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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO. 918/2000

New Delhi, this the 22 day of ~~February~~^{January}, 2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. N.K. Sharma,
Deputy Director
Central Statistical Organisation,
M/o Statistics & Programme Implementation,
Sardar Patel Bhawan,
Sansad Marg, New Delhi Applicant
(In person)

VERSUS

- 1.. Union of India
(through Secretary
M/o Statistics & Programme Implementation,
206, Sardar Patel Bhawan,
Sansad Marg,
New Delhi - 1) Respondent
(By Advocate: Shri K.C.D. Gangwani

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, Member (A) :

After final hearing on 22nd January, 2001, this
OA was disposed of in the following terms:-

"For the reasons to be separately recorded,
the present OA is allowed. The impugned
Memorandum dated 17.12.99 and 21.1.2000 are
quashed and set aside. The pay of the
applicant is directed to be upgraded
vis-a-vis his junior Shri A.K. Gupta from
the date of his regular promotion and
thereafter, i.e., w.e.f. 31.8.98 and
onwards. No costs."

2. We now proceed to record our reasons in support
of the above order.

3. The facts of this case, briefly stated, are as
follows. The applicant was directly recruited to the
Indian Statistical Service (ISS) in Grade IV (JTS) of
the said service in 1985 and in the seniority list
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showing the position as on 11.2.1986 (Annexure A-3), the applicant was placed at serial No. 713, whereas Shri Atul Kumar Gupta was placed at serial No. 730. Shri Gupta was, therefore, junior to the applicant. On completion of the usual period of probation in May, 1987, the applicant assumed charge of the post of Assistant Director (AD) in the Central Statistical Organisation (CSO) in the pay scale of Rs.2200-4000 / Rs.8000-13500. Thereafter he worked as Senior Research Officer (SRO) in the Planning Commission from 28.3.1995 to 27.6.1996 on deputation basis in the higher scale of Rs.3000-4500 / Rs.10000-15200. While still working as SRO in the Planning Commission the applicant was selected for the post of Under Secretary under the Central Staffing Scheme (CSS). The said post carried the pay scale of Rs.3000-45000 / Rs.10000-15200. The applicant joined as Under Secretary on 27.6.1996 in his parent department (Department of Statistics). While the applicant was on the aforesaid deputation, the respondent made ad-hoc promotion to Grade-III (STS) of the ISS in the pay scale of Rs.3000-4500 / 10000-15200 by the order dated 19.7.1996. The said Shri Gupta, junior to the applicant, was thus promoted to Grade-III (STS) on ad hoc-basis. The aforesaid order of 19.7.1996 made it clear that the said Shri Gupta as also several others promoted by the same order were being promoted on ad-hoc basis till further orders. (emphasis supplied) The aforesaid order of 19.7.1996 further clarifies that in making the promotions

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(ad-hoc), officers who were on deputation (such as the applicant), had not been considered, the reason being that the promotions that were being made were of a purely ad-hoc nature. Subsequently, the respondent made regular promotions to the Grade-III (STS) and on this occasion, as required under the Rules, the applicant's name was also considered along with the name of Shri Gupta and others. Regular promotions were accordingly made with effect from 31.8.1998. In the list of promotees (regular), placed at Annexure A-V, the applicant figures at serial No.2, whereas the said Shri Gupta figures at serial No. 18. This is in accordance with the inter-se-seniority list, which has been maintained by the respondent. As per Rules, following his regular promotion, the applicant, even though still on deputation, exercised his option to have his pay fixed in the scale of Rs. 10000-15200 in Grade-III (STS). His pay was fixed at Rs..10325/- with effect from 1.12.1998, which is his normal date of increment in the grade of AD (Grade-IV) (Annexure A-6). Accordingly, the applicant is currently drawing Rs.10650/- as his basic pay from 1.12.1999. In January, 1999, however, it had come to the applicant's notice that the said Shri Gupta had been drawing Rs.10325/- as basic pay since 1.10.1997 (Annexure A-7). Thus, the said Shri Gupta would draw Rs.10650/- as basic pay w.e.f. 1.10.1998. As stated, the applicant, by virtue of the order at Annexure A-6, was drawing Rs. 10000/- only as basic pay as on 1.10.1998. That is to

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say, on 1.10.1998, the said Shri Gupta was drawing Rs. 650/- per month in excess of the pay drawn by the applicant. This gave rise to pay anomaly impugned in this OA. The applicant made a representation on 5.2.1999 and thereafter filed a comprehensive representation again on 30th December, 1999. His first representation has been rejected by the impugned order of 17.12.1999 placed at Annexure A-1 and the second representation has been rejected by the impugned order dated 21.1.2000 placed at Annexure A-2.

4. We have heard the learned counsel at length and have perused the material placed on record.

5. The learned counsel appearing for the respondents who contest the OA has not disputed the facts described in paragraph 4. He has, however, placed reliance on the relevant instructions of the Govt. of India issued vide Office Memorandum dated 4.11.1993 (placed on record) and also on certain extracts from a publication placed at page 53 of the paper book. He has also placed reliance on the advice received by the respondent from the DOP&T. He has gone on to contend that the aforesaid Office Memorandum of 4.11.1993 has been upheld by the Supreme Court in Union of India and Anr v. R. Swaminathan etc. reported as JT (1997) 8 SC 61.

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6. The applicant has argued his case in person and has extensively quoted from the relevant instructions to prove that his case is fully covered by the aforesaid instructions and is further covered by the orders of this Tribunal as also the judgement of the Supreme Court. He has inter alia contended that his case for the removal of pay anomaly has been wrongly treated by the respondent as well as the DOP&T as a case of proforma promotion.

