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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 460/94

New Delhi, 30th September, 1994

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

S/Shri

1. Balasubramanian, SG, Asstt., NHQ/DNS
2. Badrinarayanan, KC, Asstt, AG/Coord
3. Basandrai, SK, Asstt, AG/CW-3(b)
4. Bhandari, MMR, Asstt, MS-3 GP
5. Bhatia, RL, Asstt, NHQ/DMPR
6. Chopra BL, Asstt, AG/Org-4(Civ)
7. Choudhury, Raghubir, Asstt, Air Hq(MT)
8. Jagmohan Swarup, Asstt, MS-7
9. Jain, KR, ACSO, GS/ST Dte
10. Jalwal, MC, Asstt, DGAS/NHQ
11. Jolly, VS, ACSO, GS/WE Dte
12. Khushal Chand, Asstt, E-in-C/Navy-2
13. Kumar, SD, Asstt, NHQ/DOA
14. Kanojia, VP, Asstt, DGMS (Army)
15. Gupta, OP, Asstt, DGQA/DWP
16. Malhotra, SC, Asstt, GS/WE Dte
17. Mangla, Vijay Laxmi (Mrs) Asstt, NHQ/DOS (L)
18. Mohan Lal, Asstt, MGO/PPO
19. Mohan Singh, Asstt, DGAFMS
20. Nair, SPR, Asstt, NHQ/DOA(Cashier)
21. Nathani, Padma (Mrs), Asstt, Air Hq/D Pers (Plg)
22. Nagi, KS, Asstt, DGNCG
23. Patni, Kanta (Mrs), Asstt, Air Hq/DMP&QA
24. Prabal Das, Asstt, NHQ/DSP
25. Prem Prakash, Asstt, DP & DIC
26. Sahni, Inder Jit, Asstt, DOA(P&R)/NHQ
27. Santanu Das, Asstt, AG/PS Dte
28. Sethi, JS, Asstt, Air Hq/Dte of Eng 'D'
29. Sher Singh, ACSO, AG/PS Dte
30. Singhal, TN, Asstt, GS/MI Dte
31. Srinivasan, Annapurna (Mrs), Asstt, NHQ/DOP (NA)
32. Surjan Singh, Asstt, NHQ/DCP
33. Vijay Kumar, Asstt, AG/Org 9(c)

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34. Yadava, KG, Asstt, DGMS (Air)

35. Yogeshwar Lal, MGO/Coord ... Applicants

Address for Service on all Applicants
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By Advocate Shri G. K. Aggarwal

Versus

1. Union of India through
Defence Secretary,
South Block,
New Delhi - 110011.

2. Chief Administrative Officer
& JS(A), Ministry of Defence,
C-II Hutments, South Block,
New Delhi - 110011.

... Respondents

By Sr. Standing Counsel Shri N. S. Mehta

O R D E R

In this application Shri S. G. Balasubramanian and 34 others, all working in the Armed Forces Head Quarters (AFHQ), New Delhi, have prayed for pay parity with their revised juniors in the grades of UDCs, Assistants, ACSOs, etc. and with retrospective pay fixation at par with the highest drawn by any of their juniors together with arrears plus 20% interest thereon compounded quarterly.

2. From the materials on record, it appears that a number of LDCs, including the applicants joined AFHQ between 1951 and 1968. One of their conditions for confirmation was that they would pass the typing test conducted by the UPSC at the prescribed speed. Some of these persons did not pass the prescribed typewriting test within the time limit laid down for the same and hence, lost seniority in the LDCs grade,

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as the general instructions at the time laid down that seniority would depend upon confirmation. The result was that their promotions to higher grades were also delayed. Some of them filed a writ petition in the Delhi High Court. A Single Judge of the High Court in his judgment dated 8.4.1981 allowed the writ petition and ruled that seniority of the employees would reckon from the date of their joining AFHQ. In an LPA filed by the department against this judgment, a Division Bench of the Delhi High Court allowed the same and set aside the Single Judge's judgment, upon which the petitioners then filed an SLP in the Hon'ble Supreme Court who by their judgment dated 21.2.1989 held that the seniority assigned to those persons as temporary Assistant be allowed from the date of their continuous officiation in the grade and not on the basis of their date of confirmation. On 9.1.1991, the Hon'ble Supreme Court in Writ Petition No. 493/90 directed that the benefits of their judgment dated 21.2.1989 should be made applicable to all similarly placed persons, and a similar order was also passed by the Tribunal in its judgment dated 8.1.1991 in O.A. No. 115/90 - Hans Raj Gawa vs. Union of India & Ors., and related cases. By the judgment dated 8.1.1991 the Tribunal directed the respondents to re-determine the seniority of the applicants and those similarly situate, including those who may have retired from service and review their cases for promotion in the light of the revised seniority list. As per these directions, admittedly seniority of LDCs who joined service in AFHQ between 1951 and 1968 has been re-determined and re-fixed,

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followed by ante dating and post dating promotions to the higher grades of UDCs, Assistants and ACSOs of a number of persons. Those who could not qualify the typing test and who lost their seniority earlier, regained the same on the basis of continuous officiation in the LDCs grade and their promotions to the higher grades were also ante dated, although they were not holding the higher posts for the period. It is also not denied that they have been paid full arrears of pay and allowances based on the revised dates of promotion. The applicants are now pressing for grant of notional promotion/notional pay fixation from the dates from which their immediate juniors were promoted as UDCs, Assistants and ACSOs, even on ad hoc basis.

