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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO. 161/1990

DATE OF DECISION : 10.3.92

SHRI R.S. VERMA

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

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SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI B.S. MAINEE

FOR THE RESPONDENTS

...SHRI K.L. BHANDULA

1. Whether Reporters of local papers may be allowed to see the Judgement? *yc*
2. To be referred to the Reporter or not? *yc*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant joined as Junior Engineer on 13.1.1966 and was sent on deputation as Supervisor to the foreign service in National Hydro Electric Power Corporation Ltd. by the order dt. 22.11.78. During his posting on foreign service, the juniors to the applicant in the parent cadre were promoted as Extra Assistant Director/Assistant Engineer, Group-B w.e.f. 5.9.80. The applicant returned from the deputation post in November, 81 and he was also promoted as Assistant Engineer, Group-B/Extra Assistant Director. However, the pay of the applicant was fixed in

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the minimum/scale at Rs.650 in December, 81, while
the juniors who were promoted earlier in September, 80
were given the pay scale of Rs.650 at that time. The
applicant has since been working as Assistant Engineer,
Central Store, Directorate, Central Water Commission,
New Delhi. The applicant has filed this application
on 24.1.90 and he claimed the relief that his pay be
fixed at Rs.650 from the date, it was given to his juniors,
i.e., from September, 80 and the order passed on his
representation dt.24.11.89 (Annexure A1) be quashed.

2. The case of the applicant is that when he went
on deputation, he was sent there after selection as
Supervisor and while in foreign service, he was never
informed or given an option to return when his ad hoc
promotion was due and his juniors were promoted and allowed
to work on the post of Assistant Engineering Group-B/Extra
Assistant Director. Thus it was no fault of the applicant
and the applicant could have opted for promotion. It was
only in November, 81 that the applicant returned and the
promotion was given to the juniors in September, 90. The
juniors to the applicant are getting more pay than the
applicant and the pay has not been stepped up under the
provisions of FR 27 and his representation dt.29.1.85 has
been wrongly rejected.

3. The respondents contested the application and stated that since the applicant was drawing higher pay on deputation post in the foreign service and local arrangement was made to promote Junior Engineers to the post of Assistant Engineers/Extra Assistant Director, so the applicant can have no grievance in that regard and since the juniors to the applicant had joined and earned increment by the passage of time, they are getting higher pay than the applicant. It is also stated that for ad hoc promotion, the applicant had no vested right because he was not available at that time.

4. We have heard the learned counsel for the parties at length and have gone through the record of the case. The case of the applicant is that he is already covered by the judgement delivered in the case of B.V. Rangaiah vs. UOI (T.A. NO.1/88) decided by the Hyderabad Bench. A copy of the judgement is at Annexure A-7. Further the judgement has been given by the Principal Bench in the case of V.V.G.Rao vs. UOI decided on 30.7.89. The applicant has also relied on the judgement in the case of OA 1321 /1989 & 5 Ors. vs. UOI & Ors. decided by the Principal Bench on 28.2.90. Relying on these judgements, the learned counsel for the applicant argued that the judgement applies on all fours to the case of the applicant.

5. The applicant has taken the following pleas :-

(a) While on deputation/foreign service, the applicant was not intimated about the orders of promotion of his juniors, nor was he given an opportunity to exercise his option whether to continue on deputation or return to his parent organisation to avail himself of promotion, which for all intents and purposes was on long term basis.

(b) He was advised of the observations of the Ministry of Finance contained in CMC I.D. Note dt.12.5.1982 to the effect that after the promotion of junior official is made regular without any break in 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 retrospective. ly under F.R. 27.

(c) Even on promotion on regular basis, the applicant has not been given the benefit of refixation/ stepping up of his pay at the level of pay drawn by his juniors.

(d) The applicant is relying upon the judgement of the Hyderabad Bench of the Tribunal in the case of B.V. Rangaiah Vs. UOI & Ors. (TA 1/88) decided on 7.10.88, and judgements of the Principal Bench of the Tribunal in OA 1095/88, OA 1096/88 and

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OA 1097/88 stated to have been decided on
3.7.89.

(e) Denial of re-fixation of pay at par with juniors is against the principle of natural justice and the decision of the respondents in the impugned orders is arbitrary, capricious, irrational and unjustified.