7. We will now proceed to examine the material placed before us. The respondent have placed on record a copy of the DOP&T's opinion rendered in December, 1999, which has led to the issuance of the impugned order in question. We have perused the said opinion and find that the same clearly deals with the question of proforma promotion and not with the question of removal of pay anomaly. The respondent should not, therefore, have placed reliance on the aforesaid opinion of the DOP&T in dealing with the representation filed by the applicant.

8. We have next perused the judgement of the Supreme Court in R. Swaminathan's case (supra). We find that the same deals with the question of pay anomaly arising from adhoc promotion of juniors, but in a context totally different from the context of the present OA. The facts and circumstances of the case decided by the Supreme Court are materially different

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from the facts and circumstances of the present OA. The Supreme Court in that case dealt with the same question relating to the Department of Posts & Telegraphs and Telecommunications and observed as under:

"The regular promotions from the junior posts in question to the higher posts are on the basis of all India seniority. The Heads of Circles have, however, been delegated powers for making local officiating arrangements based on Circle seniority to the higher posts in question against short-term vacancies upto 120 days in the event of the regular panelled officers not being available in that Circle. This period of 120 days was subsequently revised to 180 days. Under this provision for local officiation, the senior-most official in the Circle is allowed to hold the charge of the higher post for a limited duration. This is purely out of administrative considerations and is resorted to in order to tide over the exigencies of work. This practice, we are informed, has been followed in all Circles in the Department of Telecommunications since 1970.

From the aforesaid extract, it is clear that in the context of the situation obtaining in the aforesaid Department of Posts (supra), short duration promotions lasting not more than 180 days are resorted on the basis of Circle seniority lists and not on the basis of all India seniority lists, though for regular promotion purposes these same Departments also rely on the all India seniority list. In the present case, we find the adhoc promotions made by the respondent are for an indefinite period. The ad-hoc promotion order dated 19.7.1996 itself provides that promotions were being made on adhoc basis till further orders. In this view

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of the matter, we find the judgement of the Supreme Court in R. Swaminathan (supra) cannot find application in the present OA.

9. We had occasion to glance through the detailed representation filed by the applicant on 30th December, 1999. In the said representation, the applicant has dealt with the requirements laid down in the relevant Govt. of India's instructions comprehensively and adequately and has, at the same time, placed reliance on the order dated 15.12.1994 of the Chandigarh Bench of this Tribunal in OAs 1121 to 1123 of 1993. The applicants in those OAs had sought extension of benefit of the judgement of this Tribunal in N. Lalitha and others v. Union of India and Ors reported as (1992) 12 ATC 567. Accordingly, the Chandigarh Bench of this Tribunal had held that the pay anomaly between a senior and a junior should be rectified and seniors should get higher pay even if the junior enjoyed ad-hoc promotion.

10. The applicant has next placed reliance on the order of the Eranakulam Bench of this Tribunal dated 22.12.1994 in OA No.251/1994. According to the applicant, in that case it was held that if for any reason except by way of disciplinary proceedings a junior gets higher pay than the senior, the senior is entitled to have his pay stepped up to the level of junior due to fortuitous circumstances. The Eranakulam Bench had in the said case relied on the aforesaid case

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of N. Lalitha and Others v. Union of India and also on the case of Anil Chandra Das v. Union of India (1988) 7 ATC 224), which was, according to the applicant, affirmed on its merits by the Supreme Court in SLP No. 13994 of 1991.

11. During the course of arguments, the learned counsel appearing for the respondent had placed reliance on the following clause appearing in the relevant Government of India's instructions dated 4.11.1993 to contend that the applicant's case was not a case of pay anomaly:-

"A senior forgoing/refusing promotion leading to the promotion of junior earlier and drawl of higher pay than the senior; increased pay drawn by a junior due to ad hoc officiating/regular service rendered in the higher posts for period earlier than the senior."

The same clause has been re-interpreted and according to us correctly by the applicant, who had argued that the provisions of the aforesaid clause would find application only in a case in which a senior forgoes or refuses promotion and as a consequence thereof, the junior is required to be promoted even if on an ad hoc basis. Such is not the case in the present OA, for admittedly the applicant has, at no point of time, forgone nor has refused promotion.

12. In support of his contention, the applicant has placed heavy reliance on the Judgement of this Tribunal in N. Lalitha's case (supra). The relevant extract

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taken from the said judgement has been reproduced by the applicant in his OA and the same is reproduced below:

"5. 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 to which I was a party V. Vivekananda v. 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 v. Union of India. In that case also the juniors were fixed at a higher point by virtue of the ad hoc promotions they enjoyed. This Bench, following the Calcutta Bench judgement 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 in 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"

The law on the point in dispute in the present OA has thus been clearly spelt out in the aforesaid judgement. Further, the Chandigarh Bench of this Tribunal in CAs 1121 to 1123 of 1993 (supra) has also held that the judgement in N. Lalitha's case (supra) cannot be termed as a judgement in personam, but a judgement in rem. Thus, according to the applicant, the pay anomaly between a senior and a junior should be rectified whenever a junior gets higher pay even if he gets it on the basis of earlier ad hoc promotion.

13. In the circumstances outlined in detail in the preceding paragraphs and having regard to the orders of this Tribunal and of the Supreme Court referred to by the applicant, the OA must succeed. *The respondents are, in the circumstances, directed to comply with the directions contained in para 1 within a maximum period of two months.*

S.A.T. Rizvi

(S.A.T. RIZVI)
MEMBER (A)

Ashok Agarwal

(ASHOK AGARWAL)
CHAIRMAN

(pkr)