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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN.NO. OA 753/86

Date of decision: 10 JAN
1990

Shri B. S. Bhandari Applicant

Vs.

Union of India Respondents

CORAM: HON'BLE MR. D. K. CHAKRAVORTY, MEMBER(A)

For the Applicant Shri K.L.Bhandula, Counsel.

For the Respondents Shri K. C. Mittal, Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. D. K. Chakravorty, Member)

This is an application under Section 19 of
the Administrative Tribunals Act, 1985/^{filed} by Shri B.S.Bhandari,
Assistant Engineer in the River Data Coordination Unit of
the Central Water Commission (for short, C.W.C.), New Delhi
against order No.A-19012/974/81-Estt.V dated 27.3.1986
issued by the Under Secretary, C.W.C. relating to fixation
of his pay.

2. The brief facts of the case, as stated in the
application, are that the applicant was appointed as
Supervisor on 17.4.65 in the C.W.C. and was due for promotion
to the post of Assistant Engineer in the scale of Rs.650-
1200 in April 1978. However, in August 1976, the applicant
was sent on deputation on foreign service as Surveyor
with the Government of Iraq. The initial period of deputation
of one year was extended from time to time and ^{in August, 1981} the applicant
was repatriated from foreign deputation. He joined his

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duties in India on 20.8.1981. On 11th September, 1981, the applicant was promoted as Assistant Engineer on ad hoc basis. On the recommendations of the Departmental Promotion Committee, his promotion was made regular with effect from 31.12.1984. During ^{the} applicant's period of deputation abroad, two Supervisors, junior to him, namely Shri G.B. Balakrishnan and Shri B.R. Reddy, were promoted on ad hoc basis as Assistant Engineers in April 1978. Even in the seniority list of the Assistant Engineers as on 1.10.85 these officers are shown junior to him being at Serial Nos. 471 and 475 as compared to the applicant's Serial No. 465.

It is averred in the application that under Fundamental Rule 113, the applicant should have been given proforma officiating promotion in his parent cadre in April 1978 when his juniors were promoted and he should have been allowed notional annual increments during his period of deputation on foreign service. His basic pay in 1981 should have been Rs. 740/- and in 1986 his pay should have been fixed at Rs. 920/- presently being drawn by Shri G.B. Balakrishnan and Shri B.R. Reddy - as against Rs. 810 being drawn by the applicant. Thus, the respondents not having given the notional promotion, there arose alarming disparity of pay between the applicant and the two persons junior to him. The applicant made representation of his grievance to the Secretary and then to the Chairman, C.W.C. under letters dated 15.2.85, 29.4.85, 17.9.85 and 30.12.1985 but the relief was finally declined under the impugned order dated 27.3.1986.

3. In the counter-affidavit filed on behalf of the respondents, it has been stated that S/Shri G.B.

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Balakrishnan and B.R.Reddy were promoted to the grade of Assistant Engineer on ad hoc basis when the applicant was away on foreign assignment and after his rejoining the Central Water Commission, he was promoted to the grade of Assistant Engineer, initially on ad hoc basis and, later, on regular basis. It is admitted in the counter-affidavit that the officers junior to the applicant are drawing pay at higher stages than the applicant. The applicant's pay cannot be stepped up at par with his juniors as this is not covered under the rules in force and only when promotions are made on regular basis on the recommendations of the D.P.C., senior persons working on deputation are given promotion under the Next Below Rule. In the counter-affidavit a reference made by the C.W.C. on 23.8.84 to the Ministry of Irrigation and reply thereto have been annexed. The C.W.C. had strongly recommended to the Ministry of Irrigation that the benefit of protection in pay, with reference to the juniors, on promotion should also be extended to the officers whose pay fall short of their juniors on promotion after repatriation from deputation. Since these officers go on deputation to other departments in the public interest provision for protection of their pay on promotion should also be made in the Rules. The Ministry, however, stated in its reply that:

"..the proposal has been examined in consultation with the Finance Desk of the Ministry, and it is observed that the present situation of a junior officer drawing pay higher than his senior has arisen because the former officiated in the promotion post on ad-hoc basis while the latter had been on deputation to an ex-cadre post. There is no order allowing stepping up of pay in such cases. This problem is common to all

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cadres and any proposal for special dispensation to Central Water Commission cadre is not likely to be entertained by Department of Personnel and Administrative Reforms.

