CA, the Apex Court was examining the ratio arrived at by the New Bombay Bench of this Tribunal in OA-294/86 cited in the case of 'R. Srinivasan Vs. U.O.I. & Ors. (1994(1) ATJ Vol.16 232). In that case (OA-294/86) the applicants were shouldering higher responsibilities of officer of Grade II but denied emoluments for the said post. It was observed that inasmuch as the applicants have not given in writing that they would not claim any extra remuneration, they would be entitled to such payments as per rules. That judgement has become final since the appeal filed by the respondents against the said judgement in the aforesaid O.A. was dismissed by the Hon'ble Supreme Court by an order dated 2.8.91 (emphasis added).

The same issue regarding legality of additional remuneration for having discharged higher responsibilities has been very recently adjudicated by the Apex Court in the case of Silvaraj (supra) decided on 6.3.98. That was the case where a primary school teacher was asked to look after the duties of Secretary (Scouts). Appellant was posted on officiting basis, as in the present case. The apex court held that on principle of quantum meruit, the said primary teacher should have been paid higher scale during the period he actually worked in that capacity. We find the same situation prevails here. **and hold that the applicant is eligible for the higher salary (i.e. the difference between the salary of Surveyor and JE) for the period he functioned as JE.**

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14. We now come to the last issue concerning respondents' plea of limitation. A perusal of the records reveal that the applicant had been agitating the issues of stagnation/claim for promotion even as Section Officer right from 23.12.1977. Respondents never replied to several of applicant's representations. It is well settled in law that where Government itself is at fault, it should not stand on plea of limitation. This view finds support from the judgement of the Hon'ble Supreme Court in the case of **S.R. Bhanrale Vs. UOI & Ors.** 1997(1) SLJ 14. That was the case where certain amounts had admittedly fallen due to the appellant therein before his retirement. The same was wrongfully withheld. The apex court held that it was "improper on the part of Union of India to plead bar of limitation against the said claims of its employee, when it had defaulted in making payment promptly when the same fell due. It was not as if the appellant had woken up after a decade to claim his dues. He had been asking the department to pay him his dues both while in service and after superannuation but to no avail. In these circumstances, it ill behoved the Union of India to plead bar of limitation against the dues of the appellant". The case of the applicant herein is covered on all fours in the facts and circumstances of the aforesaid case decided by the apex court. Respondents' plea of limitation, therefore, falls on the grounds.

15. In the background of the circumstances aforementioned, the O.A. is allowed with the following directions:-

of

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(i) The applicant shall be deemed to have been promoted as JE on ISP basis with effect from 1.4.91 with all consequential benefits flowing out of the said promotion, since he was already found eligible at all levels for promotion as JE on 8.8.90. This will take care of his claim for officiating pay/extra remuneration for having worked as JE;

The abovesaid direction shall be carried out within a period of four months from the date of receipt of a certified copy of this order.

(ii) It is eminently a fit case for R-1 and R-2 to identify and take appropriate actions against the erring official(s) who had failed to bring the necessary provisions laid down in respect of ISP Scheme as well as payment of higher wages, as detailed aforesaid, to the knowledge of the higher authorities;

(iv) There shall be no order as to costs.

S. P. Biswas
(S. P. Biswas)
Member (A)

T. N. Bhat
13-11-98
(T. N. Bhat)
Member (J)

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