

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 827  
T.A. No.

198 7

DATE OF DECISION 2.2.1988

Shri Lilaram G. Bhatia

Petitioner

Applicant in person

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri P. P. Khurana

Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No

*Ch. Ramakrishna Rao*  
(Ch. Ramakrishna Rao)  
Judicial Member

*S.P. Mukerji*  
(S.P. Mukerji)  
Administrative Member

6

Central Administrative Tribunal  
Principal Bench, New Delhi

No. DA-827/87

Date: 2.2.1988

Shri Lilaram G. Bhatia .... Applicant

Versus

Union of India & Ors. .... Respondents

For the Applicant .... Applicant in person

For the Respondents .... Shri P. P. Khurana, Advocate.

CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member.  
Hon'ble Shri Ch. Ramakrishna Rao, Judicial Member.

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

The applicant, who is a retired Deputy Secretary of the Department of Civil Supplies, has in this application of 25.4.1987, under Section 19 of the Administrative Tribunals Act, prayed for being given the arrears of pay and allowances as Deputy Secretary (Rs.1500-2000) for the period his juniors officiated as Deputy Secretary while he was paid in the scale of Under Secretary (Rs.1200-1600).

2. The brief facts of the case can be narrated as follows. While working as an Under Secretary, he was deputed on foreign service with the Government of Kenya under the Special Commonwealth African Assistance Programme as Legal Adviser to that Government. His period of deputation commencing from 17.1.1979 was originally for two years but was extended by two years and then by one year till 16.1.1984. On 26.5.1981, he was included in the panel for promotion as Deputy Secretary but he was not asked to return <sup>to India</sup> ~~to India~~ <sup>member</sup> to avail of the promotion. On the expiry of his extended deputation period, he returned to India in January, 1984 and after a spell of leave and joining time, he could join on 27.3.1984. As, however, there was no post of Deputy Secretary available

at that time, he was posted as Under Secretary for five days from 27th to 31st March, 1984, then as Director (Rs.1500-1800) between 1.4.1984 and 14.6.1984 and thereafter as Commissioner of Payments (Rs.2000-2250) between 15.6.1984 and 5.9.1984. Even though as Director and Commissioner he was holding posts higher than that of Under Secretary or even as a Deputy Secretary, he was paid as an Under Secretary in the former post and as a Deputy Secretary in the latter post. When the regular incumbent of the latter post was to join, he was forced to leave the post and he went on leave on medical grounds from 6.9.1984 to 31.1.1985. He was ultimately promoted as a Deputy Secretary on a regular basis for the first time on 1.2.1985. He had sought voluntary retirement in January, 1985 w.e.f. 31.3.1985 and, accordingly, he retired prematurely w.e.f. 1.4.1985. On the basis of his various representations and the admitted fact of his juniors officiating as Deputy Secretary, at long last and after the applicant had retired prematurely, the respondents on 28th May, 1985 (Annexure III to the petition) gave him <sup>only</sup> the proforma promotion as Deputy Secretary from 31.7.1982, when his immediate junior had been so promoted. However, in fixing his pay during the aforesaid period, in accordance with the impugned order (Annexure I) dated 31.5.1985, he was allowed the arrears of pay w.e.f. 1.2.1985 only. It is against this order that the applicant has come up claiming arrears of pay from 31.7.1982 itself.

2. In accordance with the applicant, when he returned from deputation abroad, in January 1984, 125 officers junior to him had already been appointed as Deputy

Secretary. Even on 31.12.1983, 29 vacancies of Deputy Secretaries were filled up. At no stage was he given the opportunity to come back to avail of his promotion given to him while he was on deputation abroad. Even when the Government of Kenya was keen to retain him, the respondents did not agree and having recalled him to India, could not give him the promotion due to him. It is admitted by the respondents that he had represented on 19.12.1981 for getting proforma promotion as Deputy Secretary while on deputation but the same was not agreed to by the respondents. The applicant has alleged that since some of his juniors were interested in getting promotion as Deputy Secretary, he was purposely kept out of proforma promotion. According to the respondents, the question of giving him proforma promotion was rejected by the Department of Personnel on the ground that he was deputed to hold regularly constituted ex-cadre post and under Government of India's decision No.5 below F.R.32, the benefit of 'Next Below Rule' was not admissible in such a case. According to the aforesaid decision, he was entitled to get his pay on his regular appointment as Deputy Secretary fixed by taking into account his notional promotion as Deputy Secretary from the date his junior was appointed, but he was not entitled to get arrears of pay.

3. We have heard the arguments of the applicant and the learned counsel for the respondents and gone through the documents carefully. There is no dispute about the facts and the respondents have themselves allowed proforma promotion to the applicant w.e.f. 31.7.1982 but without arrears of pay. In this respect, the proforma promotion was given by the respondents under F.R.113 read with F.R.30.

