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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 952/1989.

DATE OF DECISION: 14-11-1990.

Satpaul Bareja ... Applicant.
Shri D.R. Gupta &
Shri O.P. Khokha ... Counsel for the Applicant.
V/s
Union of India & Ors. ... Respondents.
Shri P.P. Khurana Counsel for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reports of local papers may be allowed to see the judgement? *yes.*
2. To be referred to the Reporter or not? *yes.*
3. Whether their lordships wish to see the fair copy of the judgement? *No.*
4. To be circulated to all Benches of the Tribunal? *No.*

J. Sharma
(J.P. SHARMA)
Member (J)

P.C. Jain
(P.C. JAIN)
Member (A)

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CCRAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved by Office Order dated 4.8.1987 (Annexure 14), by which the proforma promotion given to him as officiating Assistant for the period 1.5.1979 to 30.3.1981 in the pay scale of Rs.425-800 vide Office Order dated 10.4.1981 was cancelled. He has prayed that the impugned order dated 4.8.1987 be quashed and that the respondents be directed to treat him retired from the post of Assistant in the grade of Rs.425-800 and entitled to retire at the stage of Rs.455/- per month. He has further prayed that his pension and gratuity be fixed with reference to his emoluments of Rs.455/- per month.

2. Briefly stated, the relevant facts are as below: -

The applicant was appointed as Lower Division Clerk in the grade of Rs.110-180 in the erstwhile Ministry of Petroleum and Chemicals, Government of India, with effect from 14.4.1967. After he qualified in the Examination of Upper Division Grade conducted by the U.P.S.C. in 1972, he was promoted as U.D.C. in the scale of Rs.330 - 560 with

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effect from 27.8.1973. He was appointed to officiate as Assistant in the scale of Rs.425-800 for the period from 24.6.1977 to 31.12.1977 and again from 1.6.1978 to 15.7.1978 and 1.1.1979 to 30.4.1979. His services were placed at the disposal of the National Hydroelectric Power Corporation Limited (hereinafter to be referred as "the Corporation"), a Public Sector Undertaking under the control of the Ministry of Energy, as Assistant Grade II in the scale of Rs.330-560 for a period of one year with effect from 1.5.1979. The deputation period was extended for a further period of one year. On the plea that he had officiated as Assistant under the Government of India for a period of about one year before his deputation on foreign service, he applied for grant of one increment under Fundamental Rule 22-C. Thereafter, Respondent No.1, viz., Union of India, wrote to Respondent No.3, viz., General Manager (P & A) of the Corporation, that prior to the deputation of the applicant to the Corporation, he had officiated as Assistant for a period of about one year and was eligible for the grant of one increment raising his pay from Rs.425 per month to Rs.440 per month in the scale of Rs.425 - 800 with effect from 1.5.1979, and further that but for his deputation to the Corporation, he would have continued to officiate as Assistant and he would have drawn another increment raising his pay from Rs.440 to Rs.455 per month in the scale of Rs.425 - 800 with effect from 1.5.1980. In pursuance of the above, Respondent No.3 fixed the revised pay of the applicant and leave salary and pension contribution were also remitted to the parent employer at the revised rate. Here it may be stated that while the applicant came on deputation to the Corporation, one Shri M.L. Khanna, junior to him as Upper Division Clerk in the erstwhile ~~in the~~ Department of Chemical and Fertilizers was appointed to officiate as Assistant in the scale of

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Rs.425 - 800 with effect from 1.5.1979 to 31.8.1979 and again from 1.9.1979 to 31.12.1979, which arrangement is stated to have continued further. The applicant had, therefore, represented to the concerned Department of the Union of India to give him proforma promotion as Assistant with effect from 1.5.1979, i.e., from the date of promotion of his junior under the next below rule. This proforma promotion was given vide Office Order dated 10.4.1981 (Annexure 3) for the period from 1.5.1979 to 30.3.1981 in the pay scale of Rs.425 - 800 under the Next Below Rule and this Office Order also stated that the pay of the applicant is fixed at Rs.440/- per month with effect from 1.5.1979 and at Rs.455/- per month with effect from 1.5.1980 in the pay scale of Rs.425-800. Necessary certificate for giving promotion under the Next Below Rule was also accorded in the same Office Order.

3. In pursuance of this Office Order, the Corporation promoted the applicant as Assistant Grade I in the scale of Rs.425 - 800 retrospectively with effect from 1.5.1979, under intimation to Respondents No.1 and 2. It is stated that Respondents No.1 and 2 raised no objection to the above action of the Corporation, which in any case was in accordance with the orders issued by the Government. It is stated that the applicant was also otherwise eligible for promotion as Assistant Grade I in the Corporation after completion of six years' service in the grade of Rs.330-560 with effect from August, 1973, as per the standing rules applicable to the Corporation.

4. In January, 1981, the applicant was offered permanent absorption as Assistant Grade I in the scale of Rs.425-800 in the Corporation with effect from 31.12.80 (Annexure 2). According to the applicant, since no reply

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to the applicant's representation for grant of proforma promotion had been received by that time, he made another representation to Respondent No.1. When no reply was received even then till the date he was to give his consent to the proposal for his permanent absorption, he declined the offer and requested the Corporation to repatriate him back to his parent Department, under intimation to Respondent No.1. But when proforma promotion was given to him in April, 1981, the applicant accepted the offer made by the Corporation for permanent absorption and thereafter he submitted his resignation from the post of Assistant with effect from 31.12.1980 in the parent Department on 22.4.1981, which was forwarded by the Corporation to the Government (Annexure 4). The acceptance of the resignation was conveyed by the Government vide Office Order dated 20.7.1981, later on substituted by Office Order dated 21.8.1981. The Government accepted the resignation of the applicant with effect from 31.12.1980. Thereafter, order for his permanent absorption in the Corporation as Assistant Grade I in the scale of Rs.425-800 was issued by the Corporation on 24.8.1981. Sanction of the President of India to the permanent absorption of the applicant in the Corporation, as above, was issued on 11.12.1981, which meant that the applicant had retired from the service of the Government with effect from 31.12.1980.

