

4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH
NEW DELHI.

RENG. NO. O.A. 1095/88

Date of Decision: 3.7.89.

Shri Y.N. Rao

....

Applicant

Vs.

Union of India & Ors.

....

Respondents

CORAM:- Hon'ble Mr. B.C. Mathur, Vice Chairman

For the Applicant

..... Shri K.L. Bhandula, Advocate

For the Respondents.

..... Shri M.L. Verma, Advocate.

Judgement

This is an application filed by Shri Y.N. Rao, Extra Assistant Director/Assistant Engineer in the Directorate Central Water Commission under Section 19 of the Administrative Tribunals Act, 1985 against the impugned order dated 8.3.1988 passed by the Under Secretary, Central Water Commission, regarding fixation of his pay. The brief facts of the case as stated in the application are that the applicant was appointed as Supervisor in Central Water Commission and was eligible for promotion to the post of Extra Assistant Director/Assistant Engineer. While working in the Central Water Commission he was selected for deputation as Supervisor to the Chukha Hydel Project Construction Circle, Bhutan in November, 1978⁵. The applicant was transferred on deputation on foreign service to the Chukha Hydel Project, initially for three months which was extended from time to time in the public interest and he remained there till April, 1979 and re-joined the Central Water Commission on 2.7.1979, after availing the terminal leave. While the applicant was working on foreign service, some of his juniors were promoted as Extra Assistant Director/Assistant Engineer on ad hoc basis in April, 1978. The applicant was not informed of the promotion orders, so as to enable him to opt out of deputation and rejoin the Central Water Commission. The promotion on ad hoc basis for all

intent and purposes was on long term basis. On repatriation from Chukha Hydel Project in April, 1979 he joined the Central Water Commission on 2nd July, 1979. The applicant was promoted in September, 1980 as Extra Assistant Director/Assistant Engineer. He was regularised w.e.f. 9.8.82. During the deputation of the applicant to the Chukha Hydel Project a number of his juniors viz. Shri K. Balakrishnan Nair and Shri M.V. Desai were promoted on ad hoc basis as EAD/AE w.e.f. 26.4.78 and 6.6.78 respectively. The applicant again proceeded on deputation to Mica Mines Labour Welfare Organisation as Assistant Engineer in the same scale but the Central Water Commission reverted him to the grade of Supervisor though number of his juniors ~~were~~ continued to work on long term basis in the grade of E.A.D/A.E. The applicant was continuously working as E.A.D/A.E. since September, 1980 without a break of single day giving him benefit of the "Next Below Rule" in absentia but he was denied fixation of pay at par with his juniors. On repatriation, the applicant joined back the Central Water Commission on 3.2.1983 and his pay was not re-fixed and he continued to draw the minimum of the scale of pay of EAD/AE i.e. Rs. 650/- per month till November, 1984. The pay of the applicant was later refixed in the grade of EAD/AE on the date of regularisation i.e. 9.8.82 @ Rs. 710/- without considering the pay drawn by the juniors. By that time the pay of S/Shri K. Balakrishnan Nair and SM.V. Desai had been fixed at Rs. 775/- per month. The ad hoc promotion of the applicant is followed by regular promotion and his seniority has not been disturbed. The applicant had been placed at ^adisadvantageous position to the extent of Rs. 65/- in the old scale & Rs. 300/- in the new scales in the basic pay in the pay fixation in relation to his juniors for no fault of the applicant. The authorities of the C.W.C. failed to inform the applicant regarding promotion of his juniors thus denying the chance of promotion, exercising his option whether to continue on deputation or to return to the cadre to avail himself of promotion. He has prayed that in view of the observations of the Ministry of Finance incorporating in the C.W.C. I.D. note dated 12.5.82 that after the promotion of junior official is made regular without any break in the service in the higher grade, the pay of the senior official may be considered for stepping

up to the level of the pay drawn by the junior official retrospectively under F.R. 27 and therefore, the applicant is entitled to get pay in the grade of Extra Assistant Director/Assistant Engineer being stepped up to the level of pay drawn by his juniors retrospectively w.e.f. 2.7.79 with consequential benefits of arrears etc. The relief sought by the applicant is to re-fix the pay in the grade of Extra Assistant Director / Asstt. Engineer @ Rs. 775/- w.e.f. 2.7.79 or alternatively to re-fix his pay w.e.f. 2.7.79 at the level of the pay drawn by his juniors viz., S/Shri K. Balakrishnan Nair and M.V. Desai and pay arrears of pay, allowances on the re-fixation of the pay.

