

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 2241/91

.. Date of decision: 18.5.92
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Sh. P.S. Saini & Others .. Applicant

Sh. S.P. Gupta with .. Counsel for the applicant
Sh. M.K. Gupta

Versus

U.O.I. & Ors. .. Respondents

Sh. M.L. Verma .. Counsel for the Respondents.

CORAM

HON'BLE SH. JUSTICE RAM PAL SINGH, VICE CHAIRMAN (C)
HON'BLE SH. I.P. GUPTA, MEMBER (A)

JUDGEMENT

(Delivered by Hon'ble Sh. I.P. Gupta, Member (A))

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have challenged the actions of the respondent Nos. 2 & 3 of not giving to them the pay scale of Rs. 1640-2900 as, according to them, is contemplated in the decision taken by Respondent No. 1 vide communication dated 22.3.91, despite the fact that the applicants have completed 5 years of service in the entry grade much before 1.1.1986, which is cut off date and further of not giving to them the pay scale of Rs. 2000-3500 despite the fact that they have rendered more than 15 years of total service as Junior Engineers as on 1.1.1991. The applicants made representations to the authorities for fixing the pay in the scale of Rs. 1640-2900 and then Rs. 2000-3500 which have been returned to them alongwith the copy of Office Memo dated 16.8.91 issued by the office of Respondent No. 2.

2. Applicant No. 1 joined the Beas Construction Board in the year 1973 as Sectional Officer (Electrical) which was re-designated later on as Jr. Engineer. The applicant No. 2 joined Beas Construction Board in the same year and in the same post. The employees of Beas Construction Board were

declared by the Hon'ble Supreme Court as Central Government Employees in the case of 'Jaswant Singh & Others V/S Union of India and others' (AIR 1980, SC 115). Both the applicants were declared Quasi- permanent by the Beas Construction Board in the year 1980 w.e.f. 29.8.76 and 23.7.76 respectively. In 1984, the applicant alongwith a large number of other officers were declared surplus by the Beas Construction Board and they were taken on rolls of the Central (Surplus Staff) Cell in the Department of Personnel & Administrative Reforms w.e.f. 1.12.1984 for further re-deployment in the posts carrying corresponding pay scale of Rs. 425-700 in the other Central Government Departments vide order dated 21.12.84 issued by Department of Personnel. Vide order dated 21.1.85, the Department of Personnel & Administrative Reforms, transferred the surplus Sectional Officers (Electrical) including the applicants who were working under the Beas Construction Board against the posts of Sectional Officers/Jr. Engineers (Electrical) in the office of the Respondent No.2. The words used in the said letter of 21.1.85 are 'decided to transfer the surplus Central Government Sectional Officers (Electrical) against the posts of Sectional Officers/Jr. Engineers (Electrical)' in the organisation of Respondent No.2 and 'surplus staff on re-deployment are not subject to any test or interview in the matter of absorption' and they are nominated in public interest.

3. The applicants were given appointment orders by the office of Respondent No.2 vide memos dated 26.3.85 and 1.5.85 respectively. The memos stated inter-alia that:-

- (i) On the basis of allotment made through surplus cell of the Deptt. of Personnel & Administrative Reforms, the applicant was offered a purely temporary appointment as Jr. Engineer(Electrical) likely to continue indefinitely until further orders.

He will be placed in the scale of Rs. 425-700.

The appointment will take effect from the date he actually joins duty,

- (ii) He will be on probation for a period of 2 years.
- (iii) He will not get any benefit of his past seniority (emphasis ours) and that his seniority in the CPWD will be reckoned from the date of his actual joining in the Deptt. subject to his inter-se seniority in the Beas Construction Board.

4. The Government of India (Ministry of Urban Development) vide their letter dated 22.3.1991 decided that :-

- (1) ^{there will be} ~~that the~~ two scales of pay for Jr.Engineers/Sectional Officers (Horticulture) in the CPWD viz., Rs.1400-2300 and Rs. 1640-2900 and the incumbents thereof will be designated as Jr.Engineer/Sectional Officers(Horticulture) in the grade of Rs. 1400-2300, and, Jr.Engineer/Sectional Officer(Horticulture) in the grade of Rs. 1640-2900. The entry grade will be Rs. 1400-2300. The Jr.Engineers/Sectional Officers(Horticulture), on completion of 5 years service in the entry grade will be placed in the scale of Rs. 1640-2900 subject to the rejection of unfit. This higher grade will not be treated as a promotional one but will be non-functional and the benefit of FR 22(I)(a)(i) will not be admissible, while fixing the pay in the higher grade as there will be no change in duties and responsibilities.
- (ii) Junior Engineers/Sectional Officers(Horticulture), who could not be promoted to the post of Assistant Engineers/Assistant Directors (Horticulture) in the

