

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

No. O.A. 1288/88.

DATE OF DECISION: February 11, 1990.

Kanshi Ram Applicant.

Shri Vijay Kumar Mehta ... Advocate for the Applicant.

v/s.

Director General of
Works, CPWD & Anr. Respondents.

Shri M. L. Verma Advocate for the Respondents

COURT: Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgement? _____
2. To be referred to the Reporter or not? Yes.
3. Whether his Lordship wishes to see the fair copy No. of the judgement?
4. To be circulated to all Benches of the Tribunal? No.

(Signature)
(P.C. JAIN)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

No. O.A. 1288/88.

DATE OF DECISION: February 14, 1990.

Kanshi Ram Applicant.

Shri Vijay Kumar Mehta ... Advocate for the Applicant.

V/s.

Director General of
Works, CPWD & Anr. Respondents.

Shri M.L. Verma Advocate for the Respondents.

CORAM:

Hon'ble Mr. P.C. Jain, Member (A).

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who is an Assistant Engineer (Elect.) in the C.P.W.D., has impugned order dated 28.3.1988 passed by the Chief Engineer (Food), C.P.W.D., New Delhi, by which the request of the applicant for upward revision of his pay vis-a-vis the pay of his Junior, Shri Mohanan, was rejected, and has prayed that the respondents be directed/to refix his pay at Rs. 710 per month with effect from 31.12.1976 in the grade of Assistant Engineer (E); (1) to refix his pay in the revised scales on the basis of stepped up pay; and (2) to grant all arrears of pay from 18.11.1981.

2. The relevant facts, in brief, are that the applicant was appointed as Junior Engineer (Elect.) (for short, J.E. (E)) in the Central Electrical Engineers Service Group C on 4.6.1963. From time to time, ad-hoc promotions of J.E. (E) to the next higher post of A.E. (E) were made by the Director General (Works), C.P.W.D. By order dated 25.4.1986, ad-hoc promotions of A.E. (E) were regularised and deemed dates of regular promotion to the grade of A.E. (E) were assigned by issuing a seniority list of A.E.s (E) from 1973 onwards. The applicant was

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assigned 31.12.76 as deemed date of his regular promotion as A.E. (E) and his name was shown at Serial No. 100 in the seniority list dated 25.4.1986. His pay in the grade of A.E. (E) was fixed from the deemed date of promotion without payment of arrears for the period prior to actual date of promotion. He was granted arrears with effect from 18.11.1981, the date on which he actually assumed charge as A.E. (E). By Office Order dated 19.11.1986, his pay as A.E. (E) was fixed notionally with effect from 31.12.76 in the scale of Rs.650 - 1200 (pre-revised) as under: -

Pay fixed w.e.f. 31.12.1976	..	Rs.650 p.m.
Pay fixed w.e.f. 1.12.1977	..	Rs.680 p.m.
Pay fixed w.e.f. 1.12.1978	..	Rs.710 p.m.
Pay fixed w.e.f. 1.12.1979	..	Rs.740 p.m.
Pay fixed w.e.f. 1.12.1980	..	Rs.775 p.m.
Pay fixed w.e.f. 1.12.1981	..	Rs.810 p.m.
Pay fixed w.e.f. 1.12.1982	..	Rs.880 p.m.
Pay fixed w.e.f. 1.12.1983	..	Rs.920 p.m.
Pay fixed w.e.f. 1.12.1984	..	Rs.960 p.m.

3. His pay was fixed at Rs.2750 in the revised scale of Rs.2000 - 3500 with effect from 1.1.1986.

4. The applicant's case is that he came to know that Shri Mohanan, A.E. (E), who was appointed as J.E. (E) on 26.9.63 while the applicant was appointed to the same post on 4.6.63, and whose name in the seniority list is at Serial No.106, has been allowed pay of Rs.710 with effect from 31.12.1976, while both of them were assigned the date of 31.12.1976 as the deemed date of promotion to the grade of A.E. (E), but the applicant was allowed the pay of Rs.650 only. The applicant made a representation for stepping up his pay to the level at which Shri Mohanan was drawing. This representation bears the date of 15.11.86 (Annexure III to the application). After some correspondence, his representation was rejected vide impugned order dated 28.3.88 (at page 27 of