2. The respondents in their reply have stated that the applicant was on deputation with the Chukha Hydel Project w.e.f. 1.3.76 to 2.7.79, and on repatriation the applicant joined as Supervisor. When the applicant was away on deputation, S/Shri K. Balakrishnan Nair and M.V. Deasi, Supervisors were promoted to the grade of EAD/AE on ad hoc basis w.e.f. 26.4.78 and 6.6.78 respectively and their pay in the scale of pay of Rs. 650-1200 were fixed under F.R. 22-C at Rs. 650/-. The applicant was promoted to the grade of EAD/AE on ad hoc basis on 21.11.80 and his pay was fixed at Rs. 650/- in the scale of Rs. 650-1200 under F.R. 22-C. On his selection in Mica Mines Labour Welfare Organisation the applicant again proceeded on deputation w.e.f. 6.8.81. It was clearly indicated in his orders of deputation dated 31.7.81 that he would stand reverted to the feeder grade of Supervisor from the date he handed over charge of the post in Central Water Commission. He remained on deputation on 6.8.81 to 2.2.83 and he was given proforma promotion as E.A.D./A.E. on regular basis w.e.f. 9.8.82. Taking into account the pay of the applicant in the feeder cadre was fixed afresh under R.R. 22-C at Rs. 710/- in the scale of Rs. 650-1200 w.e.f. 9.8.82. S/Shri K. Balakrishnan and M.V. Deasi who are juniors to the applicant in the grade of Supervisor and EAD/AE are drawing pay at higher stage due to their continuous officiation in the grade of EAD/AE on ad hoc basis w.e.f. 26.4.78 and 6.6.78 respectively. The rules do not permit either stepping up of the scale of the applicant with reference to the pay of junior or projection of pay with

reference to the pay drawn in the ex-cadre post. It is further stated that the cadre ~~employees~~ not available in the cadre for any reason are not required to be considered for any ad hoc promotion ^{if} it is necessary to inform such officers of promotion of their juniors. The anomaly in this case is not on account of direct application of F.R. 22-C but on account of the senior officer being away from the cadre not being available for ad hoc promotion.

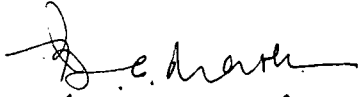
3. The learned counsel for the applicant has brought out in the rejoinder a judgement of the Hyderabad Bench of the Tribunal dated 27.10.1988 in T.A. 1/1988 (W.P. 1833/85) between B.V. Rangaiah Vs. Union of India and has held that the applicant would be entitled to re-fixation of pay as claimed in the application. The judgement says that he is, therefore entitled to re-fixation of pay on par with his juniors Shri B.R. Reddy with monetary benefits from 26.6.81 and would also be entitled to all consequential increments and difference in pay which would accrue to him from time to time on the basis of fixation of pay. The present applicant is a colleague of Shri B.V. Rangaiah and working in the same organisation and also belongs to the same cadre and this case is on all four with his case and therefore fully applicable.

4. Learned counsel for the applicant also stated that a S.L.P. has been filed by the respondents against the order of the Tribunal in the case of Sh. B.V. Rangaiah but the S.L.P. was dismissed by the Supreme Court. The pay of Shri B.V. Rangaiah was re-fixed on the basis of the judgement of the Central Administrative Tribunal Hyderabad Bench on 19.5.89, giving him the benefits retrospectively w.e.f. 26.6.81. Learned counsel for the applicant contended that the present case is identical to the case of Shri Rangaiah.

5. I have gone through the pleadings and carefully considered the arguments of both sides. While the pay on deputation may not be protected and there may also be a case for not providing a senior officer on deputation when a junior officer is promoted purely on ad hoc basis but in this case the promotion was not just ad hoc but there has been no reversion nor was the promotion to the grade of E.A.D./A.E. a short term arrangement, as promotions of all the juniors referred to in the application were followed by regularisation without any

Pa

break. The applicant was on deputation without drawing any allowance deputation/and since the promotions of his juniors were on long term basis it would be denial of natural justice if he is not allowed the pay drawn by his juniors especially when he has not given any option to revert to the cadre when his juniors were promoted on ad hoc basis. In view of the judgement of the Hyderabad Bench of the Tribunal in the case of Sh. B.V. Rangaiah Vs. U.O.I. similar facilities have to be provided to the applicant. In the circumstances the application is allowed and it is directed that pay of the applicant be stepped up to that drawn by his junior ^{w.e.f.} retrospectively 2.7.79 with all consequential benefits of arrears and salary etc. In other words his pay should be re-fixed at Rs. 775/- per month in the scale of pay of Rs. 650-1200 w.e.f. 2.7.79 which is at the same level of the pay drawn by his juniors viz S/Shri K. Balakrishnan and M.V. Desai. He would also be entitled to all arrears of pay and allowances with consequential benefits that he may be entitled to on account of re-fixation of his salary. Respondents are further directed to make the above payments to the applicant within a period of three months from the date of receipt of the orders. There is no orders as to costs.


(B.C. MATHUR)
VICE CHAIRMAN