

-5-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: April 10, 1992.

DA 2150/89

V.P. SHIV

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant

... Shri K.L. Bhandula,
Counsel.

For the Respondents

... Shri M.L. Verma,
Counsel.

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporters of not ?

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant, Deputy Director, Hydrology-North Directorate, Central Water Commission, has prayed for fixation of his pay at par with the juniors. The application was appointed on 7.11.1970 as Supervisor Junior Engineer in the Central Water Commission. On 16.5.1980 under the orders of the Govt. of India he went on deputation to Iraq and remain till 15.5.1983. On

3.11.1980, when the applicant was on deputation, a person junior to the applicant Shri K.P. Sengar was promoted as Assistant Director/Assistant Executive Engineer. However, on 9.8.1982 there was a DPC and the regular promotion was given to the juniors as well as to the applicant but the junior Shri K.P.Sengar was earning an increment from the date of his original adhoc promotion i.e. from 1st November, while the increment of the applicant is to fall due in August. The applicant returned from deputation in May, 1983 and joined promoted post of Assistant Director/Assistant Executive Engineer and his pay was fixed at 980/-. The pay of Shri Sengar was fixed on 1.11.1982 at 1020/- while the pay of the applicant because of the increment falling due in August, 1983 could reach that figure in August, 1983 i.e. nine months later.

2. The applicant, therefore, in this application has prayed to re-fix his pay in the Grade of Assistant Director/Assistant Executive Engineer w.e.f. 1.11.1981 at the level of pay drawn by his junior Shri K.P. Sengar with all consequential benefits including increment etc.

3. The brief facts of the case are that the applicant while joined after deputation was fixed on a lower pay than that of his junior Shri K.P. Sengar while the

fixation of his pay should have been done in view of of the Ministry of Finance memo dated 12.5.1982, as reproduced below :-

"The pay of the senior official cannot be stepped up because the promotion of the junior officer to the higher grade has been made on ad-hoc basis. After the promotion of the junior official is made regular without any break in the service in the higher grade, the pay of the senior official may be considered for stepping up to the level of the pay drawn by the junior official retrospectively under F.R. 27 in consultation with the Ministry (Ministry of Finance)."

4. The applicant has also relied on the judgement given in the case of B.B. Rangaiah Vs. Union of India decided by the Hyderabad Bench in TA 1/88 arising out of Writ Petition 11833. The SLP against the judgement which give similar relief to similarly situated persons, was dismissed by the Hon'ble Supreme Court and a photo-stat copy of the same has been filed by the applicant. The respondents have also complied with the order and upgraded the pay as evident by Annexure III by the memo dated 19th May, 1989. The applicant has also relied on another judgement given by the Principal Bench on 3.7.1989, Y.N. Rao -OA 1095/88, V.V.G. Rao in OA 1096/88 and A.B. Thammaiah- OA 1097/88. The applicant has also relied on a decision given by the Principal Bench in a number of Original Applications 1621/89 and others, decided on February 26, 1990 by the Principal Bench.

- 8 -

5. The respondents contested the application and filed the reply stating that the applicant was on deputation and the applicant was to exercise option but he did not do so. The material facts should be considered as :-

- i) Both the junior and senior officers who belong to the same cadre and the post in which they have been promoted/appointed should be identical.
- ii) The scale of pay of the lower and higher position which they are entitled to draw the pay, should be identical.
- iii) The anomaly should be directed as a result of application of F.R. 22-C.

6. In view of the above facts, it is stated that the application has no force, and dismissed. Regarding judgement of Hyderabad Bench, delivered on 27.10.1989 in TA 1/88 it is said that the judgement in personem and the benefits cannot be extended to the applicant.

7. I have heard the learned counsel for both parties at length and have gone through the records of the case.
(a)
The plea taken by the applicant is that while on deputation the applicant was not intimated about the orders of promotion of their juniors nor he was given an opportunity to express his option whether to continue

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on deputation or return to his parent organisation to avail themselves on promotion which for intention purposes or on long term basis.

(b) They were advised of the observations of the Ministry of Finance contained in CWC I.D. note dated 12.5.1982.

(c) Even on promotion on regular basis, the applicant has not been given the benefit of refixation/stepping up of their pay on the level of pay, drawn by the junior.

8. In the case of D.B. Rangaiah Vs. Chairman, Central Water Commission & Another (supra) the applicant working as Supervisor in CWC was on foreign service with Water and Power Development Consultancy service. While he was in foreign service, his immediate juniors were promoted as Assistant Engineers on adhoc basis in April, 1978. On return to his parent department in 1981, he was promoted on temporary basis as Assistant Engineer w.e.f. 26.6.1981 and was regularised w.e.f. 31.12.1984. By the principles of next below rules, the fixation of the pay of his senior who had been on deputation has to be fixed. This rule provides an officer out of his regular line should not suffer by forfeiting the promotion which he would otherwise have received, had he remained in the original line. On the basis of above principles, in the case of D.B. Rangaiah (supra) the pay

of the senior was stepped up to that of his immediate junior. The ratio of the case of D.B. Rangaiah has been upheld by the Hon'ble Supreme Court in SLP, the department has already been implemented the judgement.

9. In view of the above facts, the application is allowed and the respondents are directed to stepping up ^{of} the pay of the applicant equal to that of his immediate junior Shri K.P. Sengar and give an increment from the same date as to junior when he returned from deputation in May, 1983, and the applicant shall be entitled to the benefits of refixation with all consequential benefits and arrears, as per rules. The respondents to comply with the order preferably in 10 weeks from the date of receipt of the copy of this order.

J. P. Sharma
(J.P. SHARMA) 10/4/82
MEMBER (J)