6. The pleas of the respondents are as under:-

- (a) The application is barred under Section 20 and 21 of the Administrative Tribunals Act, 1985.
- (b) The judgements relied upon by the applicant were judgements in personam and not judgements in rem and as such, they are not applicable to the applicant.
- (c) The applicant had gone on deputation/foreign service on his own volition and he being away from his cadre, his juniors, who were available in the cadres, had to be promoted to the higher grades on ad-hoc basis and they were entitled to fixation of pay in the scales of pay attached to the posts and as such they continued to draw higher pay by virtue of their actually performing the duties of higher posts.
- (d) The stepping up of pay at par with his juniors in the case of the applicant, is not covered by

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the Government of India decision No.10 under FR-22-C as the anomaly is not directly as a result of the application of FR 22-C. (Ministry of Finance O.M. No.F2(78)-E.III(A)/66, dt.4.2.1966).

7. In the case of B.V.Rangaiah Vs. The Chairman, Central Water Commission and Anr. (supra), the applicant, while working as Supervisor in the CWC, was deputed on foreign service with Water & Power Development Consultancy Service (India) Ltd. (WAPCSL). While he was on foreign service, some of his juniors were promoted as Assistant Engineer on ad hoc basis in April, 1978. On return to his parent department in 1981, he was promoted on temporary basis as Assistant Engineer w.e.f. 26.6.81 and was regularised w.e.f. 31.12.84. By the same notification, two of his juniors were also appointed on regular basis as Assistant Engineer. The learned Hon'ble Member (Judicial) of the Hyderabad Bench of this Tribunal, in his judgement in the said case observed : "In an identical case viz. O.A.No.101/1989 dt.11.10.88, I have considered the very same question in regard to the fixation of pay of a senior who had been on deputation and held that the matter is governed by the principle contained in F.Rs. under the head "Next Below Rule". Under this rule, it is provided 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

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line, i.e., he should be given proforma officiating promotion into such scale or grade on each occasion on which the officer immediately junior to him in the cadre of his service draws officiating pay in that scale or grade. So far as the applicability of "Next Below Rule" to Government servants deputed abroad, the matter was held to be covered by G.I.M.F. O.M. No.F.2(10)-E.III/60 dt.17.10.60

8. In view of the above, applying the principle of 'Next Below Rule' and the clarification of the Government of India dt.17.10.90 (Government of India Order No.5/F.R.30), it was held in the case of B.V.Rangaiyya that if during the period, an officer is deputed abroad, his junior is given officiating promotion to a higher post, immediately on his return, the deemed date of promotion in the post which may fall during the tenure of deputation, shall be arrived at by applying the conditions of the Next Below Rule and the pay on the actual appointment shall be fixed by assuming that the officer has been promoted from the date of the deemed date of promotion. The applicant, therefore, was held to be entitled to fixation of pay on par with junior, Shri B.R.Reddy with monetary benefits from 29.5.81 and also 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 Chairman, Central Water Commission and Anr. filed SLP in the

Hon'ble Supreme Court against the above judgement in B.V.Rangaiyya and the said SLP was dismissed vide order dt.17.3.89.

9. In the case of Shri V.V.G.Rao Vs. UOI (OA 1095/88), the judgement in the case of Shri B.V.Rangaiyya Vs. UOI was relied upon and followed.

10. The applicant, Shri R.S.Verma is also employee of the Central Water Commission and had gone on deputation/foreign service in public interest. Promotion of his juniors were made, though initially on ad-hoc basis, during the period the applicant was on deputation or on foreign service. He was not given the option to avail of the promotion by reverting back or to forego the promotion. We respectfully agree with the ratio of the judgement in the case of B.V. Rangaiyya (supra).

11. The Hon'ble Supreme Court also in the case of Amrit Lal Berry Vs. Collector of Central Excise & Ors., 1975(1) SLR SC p-153 and in the case of A.K.Khanna & Ors. Vs. UOI & Ors. ATR 1938(2) CAT 518, held that if a citizen aggrieved by the action of the Government department has approached the Court and obtained a declaration of law in his favour, others in like circumstances, should also be given the benefit of this declaration without the need to take their grievances to the Court.

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12. Taking all these facts into view, the application is allowed and the respondents are directed to refix the pay of the applicant w.e.f. the date of the ad-hoc promotion to the next higher grade at the same level at which the immediate juniors were drawing on that date in that grade and also grant consequential monetary benefits including refixation of pay in the new scale sanctioned in pursuance of the 4th Central Pay Commission. The arrears of pay and allowances thereon on the above basis shall be allowed to the applicant. The respondents are directed to comply with this order within a period of three months from the date of receipt of a copy of this judgement. In the circumstances, the parties shall bear their own costs.

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J. P. SHARMA
MEMBER (J) 10.3.92

D. K. CHAKRAVORTY
MEMBER (A)
10.3.1992