the paper book). He has prayed for stepping up of his pay in accordance with the provisions of O.M. No.F.2(78)-E(III)(A)/66, dated 4.2.1966 issued by the Ministry of Finance. He has also quoted Rule 7 of CCS (Revised Pay) Rules and Note 7 below that Rule in support of his case. He has pleaded that allowing the junior to draw higher pay than his senior in the same Service offends Article 14 of the Constitution and that denial of 'equal pay for equal work' would be violative of Articles 39 and 14 of the Constitution.

5. The respondents' case, in brief, is that *ex-facie* the application is time-barred, and that Shri Mohanan was promoted on ad-hoc basis to the grade of A.E.(E) on 19.10.74 while the applicant was promoted to the same grade on 18.11.81, and, therefore, the person who was promoted in 1974 will get more pay than a person promoted on 18.11.1981. They have, therefore, contended that the provisions quoted by the applicant are not applicable in this case, and that he is not entitled to any relief.

6. I have gone through the material on the record of the case and have also heard the learned counsel for the parties.

7. It is not in dispute that the applicant was appointed as J.E. (E) earlier than Shri Mohanan; in the seniority list for A.E.s (E), the applicant's name appears earlier than the name of Shri Mohanan; and that in the case of both, the deemed date of regular promotion is the same, i.e., 31.12.76. The only point for examination, therefore, is whether the applicant is entitled to the relief prayed for by him on the basis of the provisions of 1966 O.M. and Note 7 below Rule 7 of CCS (Revised Pay) Rules, 1986 (supra).

8. O.M. dated 4.2.1966 provided for removal of anomaly by stepping of pay of senior on promotion drawing less pay than his junior as a result of application of F.R. 22-C. If both the junior and senior belong to the

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same cadre and the posts to which they have been promoted are identical and in the same cadre and further if the scales of pay of the lower and the higher posts are identical and if the anomaly has occurred directly as a result of application of F.R. 22-C, then a Government servant promoted or appointed to a higher post on or after 1.4.1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade, promoted or appointed subsequently to another identical post, the pay of the senior officer in the higher post is to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is to be done with effect from the date of promotion or appointment of the junior officer. The provisions in Note 7 below Rule 7 of the C.C.S. (Revised Pay) Rules, 1986 are also similar. It is also provided that if in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer. It is emphasised in these orders that the anomaly should be directly as a result of the application of F.R. 22-C.

9. It is clear from these provisions that the benefit of stepping up of pay of the senior is admissible where the junior is promoted to the higher post subsequently to the promotion of the senior to the same post. In the case before me, the junior was admittedly promoted to the higher post of A.E. on 19.10.74 while the applicant was promoted as A.E. on 18.11.81. Obviously, the provisions quoted by the applicant in his application and reiterated at the bar are, therefore, not applicable to his case. Shri Mahanan, on account of his promotion as A.E. in 1974, would have drawn increments in the scale for the A.E.

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and which could not be ignored for fixation of his pay later on when the ad-hoc appointments were regularised.

10. The plea of discrimination and violation of Article 14 and the plea of 'equal pay for equal work' and alleged violation of Article 39 of the Constitution are not sustainable in law. It is an established principle of law that 'equal pay for equal work' means only the same scale of pay and not the same pay in the same scale. Similarly, the plea of discrimination is tenable only if the officers are equally placed. In this case, the applicant cannot be said to be equally placed with Shri Mohanan inasmuch as the latter was promoted to the grade of A.E. about seven years earlier than the applicant.

11. In view of the above discussion, the application has no merit. The case of Shri B.B.L. Mathur Vs. Union of India (A.T.R. 1986 (2) C.A.T. 444) cited by the learned counsel for the applicant is not applicable in the facts of the case as discussed above. The application is accordingly dismissed. The parties shall bear their own costs.

(Lec) 14/4/1990
(P.C. JAIN)
MEMBER(A)