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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

NEW DELHI

O.A. No. 177 of 1994

Date of decision: 21.03.1995.

Shri Jaodish Chander Petitioner

Shri R. Venkatramani Advocate for the Petitioner

Versus

Union of India & Others Respondents

Shri Brijender Chahar Advocate for the Respondents

CORAM:

Hon'ble Mr. K. Muthukumar, 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? *no*

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 177 of 1994

New Delhi this the 21st day of March, 1995

Hon'ble Mr. K. Muthukumar, Member (A)

Shri Jagdish Chander
Under Secretary,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi-110001.Applicant

By Advocate Shri R. Venkatramani

Versus

1. Union of India through
the Director General,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi-110001.
2. The Secretary,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi-110001.Respondents

By Advocate Shri Brijender Chahar

JUDGMENT

In this application, the applicant has prayed for a direction to the respondents to give him notional promotion in the grade of Section Officer with effect from 9th August, 1976 when his immediate junior one Shri Prem Nath Dogra was given promotion in the said grade. He has also sought for a direction to the respondents to fix the pay of the applicant on par with his junior both in the grade of Section Officer and Under Secretary by giving all the benefits which accrued to his junior consequent on the latter's promotion to the grade of Section Officer with effect from 9.8.76.

2. The facts in this case briefly stated are as follows.

3. The applicant and the junior Shri Dogra both belong to the Scheduled Caste community. The applicant was appointed as a Direct Recruit Assistant with effect from

05.02.1972 whereas Shri Prem Nath Dogra was promoted to the cadre of Assistant from the lower post on 1.7.1968. In the provisional seniority list of direct recruits and promotees in the grade of Assistant drawn up by the respondents in 1975, the applicant's seniority was at S.No.112 while that of Shri Prem Nath Dogra was at S.No. 69. This seniority list was drawn up admittedly on the basis of the date of appointment to the grade. It appears that the inter-se seniority of the direct recruits vis-a-vis the promotee Assistants was under litigation. Therefore, when promotions were made to the post of Section Officers, the respondents had promoted Shri Prem Nath Dogra with effect from 9.8.1976 and the applicant with effect from 1.5.1979 on ad hoc basis. The matter of inter-se seniority of the direct recruit Assistants vis-a-vis the promotee Assistants was decided by the Hon'ble Supreme Court in 1981 on the basis of which, rota-quota provision was made in the recruitment rules and the seniority of the Assistants from both the schemes were revised. On the basis of the seniority so revised following the rota-quota principle, the applicant became senior and was assigned seniority at S.No.192 whereas Shri Prem Nath Dogra was assigned seniority at S.No.211. Thereafter it appears that the respondents in accordance with the recruitment rules, conducted limited departmental examination for filling up current and backlog vacancies of Section Officers on a regular basis. Although both the applicant and Shri Prem Nath Dogra appeared in the aforesaid limited departmental examination, the applicant only qualified and was appointed on a regular basis to the post of Section Officer with effect from 28.01.1982.

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Shri Prem Nath Dogra on the other hand was subsequently appointed as ^{and} a regular Section Officer with effect from 26.01.1984^{and} thereby his ad hoc promotion was made regular. Subsequently, the applicant was promoted as Under Secretary on 18.08.1988 while Shri Prem Nath Dogra was promoted as Under Secretary on 27.07.1989.

4. The grievance of the applicant is that consequent on the revision of the seniority of the Assistants, he became senior to Shri Dogra and was, therefore, entitled to have his pay brought on par with that of Shri Prem Nath Dogra, whose pay as Under Secretary was fixed at Rs.3400/- while the pay of the applicant was fixed at Rs.3000/- on the respective dates. The applicant has also averred that his representation for notional promotion to the grade of Section Officer with effect from 9.8.1976, i.e., the date when Shri Prem Nath Dogra was promoted on ad hoc basis/consequent on the applicant becoming senior on the basis of the revised seniority list, was rejected by the respondents. The applicant further avers that he is entitled to a notional promotion and upward fixation of pay on the basis of the principle laid down in FR 27 consequent on his fixation of his seniority above that of Shri Prem Nath Dogra. In addition, the applicant has also averred that even as per the recruitment rules, the respondents should have considered him for promotion in terms of the note below Col.10 of the recruitment rules by which it was provided that if any person having 8 years/5 years experience or service as Assistant is considered for promotion-examination respectively, all persons senior to him in the Assistant Grade shall also

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be considered notwithstanding that they may not have 8 years-5 years of experience-service in that grade and in view of this, the applicant contends that even if he did not have 8 years of service, he was eligible to be considered for promotion from 9.8.1976 to the grade of Section Officer when his junior Shri Prem Nath Dogra was so considered.

5. The respondents have strongly resisted the application and the averments made therein. It has been contended on behalf of the respondents that consequent on the promotion of Shri Dogra, as Assistant during 1968, as against the appointment of the applicant as direct recruit Assistant with effect from 5.2.1972, Shri Dogra was drawing a higher pay in the grade of Assistant. The respondents contend that the applicant is not covered under the rules for stepping up of pay as the promotion of the applicant as Section Officer was on ad hoc basis and the protection of pay is admissible only in the case of regular promotion. They have also contended that the provision of FR 27 are not attracted as ad hoc promotions do not confer any right. Hence his representation was rejected as the claim of the applicant based on ad hoc promotion of a junior employee, namely, Shri Prem Nath Dogra was not sustainable. It was, therefore, contended that the question of fixing the pay of the applicant at par with Shri Prem Nath Dogra's pay did not arise at all. On the question of the applicability of note below col.10 of the recruitment rules cited by the applicant, the respondents contend that this provision has no application as at the time of appointment to the post of Section Officer, the applicant was not senior in the provisional seniority list in 1976 and the said recruitment rules were circulated by a letter dated 19th December, 1977 although it was given retrospective effect from 1.1.1976.

