

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 342/89
TAXON

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DATE OF DECISION 26.11.1991

N.H. Dave _____ Applicant (s)

Shri R.L. Sethi _____ Advocate for the Applicant (s)

Versus
Union of India _____ Respondent (s)

Shri M.L. Verma _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?


(AMITAV BANERJI)
CHAIRMAN

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PRINCIPAL BENCH
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.... Applicant.

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.... Respondent.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

For the Applicant.

... Shri R.L. Sethi,
Counsel.

For the Respondent.

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

(Judgement by Hon'ble Mr. Justice
Amitav Banerji, Chairman)

The matter in this O.A. pertains to fixation of pay. This O.A. can be heard by a Single Member Bench. Learned counsel for the applicant Shri R.L. Sethi had agreed to argue the matter before a Single Member Bench. It was accordingly listed before me.

The applicant was appointed as Statistical Assistant in the pay scale of Rs.425-700 on 13.11.1969. He was promoted as Senior Investigator on ad hoc basis w.e.f. 13.10.1977 and on regular basis w.e.f. 15.9.1980. On 25.4.1977, persons namely S/Shri P.C. Jain, S.C. Gupta, V.P. Pasrija and B.B. Bahl, Statistical Assistant (OG) were appointed as Senior Investigator in the Department, purely on ad hoc basis w.e.f. 18.4.1977, until further orders. On 25.6.1977, an assurance was given that the above appointment as Senior Investigator was purely on ad hoc basis, and the said appointment will not confer upon them any right to

claim benefits in the matter of seniority, confirmation etc. in the grade. The applicant who was senior to three of them was, however, not accorded the same position as those mentioned above. On 23.6.1977 S/Shri S.S. Malkani and N.H. Dave, Documentation Assistant was informed that as and when he reverts from deputation, he will be assigned due position according to his seniority as Statistical Assistant in the Ministry and that the ad hoc promotion given to his juniors will not in any case give them any fortuitous benefit over him. It may be mentioned here that from February, 1977 to October, 1977 the applicant served in Raja Ram Mohan Library, Delhi. What followed next was that the four persons mentioned above were granted increments in April/May 1978 whereas the applicant was allowed to draw his increment only in October, 1978. Hence, the applicant was treated as junior to them. The applicant then requested for stepping up of his pay at par with his juniors (Respondent No. 2 and 3) on the ground that he could not draw the pay less than his juniors and was entitled to stepping up in accordance with the extant rules and instructions. It is further stated that in similar cases respondents have allowed benefit to seniors, and that the vacancies were long term. The Respondent No. 1 rejected the applicant's representation on 17.11.1988 and thereafter the present O.A. was filed on 14.2.1989.

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The respondents took the plea that the Application was misconceived and the Application was barred by time. The stand of the respondents was that four officers/were promoted on 25.4.1977 (vide Annexure II), as Senior Investigators, on ad hoc basis, except Shri P.C. Jain, the other three were junior to the applicant in the Seniority List of Statistical Assistants. It was further stated that there was an anomaly in the pay drawn by the applicant and the three juniors and instead thereof the stand of the respondents was as follows:

"It may thus be observed that the anomaly of the juniors drawing more pay than their senior has arisen due to their officiation on the post of Senior Investigator on ad hoc basis prior to the applicant and not as a result of direct application of F.R. 22(c). This anomaly, therefore, cannot be rectified by stepping up of pay as demanded by the petitioner because there is no such provision in the rules".

Another plea raised by the respondents was that the representation for stepping up of his pay had been made after 9 years in June, 1985. In July, 1986, he again represented his case and in November, 1986 he had submitted a certificate that he would not claim arrears for the previous years in case his date of increment was brought at par with his junior, namely, Shri S.C. Gupta. On the basis of the above, an order was issued on 19.12.1986 antedating the date of annual increment from 1.10.86 to 1.4.86. The Department realised that the benefit of ante-dating the date of annual increment of the applicant in a way amounts to stepping up of his pay with reference to his juniors. It was stated that the impugned order

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was issued through a bonafide mistake. It was further stated that there was no anomaly as there was no provision in the rules to step up the pay of the senior with reference to his junior in such cases. The impugned order of ante-dating the date of annual increment was withdrawn subsequently vide order dated 22.6.1987. The Competent Authority had right to rectify the bonafide mistake made by it, and lastly, it was stated that the applicant has not been able to make out any case.

