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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.2083/94

New Delhi, dated the 28th July,
1995.

HON'BLE SHRI B.K. SINGH, MEMBER(A)

In the matter of :

Shri P.P. Neogi,
Extra Assistant Director/
Assistant Engineer,
Central Water Commission,
Sewa Bhawan, R.K. Puram,
New Delhi-110 066.

....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-110 001.

2. The Chairman,
Central Water Commission,
Sewa Bhawan, R.K. Puram,
New Delhi-110 066.

....Respondents

(By advocate Shri V.S.R. Krishna)

BY HON'BLE SHRI B.K. SINGH, MEMBER(A)

O R D E R

This O.A. No.2083/94 has been filed against the orders of non-disposal of representation dated 21.12.92 by the Chairman, Central Water Commission and denying the benefits of refixation of pay at par with the juniors.

Learned counsel argued that the cases were recommended but there has been no response from the Chairman, Central Water Commission. It was pointed out that the case of one Sh. B.N. Sarkar was recommended alongwith the applicant and he has been allowed the same benefit i.e. fixation of pay at par with the juniors in the judgement dated 31.8.94 by Hon'ble Sh. J.P. Sharma, Member(J). This is annexed and marked as Annexure-IV to the OA. Ld. counsel Shri K.L. Bhandula cited other judgements of the Hon'ble Tribunal where the same benefits were extended to seniors in OA.1621/89, 1628/89, 1629/89, 1769/89 and in OA-1856/89. The judgements were delivered in February 1990 by

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Hon'ble Member Shri P.C.Jain. He has also quoted some more judgements of the year 1992 in which the same benefits were extended. These judgements are :-

- a) Judgement dated 2.4.92 in OA.1788/90 and O.A.No.1790/90 in respect of S/Shri B.B.Mathur and A.K.Ghosh by Hon'ble Justice Ram Pal Singh, Vice Chairman (J).
- b) Judgement dated 15.5.92 in OA-1042/90 in the matter of Shri M.A.Madnani by Sh.J.P.Sharma, Member(J).
- c) Judgement dated 18.5.92 in O.A. No.1342/90 in the matter of Shri M.K.Nair by Hon'ble Justice Shri V.S.Malimath, Chairman.

Recently in similarly circumstanced persons, the same benefits have been allowed to others whose cases were decided by the Tribunal. These are :-

- a) O.A.No.1774/92 on 5.5.93 of Shri S.K.Das, by Hon'ble Shri B.S.Hegde.
- b) O.A.No.1775/92 on 5.11.93 of Shri Shiv Charan, by Hon'ble Shri P.T.Thiruvengadam.
- c) O.A.No.267/93 on 3.6.94 of Shri A.K.Kolay, by Hon'ble Shri S.R.Adige.

He argued that these benefits have been denied to the applicant. Reliefs sought are :-

- i) To refix the pay of the applicant in the grade of Extra Assistant Director/Assistant Engineer (Scale Rs.2000-3500) @ Rs.2375 p.m. w.e.f. 28.11.86 at the level of pay drawn by his junior Shri G.D.Roy with all consequential benefits of future increments, allowances etc.
- ii) To pay arrears of pay, allowances, increments, etc. consequent on the refixation of his pay.
- iii) To grant such other benefits as Hon'ble Tribunal may deem fit and cost of proceedings.

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Some of the judgements have also been placed by the learned counsel Shri Bhandula and these are on the record.

Notice was issued to the respondents who filed their reply contesting the application and grant of reliefs prayed for. I heard the learned counsel Shri K.L. Bhandula for Applicant and Shri V.S.R. Krishna for respondents and perused the record of the case.

The uncontroverted facts are these :-

"That Shri P.P. Neogi was appointed as Supervisor which has now been re-designated as Junior Engineer in the Central Water Commission w.e.f. 10.4.67 in the pay-scale of Rs.180-380/-. He was promoted to the grade of Extra Assistant Director/Assistant Engineer in the pre-revised pay-scale of Rs.650-1200/- purely on adhoc basis with effect from 2.11.82 and his pay was fixed at Rs.650/- from the same date."

