

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-762/87

Date: 12.2.1988.

Shri P.N. Tandon & Another Applicants

Versus

Union of India & Ors. Respondents
For the Applicants Shri R.K. Kamal, Advocate.
For the Respondents Shri P.P. Khurana, Advocate.
CORM: Hon'ble Shri S.P. Mukerji, Administrative Member.
Hon'ble Shri Ch. Ramakrishna Rao, Judicial Member.

(Judgement of the Bench delivered by Hon'ble
Shri S.P. Mukerji, Administrative Member)

Simply stated, the applicants have prayed in this application under Section 19 of the Administrative Tribunals Act that the benefits of arrears of pay and promotion consequen upon the revision of their seniority in Grade IV of I.F.S.(B) in pursuance of the judgement of this Tribunal, dated 21st November, 1986 in TA-129/85 (Transferred Civil Writ No. 565 of 1974) should be given to them. In the aforesaid transferred case No.129/85, this Tribunal had directed that the seniority of the petitioners in that case should be determined on the basis of their total length of continuous officiation in Grade IV of I.F.S.(B) even though it might have been ad hoc or temporary. It was also indicated that their seniority should be fixed on the basis of the rulings of the Supreme Court as in the cases of G.S. Lamba and Narender Chadha. The respondents have revised the seniority list but have not given to the applicants retrospective promotion to the next grade of Section Officers, ^{even though} ~~accordingly~~ ^{as} in the revised seniority list, they are senior to those who had been so promoted earlier on the basis of the old seniority list.

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2. We have heard the arguments of the learned Counsel and gone through the averments made by both the parties.

3. In their counter-affidavit, the respondents have conceded that revised seniority list in Grade IV of "I.F.S.(B)" has already been issued and the applicants have been assigned their due seniority on the basis of continuous officiation, as per the directive of the Hon'ble Tribunal." As, however, "there is no directive of the Hon'ble Tribunal regarding grant of consequential benefits nor were these asked for either in the original petition filed in the Delhi High Court on 29.4.1974 or in the subsequent interim application filed before the Hon'ble Tribunal on 4.4.1986" and as demotion of officers had to be avoided, the applicants were and not given consequential benefits of promotion/pay. The respondents have also urged that giving of consequential benefits to all those who have become senior in the revised seniority list "would cast a considerable financial burden on the Government, especially in view of the large number of officers involved which could number more than 120."

4. We are not at all impressed by the arguments of the respondents. The decision on transferred application 129 of 1985 in which the seniority was bestowed on the applicants on the basis of their ad hoc and temporary officiation, would be rendered worthless if the material benefits in

the form of arrears of pay and promotion to the next higher grade are not given to the applicants. Our attention was drawn to the judgement of the Supreme Court in Writ Petition No. 2365 of 1980, dated 11th December, 1987 in which the Supreme Court allowed the benefit of our same judgement dated 21.11.1986 to the petitioners before them who are similarly circumstanced as the applicants before us. In that judgement, the Supreme Court observed as follows:-

"By judgement dated 21.11.86 the Delhi Bench of the Tribunal has set aside the impugned seniority list and has directed that it should be re-drawn up on the basis of the seniority based upon total length of service including continuous officiation irrespective of whether the same was ad hoc or temporary. Counsel appearing for the appellant says that the decision was accepted and has also been implemented. In that view of the matter no direction in the writ petition for quashing of the seniority list or for re-drawing of the seniority list is necessary to be given. We are, however, asked to give a direction that upon the refixation of seniority in accordance with the direction of the Tribunal referred to above, consequential benefit should be available to the appellant. Counsel appearing for the respondents suggests that in calling upon the Union of India to give effect regarding conferment of consequential benefits, we should indicate that if as a result of the preparation of the seniority list in accordance with the decision and the review of the promotions which would follow as a consequence, promotees in the higher grades are likely to be reverted, such officers may not be reverted and should continue in the higher posts by creating supernumerary posts to the extent as may be necessary. Such a direction appears to have been given by this Court in a similar situation in Narinder Chadha & Ors. Vs. Union of India & Ors., 1986 (1) SCR 211. We suggest to government that while complying with the direction for extending the consequential benefits to the appellant upon re-drawing of the seniority list, it should keep this principle in view and give effect to our order. In the case of the petitioner before us who has now retired notional promotion may be granted so that the benefit which would accrue may be worked out. These consequential benefits should be worked out within six months from today. The writ petition is disposed of. Parties are directed to bear their own costs."

5. We, therefore, see no reason why the applicants before us who were directly involved with our judgement

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of 21.11.1986, should not get the benefit of consequential benefits when the same had been commended by the Supreme Court to be allowed to other petitioners who were similarly circumstanced but were not a party to our judgement dated 21.11.1986. It is immaterial whether the consequential benefits have been specifically asked for or not. Once the seniority is revised, the applicants become entitled to being considered for promotion to the next higher grade from the date their juniors in the revised seniority list had been promoted.

6. In more or less a similar conspectus of facts and circumstances, the Supreme Court in Dr. Y.P. Gupta Vs. Union of India & Others, 1985(3) SLR 55, allowed the parallel benefit of seniority also consequential upon the benefit of higher pay-scale bestowed by an earlier judgement. In the instant case before us, the benefits of pay and promotion are being sought on the basis of the benefit of seniority bestowed on the applicants through our judgement dated 21.11.1986.

7. The question of financial burden should not deter ~~at least~~ the Union of India from giving the benefit of arrears of pay and promotion legitimately due to the applicants. In M/s Mackinnon Mackenzie & Co. Ltd. Vs. Audrey D'Costa & Another, ATLT 1987 (I), 467, the Supreme Court held that the statutory obligation to pay equal remuneration to both male and female Stenographers cannot depend upon the financial ability of the management to pay equal remuneration as provided by the ~~Act~~ ^{statute}. This ruling applies with greater force when the employer happens to be the Union of India. In the facts and circumstances, we allow the application and direct the respondents as follows:-

(a) The applicants should be considered for promotion

to the Grade of Section Officers from the date their juniors were so considered and if found suitable, in accordance with the rules, should be given promotion w.e.f. the date their juniors were so promoted.

(b) The applicants, if so promoted to the Grade of Section Officers, should be given arrears of pay and allowances with retrospective effect by creating supernumerary posts, if necessary.

(c) The arrears of pay and allowances, if any, should be paid within a period of three months from the date of communication of this order.

(d) The applicants should reckon their service as Section Officers from the date of their retrospective promotion, if any, for the purpose of eligibility for promotion as Under Secretary or equivalent grade.

(e) The seniority of the applicants in the grade of Section Officers should be reckoned on the basis of their retrospective promotion, if allowed as above, and they should be considered for promotion as Under Secretary or equivalent grade in accordance with the rules from the date their juniors in the grade of Section Officers were so considered.

There will be no order as to costs.

Ch. Ramakrishna Rao
(Ch. Ramakrishna Rao) 12.2.88

Judicial Member

S. P. Mukerji
(S. P. Mukerji) 12.2.88

Administrative Member