5. After receipt of the option from the applicant in regard to his pension, Respondent No.2 issued sanction orders dated 17.8.1982 (Annexures 9 and 10). However, respondent No.1 issued another letter dated 31.8.1982 informing the applicant that his pension and gratuity were provisional (Annexure 11). The applicant accepted the pension and gratuity vide his letter dated 10.11.1982 without prejudice to his rights of claiming the pension and gratuity as per his entitlement under the rules (Annexure 12). He was sanctioned provisionally an amount of Rs.20866.60 towards

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commuted value^{of} one-third pension and terminal benefits vide letter dated 21.12.1982 (Annexure 13). The applicant contends that his efforts for release of the final sanction did not succeed. However, after a period of 6½ years, respondent No.2 issued Office Order dated 4.8.1987 (impugned order at Annexure 14) to the effect that the applicant's proforma promotion granted to him vide Office Order dated 10.4.1981 has been cancelled.

6. No counter-affidavit was filed by the respondents. However, the learned counsel for the respondents submitted at the time of final hearing of the case that the same be decided on the basis of the records.

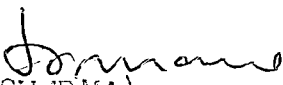
7. We have carefully perused the material on record and have also heard the learned counsel for the parties.

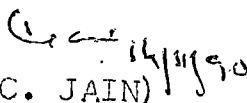
8. The short point for decision in this case is whether the proforma promotion granted to the applicant vide Office Order dated 10.4.1981 (Annexure 3) as officiating Assistant under the Government for the period from 1.5.1979 to 30.3.1981 under the Next Below Rule in the scale of Rs.425-800 and fixing his pay at Rs.440 per month with effect from 1.5.1979 and Rs.455 with effect from 1.5.1980 in the aforesaid pay scale could be cancelled by respondents No.1 and 2 by issuing another Office Order on 4.8.1987. The impugned Office Order dated 4.8.1987 cancelling the proforma promotion of the applicant, does not mention any reasons for such cancellation. It also does not show whether any opportunity had been given to the applicant to show cause against the proposed action. The material on record also does not show that any such opportunity had been given to the applicant. On the other hand, the applicant had pleaded that he had opted for permanent absorption in the Corporation only after he had been granted proforma promotion vide Office Order dated 10.4.1981. Further, there is nothing before us to dispute the contention of the applicant and the facts on record that

the applicant had been granted proforma promotion and his pay had been raised after his junior in the cadre of UDC had been promoted to officiate as Assistant under the Government. Not only this, as per the Government order, the Corporation had also revised the pay of the applicant under the Corporation with retrospective effect. The applicant has categorically stated that the Corporation paid to the Government the leave salary and pension contribution at the revised rates. The applicant having resigned from the Government service with effect from 31.12.1980 and the Government having accepted his resignation with effect from the same date, the Government could not have cancelled the proforma promotion given to the applicant with effect from 1.5.1979 vide orders issued in August, 1987. As the applicant had acted on the basis of the aforesaid proforma promotion by opting to get permanently absorbed in the Corporation and a right had accrued in favour of the applicant, the Government was prevented from taking a unilateral action in cancelling the proforma promotion after a gap of over six years and that too without following the principles of natural justice inasmuch as the applicant was not given any opportunity to show cause against the action taken by the Government. It is a clear violation of the doctrine of audi-alteram-paltem and is accordingly arbitrary and thus violative of the principles of ~~equity~~ ^{equality} enshrined in Articles 14 and 16 of the Constitution.

9. In view of the foregoing discussion, the application ^{is} succeeds. The impugned Office Order No.P-2/463/67-Estt., dated the 4th August, 1987 (Annexure 14) issued by the Ministry of Agriculture, Department of Fertilizer, Government of India, is hereby quashed. The applicant shall be entitled to get pro-rata gratuity for service under the Government on the basis of Rs.455/- per month, which he was drawing at the time of resigning from

the Government service for permanent absorption in the Corporation. He shall also be entitled to pro-rata pension / commutation of pension on the basis of average emoluments taking into account the proforma promotion granted to him vide Office Order dated 10.4.1981 and the revised pay fixed therein. Further, the lump sum amount equal to leave salary for the leave on average pay / earned leave to the applicant on the date of his permanent absorption in the Corporation shall be calculated on the basis of the revised pay fixed in the order dated 10.4.1981. These directions shall be complied with by the Union of India within a period of two months from the date of receipt of a copy of this order by them. The applicant shall also be entitled to simple Interest at the rate of 12% per annum on the arrears of gratuity and pension / commuted value of pension for the period from 1.9.1981 till the date of payment (the applicant's resignation was accepted by the Government vide Office Order dated 21.8.1981). In the facts and circumstances of the case, the parties shall bear their own costs.


(J.P. SHARMA)
Member (J)


(P.C. JAIN)
Member (A)