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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

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O.A. No.1965/88

2th Day of December 1993

Hon'ble Shri J. P. Sharma, Member(J)  
Hon'ble Shri B. K. Singh, Member(A)

Shri S. K. Paul  
S/o Late P. N. Paul  
C/o Shri K. L. Bhandula  
Advocate, B-6/6  
Safdarganj Enclave  
NEW DELHI

... Applicant

By Advocate Shri K. L. Bhandula

Vs.

1. Union of India  
through  
Ministry of Water Resources  
Shram Shakti Bhawan  
NEW DELHI

2. The Chairman  
Central Water Commission  
Sewa Bhawan  
R. K. Puram  
NEW DELHI 110066

... Respondents

By Advocate Shri N. S. Mehta

O R D E R

Hon'ble Shri B. K. Singh, Member(A)

This O.A.1965 of 1988 - Shri S. K. Paul as applicant Versus Union of India, Ministry of Water Resources and the Chairman, Central Water Commission(CWC), New Delhi, as respondents has been filed against the order Nos. i) A-20012/3(136)/79 dated 28.7.1988 and, ii) A-20012/3(136)/79 dated 10.8.1988 marked as Annexure-I and II respectively of the Paper Book.

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2. The applicant joined as Tracer on 19.12.1960 in the Siliguri Investigation Division and was subsequently transferred and posted in the Farakka Barrage Design Directorate, R. K. Puram, New Delhi, w.e.f. 8.8.1966.

3. He passed the Departmental Test of Draftsman in April 1968 and was promoted as Junior Draftsman in January 1969. The pay scale of the Junior Draftsman was Rs.150-240.

4. The applicant applied for the post of Senior Draftsman in the Baira Siul Project and he was selected in the pay scale of Rs.205-280 which was subsequently revised to Rs.425-700. He was selected on pre revised scale of pay of Rs.330-560 as Senior Draftsman. While he was working in Baira Siul Hydel Project, he got ad-hoc promotion as Senior Draftsman in his own cadre in the scale of Rs.205-280 (Annexure-IV of the paper book).

5. The applicant has stated that he wanted to revert to his parent department, but he was not relieved. <sup>He has</sup> Enclosed a copy of the letter with the O.A. dated 7-11-74 (Annexure-V of the paper book).

6. The applicant remained on deputation in the higher scale of pay for 4½ years till October 1977 and reverted to his parent department C.W.C. on 30.10.1977 as Junior Draftsman. He was subsequently promoted as Senior Draftsman in the grade of Rs.425-700 w.e.f. 12.12.1977 and since then he was working as such.

7. It has been stated by the applicant that as a result of the judgement of Hon'ble Central

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Administrative Tribunal in 1986, the pay scale of all the Senior Draftsman was revised retrospectively w.e.f. 1.1.1973 to Rs.425-700 and the applicant became eligible for the scale w.e.f. 28.2.1973, the date on which he joined at Baira Siul Hydel Project as Senior Draftsman (Annexure VII of the paper book). While on deputation, he drew the pay scale of Rs.425-700 w.e.f. 28.2.1973 and also got arrears. He continued to draw that scale till June 1988 (Annexure-VIII of the paper book).

8. Vide Annexure I & II, as already stated, his pay was refixed in the scale of Rs.425-700 w.e.f. 12.12.1977 instead of 28.2.1973 and a recovery was ordered for Rs.24,543/- as excess payment as at Annexure-II.

#### 9. Reliefs

The applicant has come up to the Tribunal with a prayer to squash the orders at Annexure I & II i.e. refixation of pay w.e.f. 12.12.1973 and recovery of excess payment of Rs.24,543.

10. A notice was issued to the respondents who filed their reply and contest<sup>-ed</sup> the application for grant of reliefs prayed for. We heard the learned counsels, Shri K. L. Bhandula for the applicant and Shri N. S. Mehta, Sr. Advocate for the respondents, and perused the records of the case.

11. It is admitted by both the parties that the applicant was not entitled to the pay scale of Rs.205-280 at the time of his deputation. He was in the pay scale of Rs.150-240 at the relevant time

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as a Junior Draftsman. When an employ goes on deputation, he is allowed the basic pay plus deputation allowance or alternatively he may be allowed the higher scale of pay <sup>of that post.</sup> It is admitted that the applicant opted for the higher scale of Rs.205-280 in lieu of 20 per cent deputation allowance to which normally he would have been entitled. This presumably would not have been beneficial since he was in the lower grade of pay of Rs.150-240 at the relevant time. However, it is clear that the applicant, instead of opting for deputation allowance, opted for the pay of the post of Senior Draftsman which was more beneficial to him. It is also admitted by both the parties that even when he was on deputation, he was holding the post of Junior Draftsman (in his) and would have been entitled for pay scale of Junior Draftsman(revised) Rs.330-560 instead of Rs.425-700. It is further admitted that the applicant on reversion joined in C.W.C. as Junior Draftsman in the scale of pay Rs.330-560. An ad-hoc promotion was given to him and he was asked to go to Surat vide office order No.32016/1/72-Adm.II(W.W.) dated 9.8.1974. As per letter dated 7.11.1974(Annexure-V of the petition), the applicant requested for proforma promotion. Since this was not a regular promotion, through DPC and was only an ad-hoc promotion, there was no question of grant of proforma promotion to him. The applicant was not considered by the DPC for regular promotion and as such he would not have been entitled for proforma promotion while holding the post of Senior Draftsman on deputation basis in Baira Siul Hydro Project. It is admitted

