

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(16)

O.A./T.A. No. 2350/94 /19 Decided on: 24.1.96

A.K.L. Das

(By Shri D.R. Roy

..... APPLICANT(S)
Advocate)

VERSUS

Union of India & Ors.

..... RESPONDENTS

(By Shri V.S.R.Krishna

Advocate)

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THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~XXXXXX~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? No


(Dr. A. VEDAVALLI)
Member (J)


(S.R. ADIGE)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.2350/94

New Delhi: this the 24th January, 1996.

HON'BLE MR. S.R.ADIGE, MEMBER (A)

HON'BLE DR. A.VEDAVALLI, MEMBER (J)

Shri A.K.L.Das,
S/o Shri S.L.Das,
R/o C-2/2286, Vasant Kunj,
New Delhi.

Presently posted as Jr. Engineer,
(Graduate Civil) Sikkim Investigation
Division, Central Water Commission,
Tadong, Gantek (Sikkim)Applicant.

By Advocate Shri D.R.Roy.

Versus

1. Union of India,
through its Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi.

2. Central Water Commission,
through its Chairman,
Central Water Commission,
Sewa Bhawan, R.K.Puram,
New DelhiRespondents

By Shri V.S.R.Krishna, Advocate

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A),

In this application, Shri A.K.L.Das
has sought

i) regular promotion as Asstt. Engineer/
Extra Asstt. Director w.e.f. 25.4.91
when his junior Shri Sis Pal Gill and
others were promoted.

ii) arrears of pay and increments as
per rules together with interest
@ 18% p.a. thereon.

iii) Costs.

2. Admittedly, the applicant joined as J.E.
in the CWC on 21.3.85. By O.M. dated 20.2.86 the
respondents issued a seniority list of JEs as on
30.11.85 but for no fault of his own the applicant's

name did not find its due place in that list. The applicant asserts that he represented against that omission on 6.6.86 but to no avail. Because of that omission, he was not considered for promotion as AE/EAD in the DPC held on 20.11.89 as reviewed on 28.8.90 and 28.11.90, consequent to which persons junior to him were promoted as AE/EAD vide respondents' office orders dated 25.4.91 (Annexure-A2). The applicant's case is that had the respondents included his name in the seniority list he would have been promoted with the others and has therefore been deprived of that promotion, along with its consequential benefits for no fault of his own.

3. It appears that not receiving any reply to his representation, the applicant had earlier filed OA No.1742/93 which was disposed of by judgment dated 1.9.93 in which it was noted that the post of AE/EAD was a selection post, and the applicant could not claim automatic selection, but the respondents were directed to send a reply to the applicant. In compliance, the respondents informed the applicant on 13.1.94 (Annexure-A1) that it was administratively not possible to promote him as AE/EAD with related benefits with effect from due date, because a number of AEs/ EADs including all his juniors had been reverted to their substantive posts w.e.f. 31.7.92 due to compliance of judgment/orders dated 17.11.87 in OA No.1262/86 and MA No.414/91 of CAT, Hyderabad Bench. However, on the basis of interim stay of reversion of the graduate Engineers as AEs/EADs in CWC granted by different benches of CAT the reversion of all such graduate engineers had been kept in abeyance till further orders subject to the decision of CAT, Principal Bench, New Delhi and by Hon'ble Supreme Court in SLP No.7166/88 filed by Shri Nageshwar

Prasad and others. He had been placed between SL.No.1341 and 1342 in the seniority list of JE's of CWC as on 30.11.85 (circulated vide O.M. dated 20.2.86) vide CWC's addenda dated 13.1.84.

4. Thereupon the applicant filed another OA bearing No.772/94 again praying for regular promotion as AE/EAD w.e.f. 25.4.91. That OA was dismissed at the admission stage by order dated 18.5.94 in which the contents of respondents' reply dated 13.1.94 were quoted in full. While dismissing the OA liberty was given to the applicant to file a fresh OA if any grievance survived after the disposal of the cases clubbed together before the CAT, Principal Bench, New Delhi and SLP No.7166/88 before the Hon'ble Supreme Court.