I have heard learned counsel for the parties. The preliminary question about the O.A. being barred by time may be examined first.

The impugned order is dated 22.6.1987. The applicant made representation on 28.6.1988. It was rejected on 17.11.1988 and thereafter the O.A. was filed on 14.2.1989. In the normal course, the impugned order should have been challenged before the Tribunal within a year i.e. by 28.6.1988, instead the applicant filed representation. The representation was, however, considered and rejected on 17.11.1988. The applicant thereupon approached the Tribunal in February, 1989. It will be noticed that the applicant had a year's time to file the O.A. under Section 19 of the A.T. Act. On the last date of limitation, he had made a representation to comply with the Section 19. That representation was disposed of within six months and within a further period of three months he had filed O.A. before the Principal Bench. We are not

prepared to hold that this O.A. is barred by time. Since the representation had been filed within a period fixed for filing the O.A. and had been entertained and disposed of, further period of limitation was provided under Section 21 of the A.T. Act. As such, the O.A. was within time.

As regards the other plea of the respondents that the O.A. is not maintainable, we are of the view that this is not such a matter which can be disposed of on this ground. The question raised in the O.A. is far reaching effect and it cannot be said that the O.A. is not maintainable. Both the preliminary objections are accordingly disposed of.

The main point in this case is whether the benefit once accorded to the applicant could be rescinded or withdrawn and whether date of annual increment could be ante-dated from October to April of the same year. The further question is whether it could be withdrawn at all.

There is no iota of doubt that the respondents No. 2 and 3 were junior to the applicant. The applicant during the relevant period was away on deputation to Raja Ram Mohan Library, and the respondents being available were promoted on an ad hoc capacity. The applicant was placed at a position junior to Respondents 2 and 3 and the applicant had merely asked for to rectify this position. This was initially accorded by the respondents but subsequently withdrawn by an order dated 22.6.1987. It is this order which is impugned. The respondent's stand is

that since it was a bonafide mistake in the order, it could be corrected by the respondents. The applicant's stand is that it could not be done for having once acceded to the position to bring him at par with his juniors.

I have considered the matter and in my opinion the primary case between the parties is whether the applicant had been affected by the withdrawal of the order. There is no doubt about it that he was affected. He had again been placed below Respondents 2 and 3, who were his juniors. The order dated 25.6.1977 was issued to correct the position and that having been granted could not be withdrawn. That order, in my opinion, corrected the anomaly between the applicant and the Respondents 2 and 3. In regard to the question of seniority, admittedly, the applicant was senior to Respondents 2 and 3, and was not liable to be placed below the Respondents 2 and 3.

I am, therefore, of the view that the order passed by the Government ante-dating his date of annual increment so as to place him at par and not below his juniors was a proper order. In the circumstances of the case, that order was not liable to be interfered with or withdrawn. The position would have been different if the applicant had not been senior to the Respondents 2 and 3. Merely because that he was on deputation does not mean he loses his position in Seniority List. It is well established that the period of ad hoc service is to be considered as regular service and counted for seniority. In this view of the matter, the Respondents 2 and 3 would be regularised from the date of their ad hoc promotion. On the

same basis, the applicant's position would be given later to commence his service because he was on deputation. It is well established that an order which seeks to put a senior into a junior position, can be challenged by the officer.

Unless there had been some punishment/under CCS(CCA) Rules which affects his career, I do not see how the applicant could lose his seniority. I am, therefore, of the view that the applicant was entitled to be placed at a place not junior to Respondents 2 and 3 and ante-dating his date of annual increment from October to April each year was a correct order and could not be withdrawn.

In the result, therefore, O.A. succeeds and the impugned orders dated 22.6.1987 and 17.11.1988 are set aside and the applicant is allowed the benefit of order dated 19.12.1986. I order accordingly.

There will be no order as to costs.

AB. 26/11/91
(AMITAV BANERJEE)
CHAIRMAN