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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 657/90

New Delhi this the 12th day of July 1994.

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri M.R. Sharma,
S/o Late Shri Pali Ram,
Asstt. Accounts Officer,
Dept. of Non Conventional Energy Sources,
Block No. 14, CGO Complex,
Lodi Road, New Delhi-110003.

Presently
Divisional Accountant (Electrical Division IV),
Rohini Office Complex,
D.D.A.,
Delhi-110 0034. ... Applicant

(By Advocate: Shri B.S. Mainee)

Vs.

Union of India, through

1. Ministry of Finance,
Dept. of Expenditure,
Controller General of Accounts,
Lok Nayak Bhawan, Khan Market,
New Delhi-110 003.

2. The Secretary,
Ministry of Energy,
Dept. of Non Conventional Energy Sources,
Block No. 14, Lodi Road, New Delhi-110003

3. The Vice Chairman,
D.D.A., Vikas Sadan,
New Delhi. ... Respondents

(By Advocate Shri P.H. Ramchandani)

ORDER (Oral)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant has been working as Assistant Accounts Officer in the Department of Non-Conventional Energy Sources. The respondents issued OM dated 31.8.1987 restructuring of accounts staff for organising accounts cadre and it was decided that the ratio of number of posts in higher and lower posts in the Accounts Cadre would be 80% Junior Accounts

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Officer functional grade Rs. 2000-3200 and the remaining 20% in the Junior Accounts Officer Grade Rs.1640-2900. The Junior Accounts Officer with three years regular service in grade after passing the Junior Accounts Officer (C) examination and who have also completed the probation period of 2/4 years will be placed in the scale of Rs.2000-3200 subject to the condition that vacancies exist to accommodate them in this functional scale, limited to 80% of the total sanctioned strength of J.A.Os. These orders were to take effect from 1.4.1987. The respondents by the order dated 2.5.1989 placed the applicant in the grade of Rs. 2000-3200 of Accounts Officer/Junior Accounts Officer functional with effect from 1.4.1987. This order was, however, superseded by the order dated 1.8.1989 and the applicant was ordered to be placed in the scale of Rs.2000-3200 with effect from 29.5.1989. By another order dated 26.9.1989 it was directed that recovery will be made from the pay and allowance of the applicant and the excess amount paid as his pay has been refixed at Rs.2000/- as on 20.4.1989 instead of 1.4.1987. After making certain representations the applicant not getting any favourable response from the respondents filed the present application in April 1990 and prayed for the grant of the relief that the impugned orders of 1.8.1989 and September 1989 be quashed and respondents be directed to promote the applicant from 24.6.1988 the date from his juniors have been promoted with all consequential benefits.

2. The respondents, on notice, contested the application and in the reply stated that the order dated 25.5.1989 has been issued under mistaken impression as the name of the applicant does not exist in the list of eligible persons annexed with the Memo dated 14/17.6.1989. It does not appear

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to reason how the name of the applicant does not exist within these named persons, how they have been given promotion from 1.4.1987 by an order of prospective date of 2.5.1989. This according to the learned counsel of the respondents is solely by inadvertent on the part of the working staff at that time. He also pointed out that the applicant in the relief clause has only prayed his promotion in the grade of Rs.2000-3200 with effect from 24.6.1988. In view of this the applicant could not get any benefit of the scale of Assistant Accounts Officer on account of restructuring with effect from 1.4.1987.

3. It is further stated that as per the circular under which the aforesaid restructuring was done dated 14/17.6.1988, the benefit is to be given from the date the applicant actually recommended by the D.P.C. and holds charge for the post from the date of the orders issued by the respective Ministries on the recommendation of the D.P.C. (Annexure A-6). The case of the respondents, therefore, is that firstly on account of restructuring the vacancies fallen within 80% has to be calculated and thereafter the D.P.C. to consider them for promotion to the grade of Rs.2000-3200 and after DPC's recommendations, the respective Ministries will issue the orders giving benefit to the concerned individuals from the date of the orders. The learned counsel for the applicant has pointed out in para 7 of the same instructions which directed the various Ministries that DPC are held and promotion orders are issued latest by 15.7.1988. However, the fact remains that according to the respondents the applicant was working in the Dept. of Non-Conventional Energy Sources and the orders in that case were dated 1.8.1989.

4. The learned counsel, however, took a legal stand in the matter that whatever may be the merit of the matter, any

adverse order could not have been passed effecting the condition of the service of the applicant particularly with respect to promotion and pay without hearing him and giving him opportunity of representing his case. He has also referred to the decision of Madras, CAT M. Venkayya Vs. Union of India ATR 1989(2) P 23 and also of the Principal Bench in the case of C.L.Kapur Vs.UOI ATR 1989(2) CAT P 510.

In both these cases reliance has been placed on the decision of the Hon'ble Supreme Court that if there is any dis-advantage ^{as} ₁ adverse orders against any person that the principle of natural justice warrants hearing of that person before condemning him. In this case though the earlier order is dated 2.5.1989 and the order superseding this order is of 1.8.1989 but the applicant had already drawn pay alongwith the arrears on the revised fixation of pay with effect from 1.4.1987, even on ~~that~~ that deputation post in DDA where he was posted. This is evident from the subsequent order of September 1989 whereby it was ordered that the excess payment paid to the applicant be recovered and his pay was refixed during his promotion in the scale of Rs.2000-3200 with effect from 20.4.1989. In view of this it was incumbent on the respondents to issue show cause notice before passing an order superseding an earlier order which was in favour of the applicant.

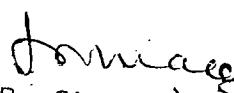
5. The counsel for the applicant has referred to the fact that the latest judgement of the Hon'ble Supreme Court clearly lays down that the principle of natural justice should not be extended to unbounded limit as to defeat the ^{legal position laid down in} ~~period of statute~~ or instructions itself. He has referred to the case of Mohd. Ramjan Khan which has also been considered in the case of Karnakaran. In any case it appears that the applicant has right to represent that he is qualified in the zone of consideration for promotion in the range of 80% of the

11

vacancies and also that if the OPC was not held at the proper time as is envisaged by the instructions of the Department dated 14/17.6.1988, he could not be made to suffer vis-a-vis to the certain persons who had been inducted in certain Ministries much after him. It is for the respondents to take decision on that matters according to their own circulars/rules or notifications but the applicant cannot be denied his right of making representation to be considered by the administration with open mind and sound reasonings.

5. In the above facts and circumstances of the case the present application is partly allowed not on merit but solely on the technical ground of not hearing the applicant before passing an adverse order against him dated 1.8.1989. The applicant is free to make a representation to the respondents against the aforesaid order and till then no recovery should be effected. As regards the impugned orders there shall be governed by the final orders to be passed on the representation to be made by the applicant and the respondents may also give a notice to the applicant to file representation against the order dated 1.8.1989, and September 1989 regarding promotion to the grade of Rs. 2000-3200 and recovery of the excess paid to him from 1.4.1987 respectively. If the applicant is still aggrieved he is free to assail his grievance according to law.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)

Mittal