Shri Neogi got an offer of deputation to Narmada Control Authority and he accepted that offer and proceeded on deputation as Assistant Liaison Officer w.e.f. 9.11.84. Before he could join his post on deputation, the parent department issued instructions vide Office Order No.A-35012/1/84-Estt.V dated 19.10.84 (Annexure-I) that he stood reverted to the grade of Supervisor i.e. Junior Engineer with effect from the date he proceeded on deputation. It is also admitted by both the parties that Shri Neogi remained on deputation with Narmada Control Authority upto 9.11.86 and the recommendations of the 4th Pay Commission were implemented from 1.1.86. It is admitted that as a result of reversion, prior to his joining on deputation, his lien in the department remained as Supervisor in his parent office i.e. Central Water Commission w.e.f. 19.10.84 till he was again promoted to the grade of EAD/A.E. on adhoc basis on repatriation from deputation ^{i.e.} on 28.11.86. On reversion from Narmada Control Authority, his pay was fixed as per rules at Rs.2120/- w.e.f. his date of joining i.e. 28.11.86 in the

revised pay scale of EAD/AE of Rs.2000-3500/-. It is also admitted by both the parties that Shri Neogi was regularised in the grade with effect from 20.11.89 alongwith other officers. The respondents in their counter reply have categorically stated that Shri P.P.Neogi's rank in the seniority list was 340 and that of Shri G.D.Roy's was 403. It is also admitted that Shri P.P.Neogi was promoted on adhoc basis as EAD/AE on 2.11.82 but as a result of his acceptance of the offer of Narmada Control Authority, he was reverted to his substantive post of Supervisor w.e.f. 19.10.84 whereas Shri G.D.Roy, who was promoted on adhoc basis on 2.10.82, continued to hold that post. It is also admitted that Shri Neogi on reversion from Narmada Control Authority was again promoted on adhoc basis as EAD/AE on 28.11.86 whereas Shri G.D.Roy continued to hold that post on adhoc basis right from 2.10.82 and earned increments due to him. It is also further admitted that Shri Neogi and Shri Roy were both regularised w.e.f. 20.11.89 in the new seniority list of EAD/AE as on 1.3.94. It is ^{further} admitted that Shri P.P.Neogi's rank ^{in the revised seniority list} is 224 whereas that of Shri G.D.Roy's is 232. It is further admitted that on reversion from N.C.A. the pay of Shri Neogi was fixed at Rs.2120/- w.e.f. 28.11.86 and that of Shri G.D.Roy was fixed at Rs.2300/- w.e.f. 1.6.86.

It is not in dispute that Shri G.D.Roy continued to officiate as EAD/AE on adhoc basis w.e.f. 2.10.82 whereas Shri Neogi was on deputation, drawing a higher pay scale or his basic pay plus deputation allowance. It is admitted by both the parties that Shri G.D.Roy did earn annual increments while working on adhoc basis w.e.f. 2.10.82 till he got the replacement scale on 1.6.86 and that ^{is} the reason why his pay after taking into consideration the increments earned by him was fixed at Rs.2300/-.

The entire controversy regarding this stepping up will depend upon the answers to the following questions :-

- 1) Whether a person who was divested of his adhoc promotion, before proceeding on deputation, can claim

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parity with juniors who continued to officiate in the promotional post without any break and earned increments?

- 2) Whether this case falls within the ambit of Section 22-C of the Fundamental Rules where the provisions of stepping up of pay have been enunciated?
- 3) Whether the applicant can get any relief without challenging Office Memorandum No.4/7/92-Estt.(Pay-I), dated 4.11.93 issued by the Department of Personnel and Training?
- 4) Whether there is any anomaly involved in the pay scale of the applicant vis-a-vis Sh.G.D.Roy and other juniors?

The answer to all these questions are in the negative. I think that this is not anomaly of pay and is not covered under Section 22-C of the Fundamental Rules. Secondly, the applicant, on his own volition, had gone on deputation and got higher emoluments in the form of deputation allowance and other perks and privileges and he also earned increments in his substantive post as Supervisor whereas his juniors got the benefit of officiating promotion as EAD/AE and continued to draw increments and these increments were earned by them as a result of their officiation in the higher post. A senior person who is on deputation cannot claim parity if increments have been earned by the juniors for their officiation. If there would have been a regular promotion of the juniors and proforma promotion had been granted to the applicant, he would have got the pay that the juniors were drawing but he could not draw any arrears of pay since the rules lay down clearly that if a junior had been drawing pay, that benefit of pay can be given only notionally but no arrears are admissible. In this case no proforma promotion was given

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since there was no regular appointment of the juniors to the higher post.

In view of these observations, the application fails and is dismissed leaving the parties to bear their own cost.

(B.K. SINGH)
MEMBER (A)

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