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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 2289/1989.

DATE OF DECISION:

2.4.83

Shri V. Bhimanna

....

Applicant.

V/s.

Union of India & Ors.

....

Respondents.

CORAM: Hon'ble Mr. J.P. Sharma, Member (J).
Hon'ble Mr. S.R. Adige, Member (A).

Shri B.S. Mainee, counsel for the applicant.
Shri P.H. Ramchandani, counsel for the respondents.

(JUDGMENT OF THE BENCH DELIVERED BY
HON'BLE MR. J.P. SHARMA, MEMBER (J)).

JUDGMENT

The applicant joined as Assistant in the year 1962 in the Railway Board and he rose to the rank of Assistant Legal Adviser on ad-hoc basis with effect from 27.5.1983 and was regularised in this post with effect from 27.3.1984 in the grade of Rs.1200 - 1600 / Rs.3000 - 4500 (Revised). One Shri O.P. Kshatriya repatriated to the Ministry of Law and Justice from the post of Deputy Legal Adviser and the applicant, by the order dated 22.4.1985 was detailed to look after the duties of the post of Deputy Legal Adviser, Railway Board, with effect from 30.3.1985 (F.N.). The relevant portion of the order reads as follows: -

"(1) Shri V. Bhimanna, Assistant Legal Adviser, Railway Board, is detailed to look after the duties of the post of Deputy Legal Adviser, Railway Board, with effect from 30-3-1985 (F.N.) vice Shri O.P. Kshatriya, repatriated to the Ministry of Law & Justice."

The applicant, by the same order, was made entitled to draw a special pay of Rs.150/- per month in addition to his pay as Assistant Legal Adviser, during the relevant period of his officiating. The applicant, subsequently by the order dated 28.5.86 was reverted to his substantive post of Assistant Legal Adviser. Again by the order dated 5.6.1986, an order similar to that passed on 22.4.1985 was passed by which the

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applicant was detailed to look after the duties of the post of Deputy Legal Adviser, Railway Board, with effect from 4.6.86 (AN) against an existing vacancy and that he will be entitled to draw a special pay of Rs.150/- per month in addition to his pay as Assistant Legal Adviser, during the relevant period of his officiating, under FR-35. The applicant continued to discharge the duties both of the Assistant Legal Adviser and also looking after the duties of the post of Deputy Legal Adviser till the date of his superannuation i.e., 31.3.1989.

2. The grievance of the applicant is that he has not not paid the salary for the post of Deputy Legal Adviser though he had been working on that post with effect from 30.3.1985 and only a charge allowance of Rs.150/- per month was paid to him till the date of his superannuation. The applicant, therefore, in this application has prayed for the grant of the following reliefs: -

"8.1. That this Hon'ble Tribunal may be pleased to direct the respondents to fix his salary as Deputy Legal Adviser in pay scale of Rs.1500-2000 (RS) and 3700-5000 (RPS) w.e.f. 30th March, 1985 and to pay him all the dues of salary alongwith the interest @ 18% per annum.

8.2. That this Hon'ble Tribunal may be further pleased to direct the respondents to give consequential benefits to the applicant.

8.3. That this Hon'ble Tribunal may be further pleased to direct the respondents to re-calculate the retirement benefits, e.g. pension, gratuity etc. on the basis of the pay as re-fixed as per item 8.1 above and to pay him the difference between the amount already paid and the amount payable in accordance with the re-fixed salary in the grade of Deputy Legal Adviser.

8.4. That any other or further orders, which this Hon'ble Tribunal may deem fit and proper under the facts and

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circumstances of the case, may also be passed in favour of the applicant."

3. The respondents have contested the claim of the applicant and in the reply stated that the applicant was only detailed to look after the duties of the Deputy Legal Adviser. In view of this, he was not allowed the grade pay of the post of the Deputy Legal Adviser, as he did not fulfil the minimum service conditions for becoming eligible for the above post as prescribed in the recruitment rules. The respondents have also taken the objection that the applicant never represented for the grade pay when he was detailed to look after the post of Deputy Legal Adviser. At the fag end of his service, just two months before his retirement, he made a representation. The applicant has already enjoyed the benefit of duty charge allowance of Rs.150/- per month. As such, it is stated that the applicant is not entitled to grant of any further relief.

4. We have heard the learned counsel for the parties at length and gone through the record of the case. The respondent have annexed with the counter the recruitment rules for the post of Deputy Legal Adviser in the Ministry of Railways (Annexure-IV). The post of Deputy Legal Adviser can also be filled by promotion from the departmental Assistant Legal Advisers with five years' regular service in the Grade. It is admitted by both the parties that the applicant was given ad-hoc promotion as Assistant Legal Adviser with effect from 27.5.83 and he was regularised in that post with effect from 27.3.1984. The applicant, according to the recruitment rules, could only be eligible for the post of Deputy Legal Adviser sometime after 27.3.1989. The applicant superannuated on 31.3.1989. In view of this, he could not have been eligible for the post of Deputy Legal Adviser almost till the date of his superannuation. This fact has been considered by the learned counsel for the applicant and so, he has not claimed that he should have been posted on regular basis to the post of Deputy Legal Adviser.

