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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

DA.No.1600/91

Date of Decision:24.01.1992

Shri M.K. Goel	...	Applicant
Shri M.K. Gupta	...	Counsel for the Applicant
Vs.		
Union of India & Ors.		Respondents
Shri P.H. Ramchandani		Counsel for the Respondents

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, Member(Admn.)

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

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N.Dhoundiyal)

Shri M.K. Goel, who is working as U.D.C. on deputation with the Central Administrative Tribunal, New Delhi from Central Excise and Customs Department, is aggrieved by the order dated 28.06.1990 from his parent department rejecting his request for proforma promotion under NBR(Next Below Rule). His representation submitted on 22.03.1991 did not elicit any reply.

2. The applicant joined as L.D.C. in the Directorate of Statistics and Intelligence, Central Excise and Customs through the Staff Selection Commission on 25.02.1978. In 1982, he cleared the written examination for the post of U.D.C.

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On 01.08.1989, he joined the Central Administrative Tribunal (C.A.T.) as an U.D.C. in the scale of Rs.1200-2040 on deputation basis for a period of one year. Later, on the basis of a request from the Tribunal, the Central Board of Excise and Customs allowed him to continue on deputation beyond 01.08.1990 and to eventually get absorbed. Meanwhile, vide order dated 10.04.1990, the Directorate of Statistics and Intelligence, promoted the applicant as U.D.C. No seniors to him were outside the regular line and all his juniors have been promoted to posts in U.D.C. scale. Thus he fulfilled all the conditions laid down in the Government order No.4 to FR 30 of F.R. & S.R. which read as under:-

"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 violation to that scale or grade then the officer next junior to him not so passed over) drawn officiating pay in that scale or grade:

Provided that all officers senior to the officer to whom the benefit under the substantive part of this rule is to be allowed are also drawing, unless they have been passed over for one or other of the reasons aforesaid, officiating pay in the said or some higher scale or grade within the cadre:

Provided further that, except in cases covered by any special orders, not more than one officer (either the seniormost fit officer in a series of adjacent officers outside the ordinary line, or if such an officer either forgoes the benefit of his own violation or does not require the benefit in virtue of his holding a post outside the ordinary line which secures at least equivalent benefits in respect of pay and pension than

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the next below series) may be authorised to draw the pay of the higher scale or grade in respect of any one officiating vacancy within the cadre filled by his junior under this rule."

3. The action of the respondents in not giving the benefit of promotion to the applicant from 10.04.1990 has resulted in his basic pay being fixed at Rs.1290/- as against Rs.1320/- per month w.e.f. 01.08.1990. This has adverse effect on the date of annual increment and quantum of deputation allowance. The applicant contends that the reason given for denying him the benefit of NBR i.e. reduction in the strength of the Department is untenable as only four posts of U.D.C.'s have been reduced and they have recently relieved UDC's on permanent transfer to other Directorates. The applicant has prayed for quashing the order dated 28.06.1990 and for directing the respondents to grant him the benefit of NBR, refixation of his pay and payment of arrears with 18% interest thereon.

4. The respondents have contended that the applicant was promoted as U.D.C. on 10.04.1990 and he was also directed to join as UDC in his parent department i.e. the Directorate of Statistics and Intelligence, Central Excise and Customs immediately. The request for his return to parent department was repeated a number of times and finally after discussions with the authorities in the C.A.T., no objection to his absorption in that organisation was conveyed vide letter dated 09.10.1990. This was reiterated in the communication dated 30.11.1990. They have stated that due to mass reduction in the sanctioned strength of their office by the Staff Inspection Unit,

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they are not in a position to allow the applicant proforma promotion under next below rule. It is well within the purview of Head of the Department to deny NBR or call back any official on deputation after expiry of the deputation period.

5. We have gone through the records of the case and heard the learned counsel for both the parties. The learned counsel for the respondents has questioned the propriety for granting the benefit of NBR to any employee who refuses to go back to the parent department. The learned counsel for the applicant has on the other hand argued that it is the borrowing department i.e. C.A.T., which would have to bear the financial burden of the increase in pay. A perusal of the relevant orders on the subject reproduced above show that the basic conditions for grant of NBR are the following:-

- (a) The officer is prevented from officiating in his turn in a post on higher scale on each occasion on which the officer immediately his junior draws the officiating pay on higher scale;
- (b) All the officers senior to him are drawing pay in the same or higher scale;
- (c) No more than one officer may be authorised to draw higher pay under this Rule. Once the respondents agreed to deputation and subsequent absorption of the applicant with the C.A.T., there was no question of the applicant rejoining the department.

6. The other two conditions are also met in this case. Considering that the extra liability has to be met by the

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borrowing department, there should be no objection to the applicant being given the benefit of NBR. It is usually accepted that services of the officer on deputation are treated to be equivalent to service in the parent department. Moreover, the Supreme Court has held that a deputationist, if not relieved by the borrowing authorities cannot be treated to have refused to return (R.L. Gupta and another Vs. Union of India and others(SC); 1988(2)S.L.J.(CAT) 165). In the instant case, the borrowing department continued to utilise the services of the applicant and ultimately the respondents agreed to let him be absorbed in the C.A.T.

7. In the facts and circumstances of the case, we are of the opinion that the applicant is entitled to the relief sought by him. We, therefore, set aside and quash the order dated 28.06.1990 and direct respondent No.1 to grant the benefit of NBR to the applicant and to refix his pay accordingly. In the facts and circumstances, we do not direct payment of arrears to the applicant. These orders shall be complied with within two months of the communication of this order. After respondent No.1 passes appropriate orders as directed above, respondent No.2 ^{as} ~~(C.A.T.)~~ shall refix the pay of the applicant accordingly. The application is disposed of on the above lines.

8. There will be no orders as to the cost.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 24/11/92
MEMBER(A)

P.K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN(J)

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