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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 809 of 1989

Date of decision: 25.4.1989

Shri A.K. Jain

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Applicant

Vs.

Union of India & Others

....

Respondents

PRESENT

Shri K.L. Bhandula, counsel for the applicant.

Shri M.L. Verma counsel for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 by Shri A.K. Jain, Deputy Director, Central Water Commission, against denial of benefit of ad-hoc service in the matter of fixation of pay.

2. Brief facts of the case as stated by the applicant are that the applicant joined as Asstt. Director on 2.3.1979 in the Central Water Commission on the basis of the Central Engineering Service Examination and was promoted to the next grade of Dy. Director in the scale of Rs. 1100 (6th year or under)-50-1600 on ad hoc basis on 31.3.1983 when he was in receipt of pay of Rs. 860.00 in the grade of Assistant Director and his pay was fixed at Rs. 1100.00 as Deputy Director. He got his first increment on 1.4.85 on the anniversary of date of promotion in the grade of Dy. Director, after completion of sixth year of service raising his pay to Rs. 1150.00. He continued to work as Dy. Director on ad hoc basis when he was made regular on the recommendation of the D.P.C. on 22.1.1985 and his pay was re-fixed at Rs. 1100.00 in the grade of Dy. Director w.e.f. 22.1.85 without giving any consideration for the service rendered by him in the grade of Dy. Director on ad hoc basis which counts for increment as per FR 26. The refixation of pay on promotion on regular basis resulted in loss to the applicant as he was denied the benefit of the ad hoc service whereas similarly situated officers in the Central



Electrical Authority are given the benefit of the ad-hoc service in terms of Ministry of Finance O.M. No. F.12/21/74-IC dated 14.11.75. The Central Electricity Authority, where the applicant is posted at present, recommended the case of the applicant for refixation of pay on the above basis vide their letter dated 18.10.1985 but no action was taken. The applicant made an identical representation to Chairman, Central Water Commission, for refixation of pay but have not received any response so far. According to the applicant his pay should have been fixed at Rs. 1150.00 w.e.f. 2.3.85 on completion of sixth year of service and at Rs. 1200.00 from 1.3.86 whereas his pay has been fixed at Rs. 1100.00 from 22.1.85 and at Rs. 1150.00 from 1.1.86.

3. According to the applicant, he is eligible for refixation of pay by counting ad-hoc service rendered by him in accordance with the various decisions of the Hon'ble Supreme Court and the C.A.T. that ad-hoc promotion followed by regular promotion without break would be entitled for all benefits including fixation of pay of the service rendered in ad hoc capacity in the grade.

4. The respondents in their reply have stated that no cause of action has accrued in favour of the applicant against the respondents as fixation of pay in the senior scale under concordance table is admissible on regular promotion only and calculating the date of next increment under the provisions of FR 26(a) is not applicable to the applicant. Application devoids merit and is liable to be dismissed. The pay of officers promoted on ad hoc basis in the grade of DD/EE (from Junior Time Scale to Senior Time Scale in CWE (Group 'A') Service) is required to be fixed in accordance with the Ministry of Finance O.M. No. 7(10) E.III A/74 dated 21.6.74 and DPAR OM No. 1/9/79-Estt (Pay-I) dated 5.10.81. In terms of the provisions contained in the Ministry of Finance OM No. 12/21/74-IC dated 14.11.75 the pay of officers on their promotion to senior time scale

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on regular basis prior to 1.1.1986 was required to be fixed under the concordance table contained therein. In the case of promotion on regular basis in continuation of promotions on ad hoc basis, for purpose of fixation of pay under the concordance table, the notional pay of the officer in the grade of Asstt. Director/Asstt. Executive Engineer, which he would have drawn, had he not been promoted to the post of Dy. Director/Ex. Engineer on ad hoc basis, is taken into account and pay fixed in the senior scale at the appropriate stage specified under the concordance table. The matter was examined by the Ministry of Water Resources in consultation with the Department of Personnel & Training and the Commission was advised under Ministry's I.D. Note No. 13/5/86 dated 6.3.87 that the benefits of pay fixation under the concordance table are admissible to officers when they are promoted from Junior Time Scale to Senior Time Scale on regular basis only. Based on the Ministry's advice, the Central Electricity Authority was informed vide Commission's Office Order dated 30.3.1987. It is not known whether the Central Electricity Authority has informed the applicant about Ministry's decision.

5. Shri Bhandula, learned counsel for the applicant, said that in the matter of fixation of salary of Deputy Directors on promotion no distinction is to be made between ad hoc promotion and regular promotion and the Central Electricity Authority had recommended to the Central Water Commission that the pay of the applicant and others should be fixed on their total service in the Senior Time Scale. Similarly situated officers, namely, Deputy Directors in the Central Electricity Authority have been given benefits of the ad hoc service in terms of Ministry of Finance's O.M. dated 14.11.75 and the clarification given by the Ministry of Finance dated 21.8.85 (Annexure IV to the application). The applicant is an officer of the Central Water Commission and belongs to the Central Water Engineering Service. He, however, works in the Thermal Civil Designs Directorate of the Central Electricity Authority which is a sister organisation. Both Central Electricity Authority and

and the Central Water Commission are attached offices of the Ministry of Energy and Ministry of Water Resources respectively. Shri Bhandula clarified that the applicant while working in the Central Electricity Authority continues to be officer of the Central Water Commission and is not on deputation to the Central Electricity Authority.

6. The Fundamental Rules do not make any distinction between ad hoc and regular service in the matter of fixation of pay. Under the concordance table, salary would be fixed according to the number of years put in by an officer. In this case, while the senior scale can be given to an officer even before completing 6 years of service, increments will not start until the officer has completed six years of service. Normally, a person starts getting his increments from the day he is promoted to the next higher grade, but in this case the officer will start getting his increment in the higher grade only after he has completed six years of service and the officiating period prior to six years will not count for increments, but this has nothing to do with the promotion on a regular or on ad hoc basis. It is a well-established principle of law that ad hoc promotion followed by regular promotion would count for increments. It is also not the case of the respondents that any of the seniors to the applicant has been getting lower salary. In the circumstances, the application is allowed and the respondents are directed to refix his salary and pay him all the arrears due to him within three months from the date of receipt of these orders. These will be no orders as to costs.

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(B.C. Mathur) 25/7/89

Vice-Chairman