

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI.

RENG. NO. O.A 1097/88

Date of Decision:- 3.7.89.

Shri A.B. Thammaiah

..... 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 A.B. Thammaiah Extra Assistant Director in the Directorate Central Water Commission under Section 19 of the Administrative Tribunals Act, 1985 against the impugned order dated 8.3.88 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 on 10.4.65 in the pay scale of Rs. 180-380, 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 Loktak Hydro Electric Project, Manipur in Feb. 1972. In 1973 the pay scale of the post of Supervisor was revised to Rs. 425-700. The applicant drew deputation allowance in the above scale of pay from Feb. 72 to April, 1976. On the basis of seniority list prepared and approved by the U.P.S.C. the applicant was offered the post of Assistant Engineer in the scale of Rs. 650-1200, and was promoted on 19.4.76. He was given the scale of pay of Asstt. Engineer and has not drawn any deputation allowance. The pay scale of pay of Assistant Engineer in the Loktak Hydro Electric Project and of the post of Extra Assistant Director/Assistant Engineer in the

*By Shri A.B. Thammaiah*

*1976*

*U.P.S.C.*

Central Water Commission was the same, i.e. Rs. 650-1200. In the meanwhile on 11th April, 1978, respondent No. 2 promoted 36 supervisors to officiate in the grade of Extra Assistant Director/Assistant Engineer in the Central Water Commission on ad hoc basis in the scale of pay of Rs. 650-1200. Neither the respondents No. 2 nor the authorities of Loktak Hydro Electric Project informed the applicant about the promotion of his juniors promoted in April, 1978. The promotion of juniors though on ad hoc basis, but for all intent and purpose was on long term basis and all the Junior Engineers were/regularised without a break of a single day in December 1984. <sup>later</sup> ~~The applicant was~~ The applicant was regularised as Extra Assistant Director/Assistant Engineer w.e.f. 26.12.83 vide order dated 22.3.84.

2. On repatriation from the Loktak Hydro Electric Project on 23.8.81, he joined as Extra Assistant Director /Assistant Engineer in the Central Water Commission without break. In Loktak H.E. Project his basic pay in the scale of Rs. 650-1200 was Rs. 810/- per month and his pay was fixed at the minimum of the scale of Rs. 650-1200 i.e. Rs. 650/- whereas his juniors, who were promoted on ad hoc basis in April, 1978 while the applicant was on deputation on foreign service, were drawing the salary of Rs. 740/- per month in the same scale. His representation for protection of pay in July 1982 was not disposed of but in 1986 he was informed that his pay was lower than his junior who had officiated in promotion post on ad hoc basis, while he had gone on deputation to ex-cadre post and there is no stepping up of the pay in such cases. It has been stated that Ministry of Finance have observed in a note dated 12.5.82 as follows:-

" The pay of the senior official cannot stepped up because the promotion of the junior officer to the higher grade has been made on ad hoc basis. After the promotion of the 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 respectively under F.R. 27 in consultation with Ministry of Finance".

He again represented his case for stepping up fixed his pay at par

with his juniors but the same was rejected. In the three cases where the juniors of the applicant have been promoted on ad hoc basis, the ad hoc promotion was followed by regular promotion. The applicant had been promoted as Assistant Engineer in the same scale of pay on the basis of a select list prepared by the U.P.S.C. in April, 1976 before his juniors were promoted on ad hoc basis in April, 1978. The applicant has been regularised one year before his juniors and his seniority in the grade of EAD/AE has not been disturbed. Even then, the applicant has been placed at disadvantageous position to the extent of Rs. 105/- in old scale and Rs. 300/- in new scale per month in the pay fixation in relation to his juniors for no fault of the applicant. The applicant has prayed that his pay drawn as Assistant Engineer in the scale of pay Rs. 650-1200 i.e. Rs. 810/- should be protected. In case, he was treated on deputation he was entitled to promotion to the post when his juniors were promoted as Assistant Engineer in 1978. The authorities of 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 also 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. 24.8.81 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/A.E. @ Rs. 810/- p.m. w.e.f. 24.8.81 or alternatively to re-fix his pay w.e.f. 24.8.81 at the level of the pay drawn by his juniors viz., S/Shri R.K. Kataria, G.B. Balakrishnan and B.R. Reddy @ Rs. 740/- per month, and pay arrears of pay, allowances on the re-fixation of the pay.

3. The respondents in their reply have stated that the applicant was on deputation with the Loktak Hydroelectric Project from 5.2.72 to 23.8.81, and on repatriation and on promotion on ad hoc basis he assumed charge of the post of Extra Assistant Director / Assistant Engineer

w.e.f. 24.8.81 and his pay was fixed at Rs. 650/- under E.R.22-C with reference to his grade pay in the feeder cadre of Supervisor. During his absence from the cadre on deputation, some of his juniors were promoted on ad hoc basis in 1978. His junior Shri B.R. Reddy is drawing pay at a higher stage in the scale of Rs. 650-1200 because he has earned increments by virtue of his having officiated on ad hoc basis in the cadre from 1978 whereas the applicant had started officiating on ad hoc basis only on repatriation from deputation w.e.f. 24.8.81 only. The rules do not permit either stepping up of the salary of the applicant with reference to the pay of junior or protection 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. <sup>Now</sup> ~~Now~~ is it necessary to inform such officers of promotion of their juniors. The anomaly in this case is not on account of direct application of E.R 22-C but on account of the senior officer being away from the cadre not being available for ad hoc promotion.

4. 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 (WP 1833/85) between B.V. Rangaiah Vs. Union of India and has held that the applicant would be entitled to refixation of pay as claimed in the application. The judgement says that he is, therefore, entitled to refixation of pay on par with his junior 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.

5. Learned counsel for the applicant also stated that a S.L.P. had been filed by the respondent against the order of the Tribunal in the case of Shri 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.

6. 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 break. The applicant was on deputation allowance without drawing any 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 Shri 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 retrospectively w.e.f. 24.8.81 with all consequential benefits of arrears and salary etc. In other words his pay should be re-fixed at Rs. 740/- per month in the scale of pay of Rs. 650-1200 w.e.f. 24.8.81 which is at the same level of the pay drawn by his juniors viz. R.K. Kataria and B.R. Reddy. 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

25.7.89.

Shri K.L. Bhandula, counsel for the applicant appeared and stated that there has been a typographical error at page 1 of the judgement namely " the applicant drew deputation allowance in the above scale from Feb. 1972 to April, 1976" whereas in the judgement instead of writing 1976, 1987 has been mentioned. This typographical error is also confirmed as in para 6.2. of the application at page 3, itself given as Feb. 1972 to April, 1976. The mistake is, therefore, correct by me. Copy supplied to the applicant has also been corrected accordingly.



( B.C. MATHUR )  
VICE CHAIRMAN