

2

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
OA 1282/1990, New Delhi this 26th day of January, 1995.

Hon'ble Shri P.T.Thiruvengadam, Member (A)

R.P. Gupta
s/o Late Shri Babu Ram
C-4/76/2, Safdarjung Development Area
New Delhi-16 .. Applicant

VERSUS

1. Union of India, through
Secretary
Ministry of Water Resources
Shram Shakti Bhawan, New Delhi
2. Central Water Commission
Sewa Bhawan, R.K. Puram,
New Delhi .. Respondents

By Shri K.L. Bhandula, Advocate

ORDER

The applicant who has filed this OA was functioning as Deputy Director/Executive Engineer in the Central Water & Power Commission, when he was promoted on ad hoc basis, on 4.1.81 to the post of Director (Junior Administrative Grade). He was subsequently regularised in JAG with effect from 29.5.85.

2. At the time when the applicant was promoted to JAG on ad hoc basis i.e. on 4.1.81, the fixation on promotion from senior scale to JAG was done under the FR 22(a)(i), as per extant instructions. However, Government of India issued instructions in OM dated 5.10.81 by which the fixation of pay on promotion/appointment from senior scale to JAG was also brought under the purview of FR22(c) viz. the pay would be fixed at a stage in the scale of pay of JAG next above the pay drawn in the lower post which is to be

2/2

notionally increased by one increment. One Shri B.L. Gupta admittedly junior to the applicant in the grade of Deputy Director/Executive Engineer, was initially promoted on ad hoc basis to the JAG with effect from 19.1.82. He was subsequently regularised in the JAG with effect from 7.2.83. On his promotion on ad hoc basis on 19.1.82, Shri B.L. Gupta was given the benefit of pay fixation under FR 22(c) in terms of the OM dated 5.10.81. The applicant found that Shri Gupta who was junior to him in the senior scale had been granted higher pay even though he was promoted on ad hoc basis later to the applicant. The applicant kept representing for stepping up of his pay. This has been ultimately negatived by the respondents' OM dated 11.7.89 (Annexure A to the OA). This OA has been filed challenging this OM.

3. The learned counsel for the respondents argued that the applicant was senior to Shri B.L. Gupta in the lower post namely as Deputy Director/Executive Engineer but in the higher post of Junior Administrative Grade, Shri B.L. Gupta had been regularised with effect from 7.2.83 whereas the applicant could be regularised only with effect from 29.5.85 based on the recommendation of the DPC. Thus the seniority in JAG has got changed and the applicant has become junior to Shri B.L. Gupta in JAG. It was conceded that the provisions of OM dated 5.10.81 confer the benefit of FR 22(c) for promotion from senior scale to JAG but such benefits were applicable only

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prospectively. However, in relation to the past cases, the matter was reviewed and further instructions were issued on 25.9.82 allowing for stepping up of the pay of seniors with effect from the date of promotion of juniors subject to the conditions stated therein. One of the conditions is that both the senior and junior officers should belong to the same cadre and the posts in which they have been promoted on a regular basis should be identical in the same cadre.

4. It was argued that the benefit of stepping up vide the provisions made by the order dated 25.7.82 can not be extended to the applicant since the applicant did not continue to be senior to Shri B.L.Gupta with whom he was comparing himself. It was also explained that the benefit of stepping up of pay of senior officers can not be allowed in cases where promotion/appointment is made on ad hoc basis as ad hoc promotion had ~~all~~ along been considered as not regular one for various benefits as given in the ambit of rules on pay fixation.

5. The main thrust of argument of the applicant who argued this case in person was that it would be invidious to grant more pay to a junior irrespective of the rules provision.

6. I note that extension of benefit of FR 22(c) by way of the OM dated 5.10.81 did create a situation where seniors promoted earlier to this date could be drawing

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less pay than juniors promoted subsequent to this date. ^{for} But overcoming this anomaly, the Government of India issued instructions on 25.9.82. These instructions have stipulated a number of conditions. One condition is that both the senior and junior should have been promoted on regular basis. In the case before me the applicant was not promoted on a regular basis at the time when his junior was promoted regularly in the year 1983. The applicant had to wait for empanelment by the DPC for promotion in the year 1985. In the process he became junior to Shri Gupta in JAGrade. Thus the applicant fails to get the benefit of the provisions of OM dated 25.9.82. I note that vires of this OM have not been challenged in this OA. It is a settled position that if the rule is not challenged, the consequence of the rule has to be accepted.

7. In the circumstances, the OA is dismissed. There will be no order as to costs.

P.T.Thiruvengadam

(P.T.Thiruvengadam)
Member(A)

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