5. The contention of the learned counsel for the applicant is that since the applicant has discharged the job and duties of Deputy Legal Adviser, so on the principle of "Equal pay for Equal work", he should have been given pay in the pay scale of Deputy Legal Adviser, i.e., Rs.3700-5000. Learned counsel for the applicant has referred to the authority of RANDHIR SINGH Vs. UNION OF INDIA AND OTHERS (AIR 1982 S.C. 879) and also referred to Article 39(D) of the Constitution of India. Learned counsel for the applicant also referred to the case of Jodhpur Bench (O.A. 139 of 1987 - K. GOPALA KRISHNA PILLAY Vs. UNION OF INDIA & OTHERS) in which a Railway employee working as Divisional Signal Telecommunication Engineer (DSTE) was given a charge allowance of Rs.150/- per month instead of full pay of DSTE and the Hon'ble Jodhpur Bench held that the applicant's claim for being fitted in the scale of Rs.1100-1600 (R) on the basis of the doctrine of 'Equal pay for equal work' was well founded and, as such that application was allowed with a direction to the respondents therein to fix the salary of the said applicant as DSTE in the pay scale of Rs.1100-1600 with effect from 17.9.1984. Learned counsel for the applicant also referred to the decision of Bangalore Bench in O.A. No.946 of 1989 (N.P. SHIVANNA Vs. THE SECRETARY, RAILWAY BOARD AND THREE OTHERS) decided on 25.1.1991. In that case, the respondents were directed to refix the pay of the applicant under FR 22-C with effect from 25.8.86 when he was promoted to the post of Senior Divisional Electrical Engineer, to regulate his pensionary benefits accordingly and then to proceed to recover if it is found that there has been any excess payment computing the pension and other benefits on the basis of the pay fixed under FR 22-C.

6. The question of application of the principle of "Equal pay for equal work" arises in those cases where the persons ~~who~~ are similarly situated having the same qualifications and obligation to discharge similar type of duties; in such an

event the pay paid to each of them should not differ. As is evident from the recruitment rules referred to above, the applicant almost till his retirement, did not even fulfil the eligibility conditions for the post of Deputy Legal Adviser. When the applicant could not have been legally appointed to the post of Deputy Legal Adviser, in that event he cannot claim equality with all those who had been appointed as such and were paid in the scale of Rs.3500 - 5000. The principle of 'Equal pay for equal work', therefore, cannot be made applicable in the case of the applicant. In a recent decision of the Hon'ble Supreme Court, STATE OF MADHYA PRADESH & ANOTHER Vs. PRAMOD BHARTIA AND OTHERS (JUDGEMENT TODAY 1992 (5) SC 683), the Hon'ble Supreme Court considered the matter of 'Equal pay for equal work'. In the reported case, ^{whether} two sets of lecturers in Madhya Pradesh, one in the Higher Secondary School and the other in the Technical School having similarity in the qualifications, service conditions and status of the school, could be paid equal pay was considered and it was held that it would significantly depend upon whether they are discharging similar duties, functions and responsibilities as lecturers in the different institutions. In the present case, though reliance has been placed by the learned counsel on the case of RANDHIR SINGH Vs. UNION OF INDIA (Supra), but that too does not apply to the present case. The higher qualification for the higher grade which may be either academic qualification or experience based on length of service reasonably sustained the classification of officers into two grades with different scales of pay. However, in cases of unequal scales of pay based on no classification or irrational classification a breach of principle is clearly made out. In the present case, in order to get promotion to the post of Deputy Legal Adviser, the applicant had to gain experience of five years standing while discharging the duties and functions on a regular basis as Assistant Legal Adviser. What the applicant desires

in this case is that he was appointed on regular basis on 27.3.84 in the scale of Rs.1200-1600 /3000 - 4500 (R) and that from 30.3.1985 he be given the pay scale of Rs.3700 - 5000 of the post of Deputy Legal Adviser. It appears totally against the recruitment rules where five years standing is required for promotion to the post of Deputy Legal Adviser. It is not the case where the applicant was the only eligible candidate, but the post could have been filled by transfer on deputation or by direct recruitment. Learned counsel for the applicant, however, stressed that since there was only one post of Assistant Legal Adviser and one post of Deputy Legal Adviser and as one of the Superintendent (Legal) had been promoted as Assistant Legal Adviser, so the applicant for all purposes was promoted to the post of Deputy Legal Adviser. However, a reading of the order dated 22.4.1985, by which the applicant was given the charge of the post of Deputy Legal Adviser in addition to his duties as Assistant Legal Adviser, goes to show that he was never promoted. He was only detailed to look after the duties of the post of Deputy Legal Adviser. In that order, it was specifically mentioned that he will be entitled to only a special pay of Rs.150/- per month, in addition to his pay as Assistant Legal Adviser. Learned counsel for the applicant wants to read into this order dated 22.4.1985 the unwritten words of promotion to the post of Deputy Legal Adviser. He wants to rely on the words used in para 3 of the order where it is mentioned that "the above promotions have been ordered as purely ad hoc and local arrangements made in the administrative interest" without conferring any right to continue in the post or to claim further promotions in such grade/post on that basis. The word "promotion" has been used here only because the applicant was assigned certain duties of the post of Deputy Legal Adviser. The word "promotion" has not been used in the literal sense as is commonly understood. Moreover, the applicant was reverted from this post by order dated 20.5.1986. He did not assail

his reversion order at any time, nor in this present application. Thus, it cannot be said that the order dated 22.4.1985 was a clear order of promotion; but it was only a stop-gap arrangement asking the applicant to look after the duties of Deputy Legal Adviser on the payment of special pay of Rs.150/- per month.