5. The Hon'ble Supreme Court delivered their judgment on 28.7.94 in SLP No.7166/88 filed by Shri Nageshwar Prasad and others (Annexure-A5) whereby the CAT, Hyderabad Bench's judgment in OA No.262/86 was struck down and the prescription of the quota as between graduate and diploma holder was held valid, and the Central Water Engineering Group 'B' Service Rules as amended on 8.1.81 were held as legally in order. Accordingly in implementation of the said judgment dated 28.7.94 in SLP No.7166/88, the earlier DFCs were reviewed, and the applicant was appointed by Office Order dated 5.4.95 (Annexure -I to reply) as AE/EAD on regular basis w.e.f. 28.11.90 itself.

6. Hence, in so far as the present O.A. is concerned relief (i) has been granted to the applicant. In his rejoinder the applicant has now put forward the

claim that he was entitled to be promoted as AE/EAD from 28.11.89, but this was not his prayer in his OA. If the applicant had wanted to change his prayer as contained in his OA he should have filed an MA praying for amendment of the relief clause in the OA. He cannot change his prayer in the rejoinder, which gives the respondents no opportunity to furnish a proper reply.

7. As regards relief (ii) the applicant has prayed for arrears of pay and allowances as per rules together with interest @ 18% p.a. thereon. These arrears are claimed with reference to relief (i) above, namely w.e.f. 25.4.91 but that date is no longer relevant now as the applicant has been promoted on regular basis from a date even prior to that date, namely 28.11.90 vide order dated 5.4.95 (Annexure I to respondents' reply). By paragraph 2 of that order notional fixation of pay has been granted with effect from the date of promotion, but actual monetary benefits have been granted only with effect from they take charge as AE/EAD. This is in accordance with the Hon'ble Supreme Courts' judgment which did not mandate grant of any arrears of pay and allowances. Grant of arrears of pay and allowances to the applicant would therefore be tantamount to treating him differently from all those who like him were also promoted as AE/EAD w.e.f. 20.11.90 which itself would be discriminatory and violative of Articles 14 and 16 of the Constitution. In this connection, the applicant has relied on the CAT P.B. ruling in O.A.No.2278/93 R.K.Jha Vs. UDI & others decided on 21.9.94, wherein in a similar case where the applicant's name was omitted from the seniority list of JEs dated 30.11.95, O.A. was disposed of with a direction to the respondents to consider the case of the applicant

for promotion w.e.f. 25.4.91 in accordance with rules and in case he was found fit for promotion, he should be deemed to have been promoted with effect from that date, and he be given all consequential benefits including arrears of pay etc.

8. However, in the light of the Hon'ble Supreme Court's judgment in Nageshwar Prasad's case (Supra) and the action taken by the respondents pursuance to that judgment, granting the applicant regular promotion as AE/ EAD w.e.f. 20.11.90, and notional pay fixation as AE/EAD from that date, the Tribunal's judgment in R.K.Jha's case (Supra) would not be applicable because if it were to be effected, it would create an anomalous situation, whereby the applicant would be granted notional pay fixation from 20.11.90, but arrears from 25.4.91. The applicant has nowhere claimed arrears from 20.11.90, because his prayer for arrears in relief (ii), flowed from his prayer in relief (i) namely regular promotion as AE/EAD from 25.4.91, while the respondents have granted that regular promotion from even an earlier date i.e. 20.11.90 itself.

9. We also note that the applicant did not actually discharge the duties of the higher post from 20.11.90 or even from 25.4.91 to be entitled to arrears of that post and furthermore as the respondents had ordered the reversion to their substantive posts of persons even junior to the applicant w.e.f. 31.7.92 in compliance of the CAT, Hyderabad Bench Judgment, the respondents could not at the same time have promoted the applicant against one of those posts. It is true that those reversion orders were subsequently stayed

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by subsequent Court's orders but the matter stood frozen till the Hon'ble Supreme Court's judgment dated 28.7.94 laid down the law on the subject, and during this period no enforceable legal right accrued to the applicant to claim arrears.

10. In the result we are unable to direct the respondents to pay any arrears to the applicant.

11. To summarise, relief No.(i) already stands granted to the applicant, while we are unable to grant reliefs (ii) and (iii). This OA accordingly stands disposed of. No costs.

A.Vedavalli

(DR.A.VEDAVALLI)
MEMBER (J)

S.R.Adige

(S.R.ADIGE)
MEMBER (A).

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