

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1343/1989

DATE OF DECISION: 30.10.1991

SHRI JAGDISH CHANDER

...APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

CORAM:

HON'BLE MR. T.S. OBEROI, MEMBER (J)

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI SHRI K.L. BHANDULA, COUNSEL

FOR THE RESPONDENTS

NONE

(JUDGEMENT OF THE BENCH DELIVERED BY  
HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

In this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, Shri Jagdish Chander, the applicant, has questioned the order of the respondents dated 21.4.1988, fixing the pay of the applicant at Rs.1640/- per month, consequent to his reversion at his request from the post of Junior Engineer (Civil) to Draftsman Grade II.

2. The facts of the case in brief are that the applicant joined the Central Water Commission as Junior Draftsman on 23.6.1965 and was confirmed in that post on 28.2.1972. He was promoted as Senior Draftsman (Draftsman Grade I) on 7.1.1974 on regular basis and worked on that post for 3½ years. After he obtained diploma in Civil Engineering, he was appointed to the post of Junior Engineer in the Central Water Commission on 12.7.1977 in which post he worked for about 11 years when he was reverted to the cadre of Draftsman Grade I on 2.2.1988 at his own request made on account of his family circumstances vide letter dated 29.10.1987. The order of reversion dated 21.1.1988 reads as under:-

"OFFICE ORDER

With reference to his representation dated 29th October,

2

1987, Chairman, CWC, hereby reverts Shri Jagdish Chander a temporary Junior Engineer of Upper Yamuna Circle, CWC under FR 15 (a), to the post of Draftsman Grade-I in the pay scale of Rs.1400-40-1800-EB-30-2300 with immediate effect.

His reversion to the post of Draftsman Grade-I has been agreed to on the conditions that he will not seek re-appointment to the post of Junior Engineer (C) and that he will be Junior to all the incumbents in the grade of Draftsman Grade-I as on the date of joining the post."

The said order was amended by the respondents vide office order dated 10.2.1988 which states that:-

" OFFICE ORDER

Consequent upon his reversion (voluntary) from the post of Junior Engineer (Civil) to the post of D'man Grade-II vide this Commission Order No.3(Sup)/118/77-Estt.VI dated 21.1.88 read with Corrigendum dated 8.2.88 Shri Jagdish Chander has joined his duties in the Commission as D'man Grade-II with effect from 2.2.88(FN). He is posted to the D&R Wing with effect from the same date."

He was directed to give his revised joining report as Draftsman Grade II in accordance with the corrigendum office order dated 10.2.88 which he did, as he was assured that this was only a technical requirement and that he would be treated as Draftsman Grade I for protection of his pay. The applicant further submits that his name appears at serial number 99 of the seniority list of Draftsmen Grade I while the last serial number in the said seniority list is 297. Thus, there are 198 persons junior to him who are working as Draftsman Grade I. The applicant contends that he cannot be reverted as Draftsman Grade II, as his juniors are working as Draftsman Grade I and he is entitled to claiming protection of pay at Rs.2000/- by giving him personal pay of Rs.100/- to be absorbed in future increments. If that cannot be done his pay can be

2

13

protected by fixing at Rs.1900/- as Draftsman Grade-I, the post held by him for 3½ years on regular basis under F.R. 26 (c) (i). The applicant has been, however, fixed at Rs.1640/- as Draftsman Grade II. The applicant further contends that he is also entitled to protection of pay as Draftsman Grade I under Next Below Rule (NBR) as per the provisions under F.R. 30.

By way of relief the applicant prays that the respondents be directed to protect his pay of Rs.2,000/- per month w.e.f. 2.2.1988 which he would have drawn, had he continued in the post of Junior Engineer held by him for 11 years by fixing him at Rs.1900/- + Rs.100/- as personal pay on reversion from the post of Junior Engineer. Alternatively, he should be fixed at Rs.1,900/- in the grade of Draftsman Grade I w.e.f. 2.2.1988, the post to which he was reverted at his own request under F.R. 26 (c) (i), as he had held that post for 3½ years on regular basis as Junior Engineer.

He further prays that if the above prayer cannot be granted the respondents should be directed to fix his pay in the grade of Rs.1600-50-2300-EB-60-2660 by giving him proforma promotion under the 'Next Below Rule' from 21.3.1974, the date from which his immediate junior was promoted as Draftsman Grade I as per provisions made in F.R. 30 and grant him consequential benefits by way of pay and allowances, consequent to re-fixation of his pay.