3. For instance, the applicant, Shri Balasubramanian, has stated that he joined the AFHQ Service w.e.f. 27.7.1966. His immediate junior was promoted as UDC w.e.f. 24.3.1975 and Assistant w.e.f. 31.3.1983, and persons junior to him even in the next panel of 1989 to 1993 are receiving basis pay of Rs.2120/- w.e.f. 1.1.1993 although they are still in the officiating/ad hoc capacity as Assistants, while the applicant himself states that he is drawing basic pay of only Rs.1180/- w.e.f. 1.1.1993 and is thus incurring loss in basis pay as well as allowances.

4. The respondents have contested the applicant's claim and state that earstwhile seniors ^{who were holding the higher posts} before the applicants, have been allowed to retain the benefits of pay and allowances which accrued to them on account of the erroneous officiation in higher posts, based on the seniority list which had subsequently been quashed.

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It is averred that the applicants are now trying to take undue advantage because the pay of their erstwhile seniors had not been reduced, although the applicants have themselves been paid arrears of pay and allowances based on a deemed date of promotion in spite of the fact that they had not discharged the duties of higher posts. It is averred that rules relating to stepping-up of pay relate to anomalies created by the operation of the rules and do not apply in extra-ordinary situations such as those where the anomaly has arisen because the person who was promoted earlier has been allowed to retain the monetary benefits, despite subsequent loss of seniority.

5. I have given my careful consideration to this matter. The fact that the applicants have themselves been paid arrears of pay and allowances based on a deemed date of promotion in spite of not having discharged the duties of the higher post, cannot be questioned at this stage as the same has been done in pursuance of court orders. Similarly, the argument that rules relating to stepping-up of pay do not apply in cases where the anomaly has arisen because persons promoted earlier have been allowed to retain the monetary benefits despite subsequent loss of seniority is also without force, because persons concerned did perform the duties of the higher posts before they lost their seniority.

6. Shri Aggarwal for the applicants has cited a number of judgments in support of his contention that the applicants are entitled to stepping up of their

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pay equal to that of their juniors. These judgments are in Smt. N. Lalitha & Ors. vs. Union of India & Ors. (1992) 19 ATC 569; Anil Chandra Das vs. Union of India : (1988) 7 ATC 234; P. Gangadhara Kurup & Ors. vs. Union of India & Ors. : 1993 (1) ATJ 165; and Shaswati Rao vs. Union of India (O.A. No.838/86) decided on 20.8.92; S. K. Jasra vs. Union of India (O.A. No. 548/93) decided on 15.11.1993; and D. V. Singh vs. Union of India (O.A. No.2947/91) decided on 26.4.1993.

7. In S. K. Jasra's case (supra) notice was taken of the judgment in the case of Smt. N. Lalitha & Ors. (supra) wherein this Tribunal had made the following observations :-

"The fact that on promotion as UDCs juniors were placed at a higher stage in the scale of pay than the seniors is admitted. The reason given is that the juniors had the benefit of ad hoc promotion which does not affect the seniority but gives them the benefit of higher pay fixation by virtue of increments earned by them due to the fortuitous ad hoc promotion. In a similar case before this Tribunal V. Vivekananda vs. Secretary, Ministry of Water Resources, O.A.No.622 of 1989 while reviewing the case in R.P. No.71 of 1990 thereto this Bench followed the decision of the Calcutta Bench of this Tribunal in Anil Chandra Das vs. Union of India (1988) 7 ATC 234 (Cal). In that case also the juniors were fixed at a higher point by virtue of the ad hoc promotion they enjoyed. This Bench, following the Calcutta Bench judgment decided that not having had the benefit of fortuitous ad hoc promotions the senior should not be at a disadvantage in pay fixation and, therefore, directed the respondents to step up the pay of the applicant therein on par with his juniors. This matter was appealed against by the government to the Hon'ble Supreme Court which, by its order, dated 22.8.1991 in disposing of the SLP No.13994 of 1991 upheld the decision of this Bench. Thus, the point of law now is in favour of the applicants therein."

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8. Following the ratio of those judgments, in the present case also each of the applicants before me would be entitled to notional stepping up of pay on par with that drawn by each of their respective juniors from the date such juniors were given ad hoc promotions to higher posts, subject to the position being established that on the relevant dates had not such respective juniors been promoted, the applicant and he alone, would have been promoted..

9. In the result this application succeeds and is allowed to the extent as directed below :-

- (1) The respondents will prepare a list of each of those LDCs in respect of whom each individual applicant claims seniority noting therein the dates from which such LDC was given promotion to higher posts.
- (2) The respondents will thereafter satisfy themselves that had not such respective junior been given ad hoc promotion to higher post from relevant dates, that individual applicant who claims to be senior to him, and he alone, would have been promoted to such higher post.
- (3) Upon being so satisfied in respect of each individual applicant, the respondents will step-up the pay of that applicant on notional basis at par with that drawn by his respective junior, but without payment of arrears or interest.

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- (4) The above directions should be implemented by the respondents with all possible expedition, and preferably within a period of four months from the date of receipt of a copy of this order.
- (5) If any grievance survives thereafter, any of the applicants may after exhausting departmental remedies available to him, approach the Tribunal afresh, if so advised, in accordance with law.
- (6) No costs.

S. R. Adige
(S. R. Adige)
Member (A)

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