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6. I have heard the learned counsel for the parties and have perused the records. The learned counsel for the applicant has cited several decisions which will be discussed in due course.

7. The limited point for consideration here is whether consequent on the revision of the seniority in the grade of Assistants following the rota-quota principle; consequent to the decision of the Supreme Court in 1981, the applicant derives a vested right for claiming parity on the pay drawn by Shri Prem Nath Dogra following his ad hoc promotion on 9.8.1976 with reference to the provisional seniority list followed at that time. Admittedly, both the applicant as well as Shri Prem Nath Dogra were promoted with reference to the original provisional seniority list of Assistants with effect from 1.5.79 and 9.8.76 respectively. On a closer examination of the matter, it will be seen that although the seniority list was revised in the grade of Assistants later on in 1982 and the applicant became senior, the fact remained that the original provisional seniority list on which basis the earlier ad hoc promotions were made cannot be held to be irregular or illegal. It was only because the seniority question was under dispute between direct recruits and promotees, the promotions were ordered on ad hoc basis with reference to the then seniority list. The applicant has raised a point that on the basis of the revised seniority list his having become senior to Shri Prem Nath Dogra would give him a right of consideration for ad hoc promotion earlier or at least on the same day when Shri Prem Nath Dogra was promoted and for this purpose, the applicant has in the rejoinder-affidavit pointed out that the respondents could have appointed him against one of the reserved vacancies at

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point No.22 which was one of the carried over Scheduled Caste vacancies of 1975 when they adjusted and promoted Shri Prem Nath Dogra with effect from 9.8.1976 against one of the two said carried over vacancies. His point is that he would be entitled to be promoted consequent on his becoming senior to Shri Prem Nath Dogra with effect from the same date against the other reserved vacancy which was unfortunately allowed to be lapsed subsequently in 1978. Apart from the fact that the applicant has brought about this new point at the rejoinder-stage^{and}, the respondents would have no opportunity of answering this contention, I find that even on merits such a contention would not be tenable. The applicant can have a grievance only if any of his juniors other than Shri Prem Nath Dogra, who was at that time senior to him in the Scheduled Caste category had been given ad hoc promotion earlier to the applicant. This apparently is not the case here and, therefore, the contention of the applicant insofar as it relates to this question is hypothetical and not tenable.

8. Learned counsel for the applicant then referred to the decision contained in V.K.D. Rajyalakshmi Vs. Regional Director, ESI Corporation, ALJ Vol.43 1992(2) page 300 to substantiate his point that the applicant would be entitled for stepping up of his pay equal to his junior. In the aforesaid case, the facts were somewhat different. In that case both the applicant and his junior's pay parity as UDC was under consideration. The junior in that case happened to be promoted as UDC earlier than the applicant and, therefore, he earned increments and his pay became higher than the applicant and it was held that the applicant

was entitled to the stepping up of pay. In the instant case, however, Shri Dogra was at the time of his appointment on an ad hoc basis was senior to the applicant and it was only subsequently on the basis of the revised seniority list he had become junior. Besides, both the applicant and Shri Dogra are not of the same category Assistants. The applicant was a direct recruit Assistant while Shri Prem Nath Dogra was promoted as an Assistant earlier than the applicant and, therefore, the original promotion and his drawing of higher pay from time to time could not be called in question. In any case, the revision of seniority does not alter the fact of earlier ad hoc promotion which itself cannot be held to be illegal at the relevant point of time. Besides, there is no provision for a notional ad hoc promotion. The learned counsel for the applicant then referred to a case of S.N. Padalkar Vs. Union of India & Others, ALJ 1992(3) Vol.45 page 40 where the application under FR 27 for giving the stepping up benefit to senior was considered. Here again the facts were slightly different as the position of the seniority of the applicant vis-a-vis his junior was not changed. It is to be reiterated that in the present case, subsequent revision of seniority on the basis of rota-quota principle does not alter the fact of an earlier ad hoc promotion and does not also give a retrospective right to the applicant for a notional ad hoc promotion in the absence of any rules or provision in that behalf. The learned counsel for the applicant then cited the case of P. Suseela & Others Vs. Union of India & Others, decided by the Cuttack Bench of this Tribunal ATC Vol.8 1988 page 213 where it was held

that if a senior person is ignored and junior is promoted for a long period, the senior is entitled to stepping up of pay. This case again is not relevant here as it is nobody's case that the senior person has been ignored at the time when the ad hoc promotion was made. As pointed out earlier at the time when the ad hoc promotion was made, applicant was not senior to Shri Dogra although the position altered after the revised seniority list was prepared. Learned counsel for the applicant also brought to my notice another case decided by the Ernakulam Bench cited in Swamy's CL Digest 1993 at 343. In this case it was decided that the seniors were entitled to stepping up of pay when juniors get higher pay due to fortuitous circumstances. With due respect I have to point out that the promotion of Shri Dogra in the instant case cannot be held to be fortuitous besides at that time he was not junior to the applicant. The learned counsel for the respondents raised an objection on the ground that the application is barred by limitation. I am not inclined to accept this position as I find that the applicant's representation was finally rejected by the competent authority in February, 1993. Besides, in a case of this nature there is a continuing cause of action for the applicant.

9. In the light of the aforesaid discussions, I find there is no merit in the application and the same is accordingly rejected. There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

21-3-95

RKS