It is therefore not possible to recommend the proposal of Central Water Commission to the Department of Personnel and A.R's." In view of this, that it is averred in the counter-affidavit/the claim of the applicant for refixation of pay equal to his juniors is without substance and the applicant is not entitled for reliefs sought for.

4. Learned counsel for the applicant, Shri K.L.Bhandula, during the course of arguments, cited the judgement of the Hyderabad Bench of the Tribunal dated 27.10.1988 in T.A.No.1/88(B.V.Rangaiah Vs. The Chairman, C.W.C., New Delhi) wherein it has been held that the applicant would be entitled to the refixation of pay on par with his junior Shri B.R.Reddy with monetary benefits from 26.6.1981 and would also be entitled to all consequential increments and the difference in pay which would accrue to him from time to time on the basis of such fixation of pay . The present applicant is the colleague of Shri B.V. Rangaiah working in the same organisation and also belonging to the same cadre. This case is on all fours and the/therein is decision therefore, fully applicable to the present application. The learned counsel for the applicant also stated that S.L.P. filed by the respondents against the aforesaid decision of the Tribunal was dismissed by the Supreme Court and the pay of Shri B.V.Rangaiah was refixed on the basis of the decision of the Hyderabad Bench of the Tribunal giving him retrospective benefit with effect from 26.6.1981.

Learned counsel for the applicant cited a similar decision rendered by the Principal Bench of the Tribunal dated 3.7.89 in CA No.1097/88 (Shri A.B.Thammaiah Vs.Union of India.& Ors.)

5. Learned counsel for the respondents, Shri K.C.Mittal, raised the question of limitation on the premise that the cause of action arose in September 1981 when the applicant was given promotion on ad hoc basis. He also contended that the applicant remained silent and did not challenge the order during the period from September 1981 till his regular promotion in December, 1984 and, therefore, there is delay on the part of the applicant.

On merits also the learned counsel for the respondents argued that the benefit of Next Below Rule cannot be allowed where the juniors have been given only ad hoc promotion.

6. The learned counsel for the applicant strongly rebutted the contentions of the learned counsel for the respondents. He stated that the applicant had represented in 1981 but this could not be pressed in view of the respondents' general circular of May, 1982. Relevant portion from the CWC I.D.No F-114/158/66-Estt-XI dated 12.5.1982 is extracted below:-

" The pay of the Senior Official cannot be stepped up because the promotion of the Junior Official to the higher grade has been made on an 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 retrospectively under F.R.-27 in consultation with this Ministry(Ministry of Finance".


In view of the above instructions, there was no scope for making any further representation.

According to him, the real cause of action arose only when regular promotion on the basis of the recommendations of the D.P.C. followed ad hoc promotion without any period of break. Regular promotion made with effect from 31.12.1984 was notified under the CWC Notification dated 16.1.1985. The applicant lost no time on receipt of the impugned order and submitted as many as four representations during February to December, 1985. Accordingly this application has been made well in time.

7. I have given anxious consideration to the submissions made by the learned counsel of both sides and have also gone through the records of the case carefully. The circumstances of this case are on all fours with that of the Transferred Application No.1/88 decided on 27.10.1988 by the Hyderabad Bench of the Tribunal(B.V.Rangaiah Vs. The Chairman, CWC & anr.) and similar to that of CA No.1097/88 decided on 3.7.89 by the Principal Bench(Shri A.B.Thammaiah Vs. Union of India & others). In view of the above judgements, similar reliefs and benefits have to be provided to the applicant. In the circumstances, the application is allowed and it is directed that the pay of the applicant be stepped up to that drawn by his juniors, namely, S/Shri G.B.Balakrishnan and B.R.Reddy, retrospectively with effect from 11.9.1981, the date when he was promoted

on ad hoc basis, with all consequential benefits of arrears and salary etc. In other words, his pay should be refixed at Rs.740/-P.M. in the scale of pay of Rs.650-1200(Pre-revised) with effect from 11.9.1981 which is at the same level as the pay drawn by his juniors viz. S/Shri G.B.Balakrishnan 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 refixation of his pay.

8. In the result, the application is allowed. Respondents are directed to make the above payments to the applicant within a period of three months from the date of receipt of this order. There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER (A)

10th January, 1990