that if the applicant had joined his duties in pursuance of the office order No. A-32016/1/72-Adm.11 dated 9.8.1974 (Annexure-IV of the application), he would have been entitled for pay of Senior Draftsman while officiating in the grade on ad-hoc basis.

12. During the course of arguments, the learned counsel for the applicant said that the persons junior to the applicant got promotion while he was ignored. The fact is that the applicant did not join at Surat and instead sent back a letter to the respondents to know whether it would be beneficial for him to join at Surat or not, on basis ad-hoc/ as Senior Draftsman when he was already drawing the scale of pay of that post. It was rightly argued by the learned counsel for the respondents that this kind of conditional acceptance was not within the right of the applicant. It was practically a diplomatic refusal to join the post at Surat as Senior Draftsman by the applicant (Annexure -V with the O.A.). While fixing his pay on 28.2.1973 (Annexure-VIII), it was <sup>stated</sup> ~~categorically~~ <sup>this</sup> that ~~it~~ <sup>he</sup> was subject to post-audit and <sup>any</sup> ~~any~~ overpayment arising, would be recoverable.

13. The learned counsel for the respondents argued that the applicant is not entitled for pay as Senior Draftsman w.e.f. 28.2.1973 in the pay scale Rs.425-700 as the same was erroneously allowed to him. This mistake was detected when some of his seniors represented that the applicant, though junior, was drawing more pay than them. It was also pointed out that the applicant drew the arrears of pay as a result of fixation in the scale of Rs.425-700 w.e.f. 28.2.73. It was very well within his knowledge as a government servant that he was

drawing arrears of a higher pay scale to which he was not entitled and instead of pointing out the mistake for rectification, he gladly continued to draw the pay and also drew the arrears of that scale of pay. As a result of his representation, it is stated that <sup>he</sup> was summoned thrice by the Administrative Section and was informed of the correct position. Although convinced of the facts, he only requested the Administrative Section not to effect the recovery. Since it was proved by Accounts/Audit that he had drawn the arrears of pay in excess to his entitlement, the recovery had to be made for this excess payment.

14. It was also stated by the learned counsel for the respondents that the applicant was wrong in saying that no reply to his letter regarding wrong fixation has been received. He was informed vide Order No.31/1/86-Estt.X dated 17.2.1987 about the facts of the wrong fixation.

15. The case of the applicant is not covered by the judgement of CAT on the petition No.T-194 of 1985 dated 9.4.1986 since all the T.A. No.(CW-616 of 1975) Senior Draftsman who were either officiating or were working on a regular basis, were allowed the pay scale rs.425-700 from the date they were promoted as Senior Draftsman. The applicant was entitled to get this pay only from the date he was promoted as Senior Draftsman and there is no discrimination in this. As a matter of fact, it is only the seniors who were discriminated as a result of deliberate action of the applicant in drawing arrears of pay in the scale of

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Rs.425-700 when he had not joined in that pay scale, either on ad-hoc basis or on regular basis in this cadre.

16. The charge of discrimination on the part of the respondents cannot be sustained because the applicant was given ad-hoc promotion while on deputation posting him to Surat and he diplomatically declined to accept that posting. In such a situation, in the exigencies of public service, the respondents had no option but to appoint his junior as Senior Draftsman on ad-hoc basis. When an employee is on deputation, he is given proforma promotion only when a junior is regularly promoted and not when ad-hoc promotions are made to meet the functional requirements. His juniors had been given ad-hoc promotion only. The regular promotion was made through DPC and the applicant's pay was fixed as Senior Draftsman w.e.f. 12.12.1977. This fixation of pay in the scale Rs.425-700, does not make him junior to any of his juniors. The seniority list does not get disturbed. The established procedure is that if a junior has been promoted on a regular basis and a senior is on deputation, he is given proforma promotion with a view to protect the seniority. He does not get the arrears but as a result of his seniority in the cadre, his pay gets protected after joining duty and he is allowed to draw the pay scale that his <sup>immediate</sup> junior is drawing.

17. In view of the above facts and circumstances of the case, we find that the application is wholly devoid of any merit or substance and is accordingly dismissed. The stay granted on recovery dated 17.10.88 is vacated.

(B. K. Singh)  
Member (A)

(J. P. Sharma)  
Member (J)