

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
PRINCIPAL BENCH
O. A. No. 726/87 199

DATE OF DECISION 4.12.91

K.B.K.Jain _____ Applicant (s)

Shri K.L.Bhandula _____ Advocate for the Applicant (s)

Versus

Union of India through Secretary,
to the Govt. of India, Ministry of _____ Respondent (s)
Water Resources, Shram Shakti Bhawan, New Delhi and another

Shri P.P.Khurana _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application the applicant has sought refixation of his pay in the grade of Extra Assistant Director/Assistant Engineer with effect from 14.7.81 to the level of pay drawn by his juniors S/Shri Balakrishna and Reddy with consequential benefits along with arrears. The brief facts of the case are as follows.

2. While the applicant was working as a Supervisor in the scale of Rs.425-700 in November 1977 he was transferred to foreign service to Chukha Hydel Project in the same capacity for three years. He was relieved on 31.3.78 for proceeding on deputation. Before taking over in Bhutan he was on earned leave upto 20th May 1978. While so, on 11th April 1978 he along with others were promoted to officiate on an ad hoc basis as Assistant Engineer in the scale of Rs.650-1200. According to the applicant he was never informed about this order of promotion even though he was in the country on leave when the order of promotion was passed. The applicant came back from deputation on

14.7.81 and his pay was fixed as Assistant Engineer at the minimum of Rs.650/- while his juniors S/Shri Balakrishna and Reddy who were promoted as Assistant Engineer on 11.7.78 and 22.6.78 on an adhoc basis were geting Rs.740/-. The applicant also was given promotion on an ad hoc basis in July, 1981. On his representation to get his pay stepped up to that of his juniors, it was directed at Annexure-VI that he should be informed as follows.

" 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)".

Subsequently the applicant and his two juniors were promoted as Assistant Engineer on a regular basis with effect from 31.12.84. When the applicant further represented for refixation of his pay from Rs.775/- which he was given on regular promotion, to Rs.880/- which was allowed to his juniors, he was informed that the upgradation cannot be done as he had been working on deputation to an ex-cadre post. The applicant has argued that since he was sent on deputation to foreign service in public interest and had never been given an option to avail of the promotion order dated 11.4.78 while he was in India , he cannot be made to suffer financially. Since he maintained his lien in his parent cadre during his deputation, he is entitled to all the benefits which he would have otherwise got in his parent cadre.

3. In the counter affidavit the respondents have conceded that vide their order dated 11.4.1978 the applicant along with 35 other Officers were promoted to the grade of Assistant Engineer . The applicant had earlier applied for foreign assignment to Bhutan and was relieved on 31.3.78 and proceeded on 50 days leave. The copy of the order of promotion dated 11.4.78 had been endorsed to all concerned including the applicant

but the respondents have expressed difficulty in producing proof of delivery of the order to the applicant nine years later. The applicant's pay could not be stepped up as it was not covered by the rules. They have also argued that promotion under the benefit of the 'Next Below Rule' are given to officers who are away from the cadre only when their names are approved for regular promotion and their juniors are promoted on a regular basis. Since his juniors had actually worked as Assistant Engineer from 1978 onwards by virtue of the increments earned by them, they were drawing higher pay in 1981 than the applicant when he returned to the parent cadre.

4. In the rejoinder the applicant has stated that according to the respondents the promotion order was endorsed only to the General Manager, National Thermal Power Corporation, New Delhi, where the applicant was working and the officers concerned before the applicant went on deputation to Bhutan. Since the endorsement did not contain the residential addresses of the officers contained and the applicant was on leave on 11.4.78, it cannot be said that the promotion order had been despatched to his residential address. Further, the sanction of leave was conveyed to the applicant on 27.5.78, so the question of the promotion order being sent to his leave address on 11.4.78 could not arise. The applicant has also appended a copy of the Government of India's order No.5 below FR 30 along with his rejoinder.

5. I have heard the arguments of the learned counsel for the applicant and gone through the documents carefully. None appeared for the respondents despite the case being listed on two consecutive days on 22.10.91 and 23.10.91. The respondents have not denied the particulars of pay, seniority and promotion to various grades indicated by the applicant in para 6.13 of his application in relation to him and his two juniors. From the pleadings it is not established that the applicant had been informed about his promotion order dated 11.4.78 while he was still on leave in India. It is also clear that he was not given any option either

to stay back on promotion or to go on deputation to Bhutan. It will not therefore, be fair to deny him notional increments in his parent cadre on the analogy of the Next Below Rule. The clarificatory order of the Government of India dated 17th October, 1960 produced by the applicant at Annexure A9 can be extracted in relevant portions as follows:-

"2. The question as to what extent the benefit under the second proviso to FR.30(1) (i.e." next below Rule") as clarified on order 4, above could be given to Government servants deputed abroad was under consideration.

It has been decided that the benefits under the "Next below Rule" shall not be admissible to Govt. servant deputed to hold regularly constituted ex-cadre posts abroad. In such cases, however, on the reversion of the officer to the post whether in or out of India in the parent cadre he would have held but for his deputation to an ex-cadre post abroad, that portion of the period of deputation during which the conditions precedent to the grant of benefit under the "next below rule" are satisfied shall be taken into account in fixing the pay of the Government servant. For this purpose, the deemed date or promotion in the post which may fall during the tenure of deputation shall be arrived at by applying all the conditions of "next below rule" and the pay on the date of actual appointment to that post immediately on reversion from deputation to an ex-cadre post abroad shall be fixed under FR.27 by assuming that the officer had been promoted from the deemed date of promotion.

(3) In order to ensure that the benefit of promotion to a higher post is not unduly denied to the Government servants, it has been decided that the administrative Ministries, etc., should screen the officer to be deputed abroad so that only such officer are sent abroad, as are not likely to be promoted to any higher grade or post in their parent department during the period of deputation."

From the above it is clear that the applicant will be entitled to reckon the period during which his juniors were officiating as Assistant Engineer, for the purposes of pay fixation and increment. It is true that the applicant himself had applied for deputation to Bhutan but it is the respondents who selected him by screening and they need not have sent him on deputation abroad as he was likely to be promoted to the higher grade.

6. In the circumstances I allow the application and direct that the

S

pay of the applicant should be fixed on his ~~regular~~ promotion as Assistant Engineer at the same level at which his juniors S/Shri Balakrishna and Reddy had their pay as Assistant Engineer. He should also be entitled to arrears of pay and allowances from the date of ~~regular~~ promotion and retirement benefits on that basis. There will be no order as to costs.

S
4. XII. 91
(S.P. Mukerji)
Vice Chairman

n.j.j

I have vide my order dated 9.4.92 in R.A. 53 of 92 directed in regard that the word "regular" occurring twice in para 6 of my judgment above be deleted and substituted by the word "ad hoc". I have in my own hand corrected the words accordingly.

S
9.4.92