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scale of Rs. 2000-3500, due to non-availability of vacancies in the grade of Assistant Engineers/Assistant Directors(Horticulture), will be allowed the scale of Assistant Engineer/Assistant Director (Horticulture) i.e. Rs. 2000-3500, on a personal basis, after completion of 15 years of total service as Junior Engineer/Sectional Officer (Horticulture). This personal promotion will be given on fitness basis. As and when regular vacancies in the cadre of Assistant Engineer/Assistant Director (Horticulture) arise, the Junior Engineer/Sectional Officers enjoying personal promotion will be adjusted against these vacancies, subject to observance of normal procedure.

- (iii) The above orders regarding placement in the scale of Rs. 1640-2900 after 5 years of service was made effective from 1.1.86 while those relating to personal promotion after 15 years of service was made effective from 1.1.1991. ~~21.3.1991.~~

5. The reliefs sought by the applicants are that :-

- (i) The applicants should be declared to be entitled to higher grade of Rs. 1640-2900 and Rs. 2000-3500 with effect from 1.1.86 and 1.1.91 respectively and consequently the respondents should be directed to consider the applicants for the said scales and the pay ~~scales~~ will be fixed in the said scales w.e.f. 1.1.86 and 1.1.91 respectively with all other benefits like arrears of pay etc;
- (ii) The OM dated 16th August, 1991 (Annexure-A-2) should be quashed. This OM has stated that the Jr. Engineers re-deployed in CPWD are not entitled to the past service benefit for getting the benefit of two higher pay scales.

- (iii) The OM dated 7.6.91 and 23.8.91 issued by Respondent No.3 whereby the applicants have been given scale of Rs. 1640-2900 w.e.f. 27.3.90 and 29.5.90 respectively should also be quashed.

6. The main arguments of the learned counsel^s for the applicants were :-

- (i) This is a case of transfer of surplus Central Govt. Jr.Engineers/Sectional Officers to similar posts in the Organisation of Respondents No. 2. It is not a case of fresh entry, as such, the order dated 22.3.91 contemplated grant of higher scale on completion of 5 years of service in the entry grade and 15 years of total service as Jr. Engineers/Sectional Officers (Horticulture), The applicants have ^{been} joined as Jr. Engineers in 1973 and completed not only 5 years of service but also 15 years of service. The orders of grant of higher scale from 1.1.86 and 1.1.91 respectively ^{were issued} ^{are} only on 22.3.91 and therefore, there was no question of limitation also, in regard to the reliefs ^{prayed} ^{placed} for.
- (ii) The higher scale according to the instruction of Respondent No.2 themselves are not as promotional ones but have been made admissible as non-functional. No change in duties and responsibilities is contemplated for grant of the said higher scales.
- (iii) The Respondents themselves in their order dated 25.5.90 indicated the date of entry of the applicant No.1 as 29.5.73. The applicant No.2 also entered the service of the Beas Construction Board in the same year and in the same post. The orders of appointment of the 2 applicants vido memo dated 26.3.85 and 1.5.85 made them ineligible for the benefit of past seniority in the Beas Construction Board and the seniority is to be

counted in CPWD from the date of actual joining.

The applicants got the scale of pay that they had before joining the new organisation and their pay was also fixed in the scale at the appropriate stage in consultation with the Deptt. of Personnel & Administrative Reforms.

- (iv) The grant of higher scale according to the order dated 22.3.91 is personal to the employees who had completed 5 years or 15 years of service.
- (v) According to the order passed in the case of P.K.Dhas Vs U.O.I. & Anrs. (1992) 19 ATC 443(FB) the past service of surplus employees after re-deployment is not to be counted for their seniority. In other service matters, they are to be treated as appointed by transfer. ~~Therefore,~~ ^{the} the grant of higher scales to be made admissible to them is not for seniority of the employees in the past service, Seniority and eligibility for promotion are regulated by different sets of rules but the scale being claimed are not on account of either seniority or promotion.

7. The learned counsel for the Respondents contended that in accordance with the instructions contained in the scheme of re-deployed staff issued by the Government from time to time, the re-deployed staff are treated as fresh entrants in the new offices/organisations for the purpose of fixing their seniority and they are placed below the employees who have already joined the new offices/organisations wherein they count the date of their seniority from the date of joining/confirmation. The intention behind the policy is that the benefit of past service should be allowed to them where it does not adversely affect the interest of the employees already senior in the office/organisation

to which they are re-deployed. Accordingly, the Junior Engineers re-deployed in the CPWD are not entitled to the past service benefit for getting the benefit of the two higher pay scales as intimated vide DGW, CPWD OM No. A-26/17/4/91- EC-VI dated 16.8.91.