3. The respondents in their counter-affidavit have taken the stand that the post of Junior Engineer is not in the normal line of promotion for Draftsman Grade II. They contend that the applicant had to be reverted as Draftsman Grade II at his request, as that was the permanent post which he held before he was promoted as Junior Engineer. According to them his officiation as Draftsman Grade I for a period of 3½ years does not confer any right on him for re-appointment in that grade after reversion. They have further submitted that the case of his reversion is under examination in consultation with the Ministry. They

2

19

maintain that applicant's pay was fixed at a stage lower than what he was drawing because of his reversion at his request and vide paragraph 4.8 of the counter-affidavit have stated "FR 26 (c) (i) under which pay of the lower post is protected is not applicable in this case." They also contend that provisions of FR 30 too are not applicable (paragraph 4.9 of the counter).

4. The applicant has filed the rejoinder, reiterating his earlier position.

5. This case was shown as part-heard on 14.8.91 and has been appearing in the cause list as such. We have heard Shri K.L. Bhandula, learned counsel for the applicant on 24.10.91 when he concluded his argument. We waited for the learned counsel for the respondents, Shri M.L. Verma, who had filed the counter-affidavit but till 4.25 P.M. he was not available. Accordingly, we proceed to decide the case on the basis of the record. F.R. 26 (c) (i) provides:-

"F.R. 26 (c) (i) If a Government servant, while officiating in a post or holding a temporary post on a time-scale of pay, is appointed to officiate in a higher post or to hold a higher temporary post, his officiating or temporary service in the higher post shall, if he is reappointed to the lower post, or is appointed or reappointed to a post on the same time-scale of pay, count for increments in the time-scale applicable to such lower post. The period of officiating service in the higher post which counts for increment in the lower post is, however, restricted to the period during which the Government servant would have officiated in the lower post but for his appointment to the higher post. This clause applies also to a Government

21

servant who is not actually officiating in the lower post at the time of his appointment to the higher post, but who would have so officiated in such lower post or in a post on the same time-scale of pay had he not been appointed to the higher post."

It is noted that when a Government servant is reappointed from a higher post to a lower post he can count the service rendered in higher post for increments in the time scale applicable to such lower post. This period is, however, restricted to the period during which the Government servant would have officiated in the lower post but for his appointment to the higher post. The rule does not make any distinction between the appointment in the lower scale of pay at one's own request or in public interest. As such the applicant is apparently entitled to count the period of service rendered by him in the higher post when he was reverted to the lower post for the purpose of increment leading to the fixation of pay on the date when he took over the lower post. The second question which arises is that whether the respondents have a right to appoint the applicant on reversion as Draftsman Grade II instead of Draftsman Grade I. Undoubtedly, the applicant is confirmed as Draftsman Grade II, 198 persons junior to him are officiating as Draftsman Grade I. Further, he was promoted as Junior Engineer from the post of Draftsman Grade I after he worked for about  $3\frac{1}{2}$  years cannot be ignored. At best, he could be treated as having reverted to the post of Draftsman Grade II notionally, as that was his permanent post. He cannot, however, be actually posted to that post as he had officiated on regular basis for  $3\frac{1}{2}$  years in the post of Draftsman Grade I. 198 persons junior to him are officiating as Draftsman Grade I.

2

16

Accordingly, we are of the view that he is entitled to be placed in the scale of Draftsman Grade I and his pay should be regulated as such from the date he was originally promoted as Draftsman Grade I. He will be entitled to the grant of increments till the date he was actually reverted, i.e., 2.2.1988 in the scale of pay of Draftsman Grade I. There is no restriction of period for counting the period the applicant worked in the post of Junior Engineer, as he would have continued to officiate in the lower post, but for his promotion as Junior Engineer in view of the fact that 198 persons junior to him are officiating as Draftsman Grade I. The 'NBR' however, is not applicable in the case of the applicant.

In view of the above, we order and direct that the respondents shall fix the pay of the applicant on reversion at his request, duly counting the period of his officiation in the higher post on his appointment to the lower post in Draftsman Grade I (not Draftsman Grade II). In other words, his pay shall be regulated in accordance with F.R. 26 (c) (i).

The O.A. is disposed of as above, with no order as to costs.

*I.K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER(A) 30/10/91

*T.S. Oberoi*  
(T.S. OBEROI)  
MEMBER(J) 30.10.91

'SKK'