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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2505/90

DECIDED ON : 15.10.1992

T. N. Dham & Ors.

... Applicants

Vs.

Union of India & Others

... Respondents

CCRAM

THE HON'BLE MR. P. C. JAIN, MEMBER (A)

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

Shri T. C. Aggarwal, Counsel for the Applicants

Shri A. K. Behra, Proxy Counsel for Shri P. H.
Ramchandani, Counsel for the Respondents

J U D G M E N T (CRAL)

Hon'ble Shri P. C. Jain, Member (A) —

All the four applicants in this O.A. under Section 19 of the Administrative Tribunals Act, 1985, are aggrieved by non-implementation in their case of the directions of the Central Administrative Tribunal in T-729/85 (CWP-3855/82) decided on 31.12.1986 between P. N. Kohli & Others vs. Union of India & Others (Annexure-I to the counter affidavit) inasmuch as though the review panels in pursuance of the above judgment have been prepared and the applicants have been given revised seniority on the basis of Assistant Engineer, Doordarshan/AIR they have not been given the difference of pay on that account. They have prayed for quashing of memorandum dated 29.6.1990 (Annexure A-5) by which a revised seniority list of Assistant Engineers in AIR and Doordarshan for purposes of eligibility for promotion to the higher post has been issued and have prayed for the following reliefs :-

- "(1) That the Memo. No.2/9/90-SIII dated the 29th June 1990 (Annexure A-5) be quashed with direction to give date of promotion as per Hon'ble Tribunal's decision.

(2) That Respondent be directed to issue promotion order with effect from 1982 of applicants as per Select Panel (Annexure A-3) with grant of pay and arrears.

(3) That in the alternative of (2) above direct respondent to step up pay of applicants with effect from 1982 with arrears of pay.

(4) That Hon'ble Tribunal may pass any other order(s)/direction(s) which may be deemed fit and proper in the matter."

2. The respondents have contested the O.A. by filing a return to which a rejoinder has also been filed by the applicants. We have perused the material on record and also heard the learned counsel for the parties.

3. It is an admitted case between the parties that promotions to the post of Assistant Engineer in Doordarshan/AIR, particularly promotions made on 19.8.1982, 24.8.1982 and 10/14.9.1982 in which quota rule in the recruitment rules of 1982 was given effect to, were quashed and a direction was given to promote Senior Engineering Assistants to the category of Assistant Engineers for the period during which the 1982 rules were in force and in accordance with the said rules but without enforcing the quota rule. Learned counsel for the applicants submitted that the judgment of the Tribunal in the aforesaid case was upheld by the Supreme Court. However, he has not placed on file a copy of the final orders passed by the Supreme Court in SLP (Civil) No. 5235/87; only a copy of the interim orders passed on 4.5.1987 is placed as Annexure-II to the counter affidavit. In pursuance of the aforesaid judgment/orders review panels were prepared and all the four applicants were included in the select panel for promotion from Senior Engineering Assistants to Assistant Engineers for the year 1982 (Annexure A-3) in which the name of the applicant No.1 was placed at sl. no. 163, that of applicant No.2 at sl. no. 156, that of applicant No. 3 at sl. no. 177, and that of applicant No.4 at sl. no. 178. Name of one Shri H. K. Mishra is shown at sl. no. 187 of the select panel

for 1982. Shri Mishra was promoted to the post of Assistant Engineer vide order dated 19.8.1982 (Annexure-IV to the counter reply) in an officiating capacity. Applicant No.1 was promoted to the post of Assistant Engineer on 26.6.1984 and applicant No. 3 was so promoted w.e.f. 30.3.1985. The exact dates of promotions of the other two applicants have not been disclosed, but the learned counsel for the applicants submits at the bar that the other two applicants were also promoted as Assistant Engineers in 1984. The case of the respondents in their reply is that review DPCs were held in 1987 and 1988 and review panels were drawn for the vacancies for the year 1982, 1983, 1984 and 1985 (1.1.1985 to 2.5.1985) and that the seniority was drawn on the basis of these panels. It is stated that while the Senior Engineering Assistants included in the panels in the light of the judgment were promoted in pursuance of the orders issued subsequently, those already working as Assistant Engineers were allowed to continue, but the seniority of those promoted on the basis of review DPCs and those already working as Assistant Engineers was refixed on the basis of the revised panels. As the applicants were already promoted and were functioning as Assistant Engineers before the revised panels were drawn, no fresh promotion orders were issued in their cases but they were given seniority in accordance with their position in the review DPCs. It is further stated that the request of applicant No.1 for stepping up his pay with reference to the pay of his junior Shri H. K. Mishra could not be accepted as the latter was promoted as Assistant Engineer on 28.8.1992 whereas the former was promoted on 26.6.1984, as stepping up of pay of senior officers is permissible only in cases where junior gets promoted later but draws more pay. Learned counsel for the respondents also submitted that only applicant No.1 had made a representation but the other three applicants did not represented for the relief prayed for in this O.A.

4. We have carefully considered the rival contentions of the parties. It is not in dispute that promotions made in 1982 etc. were required to be reviewed in accordance with the judgment in the case of P. N. Kohli & Ors. (supra). It is also not in dispute that they were accordingly reviewed, and on review all the four applicants in this O.A. were placed senior in the select panel for promotion to the post of Assistant Engineer against 1982 vacancies and Shri H. K. Mishra was placed lower than them. Further, it is not disputed that the applicants have been given seniority in accordance with their position in the revised select panel. There is also force in the contention of the respondents that in accordance with the orders under FR 22-C, the pay of the applicants cannot be stepped up on the facts of this case. However, the fact remains that if the review panel for 1982 vacancies had been in existence at the relevant time in 1982, the applicants would have been entitled to be promoted to the post of Assistant Engineer against 1982 vacancies either earlier or at least along with their junior, namely, Shri H. K. Mishra. If it were so, in the normal circumstances the pay of the applicants could not have been lower than the pay of the junior, Shri Mishra. As the review panel came into existence only in 1987, the respondents had basically relied on the date of actual promotion of Shri H. K. Mishra in 1982 and of the applicants in 1984/1985. The effect of the judgments in P. N. Kohli's case and the subsequent action taken by the respondents in pursuance of the directions in that case has necessarily to be held to mean that the actual promotion of Shri H. K. Mishra in 1982 cannot be taken to legally deprive the applicants of the promotion to the post of Assistant Engineer earlier or at least from the date Shri H. K. Mishra became entitled, in terms of the review panels, for promotion to such a post. We do not find anything in the reply of the respondents as to why when revised seniority ^{was} given to the applicants on the basis of the review panels, ^{is}

why the benefit of refixation of pay taking their promotion to be in 1982, has been denied to them.

5. In the light of the foregoing discussion, this O.A. is allowed in terms of the direction that the applicants shall be entitled to have their pay on the post of Assistant Engineer in AIR/Doordarshan refixed as if they were promoted to the said post on the date on which Shri H. K. Mishra was promoted but the arrears will be allowed to them only for the period from which the applicants were in fact actually promoted to the above post. No costs.

J. P. Sharma
(J. P. Sharma)
Member (J)

P. C. Jain
(P. C. Jain)
Member (A)