In accordance with the Government of India's decision No.2 below F.R.113, in Swamy's Compilation, such "proforma promotion given to Government servants deputed on foreign service should in future be regulated in the same manner as in the case of deputation under the Government outside the regular line of service referred to above." The respondents' case is that under decision No.5 below F.R.30 "When a Government servant is with proper sanction deputed for duty out of India to hold a regularly constituted permanent or quasi-permanent post, other than a post borne on the cadre of the service to which he belongs, his pay shall be regulated by the orders of the Central Government." In accordance with the decision taken by the Government, "the benefits under the Next Below Rule was not admissible to Government servants 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, which he would have held but for 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 ....." (Decision 5 below FR 30 in Swamy's compilation of F.R.S.R Part II)

4. It will thus be seen that the respondents have based their case entirely on the plea that since the applicant was holding "a regularly constituted 'ex-cadre post' abroad, he is not entitled to get the arrears of higher pay under the benefit of Next Below Rule, but he will get his pay fixed by counting the period of national

promotion for the purpose of increments in the higher scale of Deputy Secretary when he was so promoted on 1.2.1985.

However, in the counter-affidavit, in reply to para.6.4 of the application, the respondents have specifically admitted as follows:-

"It is not disputed that the post of Legal Adviser held by the applicant in Kenya was not a regularly constituted ex-cadre post abroad". (emphasis added)  
The aforesaid admission puts a seal on the applicant's claim. The post being not a regularly constituted ex-cadre one, the aforesaid decision number 2 below F.R.113 and decision No.5 below F.R.30, do not apply. The following extracts from Government of India's decision No.2 below F.R. 30 enunciates the principle of the benefit of Next Below Rule:-

"2. The working rule subjoined to this paragraph may be taken to express the convention which is commonly known as the 'next below rule' as originally approved, and its provisos, the modifications made from time to time. The intention underlying the "rule" is that an officer out of his regular line should not suffer by forfeiting the officiating promotion which he would otherwise have received had he remained in the original line. The so-called "rule" is not a rule of any independent application. It sets out only the guiding principles for application in any case in which it is proposed to regulate officiating pay by special orders under the second proviso to F.R. 30(1). The conditions precedent to the application of the 'next below rule' must, therefore, be fulfilled in each individual case before action may be taken under this proviso. It also follows that the benefit of officiating promotion is to be given only in respect of the period or periods during which the conditions of the 'next below rule' are satisfied.

"Rule - When an officer in a post (whether within the cadre of his service or not) is for any reason prevented from officiating in his turn in a post on higher scale or grade borne on the cadre of the service to which he belongs he may be authorised by special order of the appropriate authority pro forma officiating promotion into such scale or grade and thereupon be granted the pay of that scale or grade if that be more advantageous to him, on each occasion on which the officer immediately junior to him in

the cadre of his service (or if that officer has been passed over by reason of inefficiency or unsuitability or because he is on leave or serving outside the ordinary line or forgoes officiating promotion of his own volition to that scale or grade then the officer next junior to him not so passed over) draws officiating pay in that scale or grade."

It is clear that untrammelled by the restrictive decisions referred to above, the benefit of Next Below Rule squarely covers the case of the applicant. He would, thus, be entitled to the pay of his junior as Deputy Secretary right from 31.7.1982 till the date of his retirement on 31.3.1985. The following facts add further strength to the applicant's case:-

- (a) He was sent to Kenya in public interest.  
In the course of arguments, the applicant indicated that the post of Legal Adviser held by him in Kenya had been held by officers of the level of Joint Secretary. In any case, since he was given two extensions, it is evident that he gave a good account of himself abroad.
- (b) He was not given any option or opportunity to opt for returning to India to hold the higher post of Deputy Secretary when he was empanelled for that post.
- (c) A large number of officers junior to him had admittedly been promoted as Deputy Secretary before, on the eve of his return to India and even after that.
- (d) Even after return from abroad, he was appointed to the post of Commissioner of Payments (Rs. 2,000-2250), higher than that of a Deputy Secretary (Rs. 1500-2000) though <sup>given</sup> ~~at~~ pay lower than that of his juniors who were officiating as Deputy Secretary.

5. In the conspectus of facts and circumstances, we allow the application and set aside para.3 of the impugned order No. P-1029/71-Estt.I, dated 31st May, 1985 (Annexure I to the petition) and the notification, dated 28th May, 1985 (Annexure III to the petition) insofar as it refers to F.R. 113 and direct that the applicant should be given arrears of pay and allowances, including foreign allowances for the relevant period, as if he had actually been promoted as Deputy Secretary w.e.f. 31.7.1982. The arrears of pay and allowances should be calculated <sup>from</sup> ~~from~~ the date of his retirement on 31.3.1985 and his pension and other retirement benefits should be revised on that basis. The payment of arrears of pay, allowances and pension and other retirement benefits and issue of revised sanction of pension should be effected within a period of three months from the date of communication of this order. There will be no order as to costs.

*Ch. Ramakrishna Rao*  
(Ch. Ramakrishna Rao) 24/2/85  
Judicial Member

*S.P. Mukerji*  
(S.P. Mukerji) 24/2/85  
Administrative Member