8. The learned counsel for the respondents further contended that as per the instructions contained in DGW/CPWD O.M. No. A-11014/1/91-EC-VI dated 27.3.91, on their completion of five years service as per their seniority in CPWD both the applicants were given the higher scale of pay of Rs. 1640-2900 from the date on which they have completed 5 years of service from the date of joining in CPWD i.e. 27/3/90 and 29.5.90.

9. Let us analyse the facts and arguments in this case. The reliefs prayed for are based on the Govt. of India, Ministry of Urban Development's letter of 22.3.91. There are two higher scales Rs. 1640-2900 and Rs. 2000-3500 being made admissible from 1.1.86 and 1.1.91 respectively.

10. The first part of the order says that there will be two scales of pay for Junior Engineers/Sectional Officers (Horticulture) in CPWD viz. Rs. 1400-2300 and Rs. 1640-2900. The entry grade is 1400-2300. The Junior Engineers/Sectional Officers (Horticulture) on completion of 5 years service in the entry grade will be placed in Rs. 1640-2900, subject to rejoin of unfit. This higher grade will not be treated as a promotional one but will be non-functional and the benefit of FR 22(I) (a)(i) will not be admissible. It is clear that the scale of Rs. 1640-2900 is not a promotional one. It is made admissible on account of length of service. It has no relation to seniority either. The appointment of the applicants was on transfer. According to order dated 21.8.91 in the case of P.K. Das Vs UOI & Anr (1992) 19 ATC 443 (FB) seniority and eligibility for promotion are regulated by

different sets of rules. In case redeployed surplus staff are given the benefit of past service rendered by them in the previous organisation for purpose of seniority in the new organisation, it may cause serious prejudice to the existing employees of the new organisation in matters of seniority, promotion etc. In other service matters, the surplus employees will be treated as appointed by transfer. By grant of the scale of Rs. 1640-2900, the applicants are neither claiming seniority nor promotion, as the scale is a non-promotional one. The scale will be personal to the applicants and will cause no prejudice to the existing employees. Therefore, there is no reason to deny the scale to the applicants from 1.1.86, subject to rejection due to unfitness, as they had completed much more than 5 years on 1.1.86 in the entry grade of Rs. 1400-2300 (earlier Rs. 425-700).

11. Now we come to the second higher scale of Rs. 2000⁰-3500. This scale is of Assistant Engineers/Asstt. Director (Horticulture) a higher post. This scale has been made admissible after 15 years of total service as Jr. Engineer/Sectional Officer (Horticulture). The important aspect is that this scale of higher post is allowed due to non-availability of vacancies in the grade of Asstt. Engineers/Asstt. Directors (Horticulture). The question one has to ask is whether the applicants would have got promotion, had the vacancies been available. The clear answer is that they would not have been promoted over the head of their seniors, had vacancies been available. Further the grant of this scale implies personal promotion, the term used in the order itself. Further in this higher scale, the benefit of FR 22(I)(a)(i), unlike the position in earlier scale, has been also allowed. Still further, according to the said letter of 22.3.91, as and when regular vacancies in the cadre of Asstt. Engineer/Asstt. Director arise, the Jr. Engineers/Sectional Officers enjoying personal promotion will be adjusted against those vacancies, subject to

observance of normal procedure. Such adjustments in the case of the applicants would again be not possible, since the seniors with less than 15 years, cannot be ignored because the surplus employees have no right to seniority.

12. In the conspectus of the aforesaid facts, we order that -

- i) The applicants are entitled to the scale of Rs. 1640-2900 subject to fitness from 1.1.86. This scale will be personal to them. The arrears would also be admissible to them.
- ii) The eligibility of the applicants for the scale of Rs. 2000-3500, notwithstanding their 15 years service, can be considered, only in their turn according to seniority, since the denial of this benefit to a senior would be discriminatory in as much as a junior would get a higher scale of Asstt. Engineer, thereby, as a personal promotion, ignoring the senior, which is not in tune with the order of 22.3.1991, more so when the provision for personal promotion is specifically on account of non-availability of vacancies in the grade of Asstt. En Asstt. Engineer/Asstt. Director (Horticulture).

13. With the above order, the case is disposed of with no order as to costs.

(I.P. GUPTA)
MEMBER(A)

18/5/92

20/5/18.5.92
(RAM PAL SINGH)
VICE CHAIRMAN(J)