7. Learned counsel for the applicant further argued that the applicant was further promoted to the post of Deputy Legal Adviser with effect from 4.6.1986 by the order dated 5.6.1986. It is also not a correct picture drawn by the learned counsel, in regard to the order dated 5.6.1986. In this order also, the applicant was detailed to look after the duties of the post of Deputy Legal Adviser and again he was given a special pay of Rs.150/- per month in addition to his pay as Assistant Legal Adviser. Thus, it is evident from the record that at no point of time, the applicant was promoted to the post of Deputy Legal Adviser.

8. Learned counsel for the applicant also referred to the fact that by the order of April, 1989 (Annexure A-6), it was mentioned that Shri V. Bhimanna retired on superannuation as Dy. Legal Adviser from the afternoon of 31.3.1989. By this the learned counsel wants to draw an inference that the applicant had retired from the post of Deputy Legal Adviser but the fact remains that the mention of the words "Deputy Legal Adviser" cannot by itself confer the status of Deputy Legal Adviser because at no point of time, the applicant was promoted as such and merely because he was asked to look after the duties of the post of Deputy Legal Adviser cannot entitle him to promotion to that post de-hors the rules.

9. As regards the decision in the case of O.A. 139 of 1987 (K. GOPALA KRISHNA PILLAY Vs. UNION OF INDIA), the facts of that case were totally different. The relief pressed in that O.A. was only that the respondents be directed to fix his salary as DSTE in the scale of Rs.1100-1600 from September 17, 1984 and to pay him the arrears of salary along with

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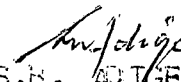
interest thereon @ 15% per annum. In that case, the Tribunal considered the matter on the principal of "Equal pay for equal work". Reliance has been placed in that on the case of RANDHIR SINGH Vs. UNION OF INDIA AND OTHERS (supra). In that case, the applicant was appointed to the post of DSTE and it was held by the Tribunal that he was unquestionably doing the same work as was being done by other DSTE. It was further observed that mere factum of his mode of appointment being different from that of the DSTEs who were appointed on regular basis would not exclude the applicability of the aforesaid doctrine. In the present case, the applicant was never appointed to the post of Deputy Legal Adviser either by promotion or by any other mode laid down in the recruitment rules for the post. He was only detailed to look after the duties of Deputy Legal Adviser in addition to his duties as Assistant Legal Adviser. The applicant has not given any bifurcation of duties which are to be performed by Assistant Legal Adviser and those by Deputy Legal Adviser. Basically, as the meaning suggests, the functions of both these posts appear to be to give advice on legal matters to the Railway Board. One may be said to be of higher type in complicated cases and the other may be in lesser important cases. In any case, experience is the main factor which has to be considered for discharging the duties of the post of Deputy Legal Adviser. The order by which the applicant was detailed to look after the duties of Deputy Legal Adviser itself goes to show that it was only a stop-gap arrangement and will not give any right to the applicant or any claim for the post. The applicant had accepted those terms and conditions. He had been reverted also in June, 1984 and at no point of time, he made any grievance to that effect. The first representation which has been made by the applicant and placed on record is only of 10th January, 1989, while he was to superannuate on 31.3.1989. The reason given by the applicant for making a delayed representation is not at all convincing.

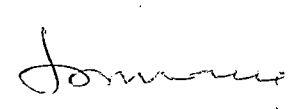
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In this representation, he has also accepted the fact that he had accepted the charge allowance on the basis of the provisions contained in Rule 2029. The Rule 2029 has not been discussed in any of the judgments referred to by the learned counsel for the applicant. Rule 2029 is still in force and followed and the Government is competent to fix the pay according to that Rule. In the representation, the applicant has averred that because of the judgment of the Jodhpur Bench in the case of K. GOPALA KRISHNA PILLAY (supra), he learned that he could also be granted the scale of pay of the post of Deputy Legal Adviser. This reason given in the representation, therefore, cannot be said to be substantial. Thus, the present application is also barred by the principle of laches and delay.

10. Learned counsel for the applicant has also referred to the decision of an Original Application of Ram Ajore Vs. Union of India, decided by a Single Bench, but the relevant copy of the judgment in that case has not been filed. However, the judgment in that case was on a different footing inasmuch as the eligibility for the post was not considered in that case and the applicant therein was given the benefit of the scale of pay given to a junior Shri P.C. Gupta.

11. In view of the above facts and circumstances, we do not find any force in the present application. The application is, therefore, dismissed as devoid of any merit and also by the principle of delay and laches. The parties shall bear their own costs.


(S.R. ADIGE)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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