

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 2539/91

DATE OF DECISION: 24.4.92

SHRI ASHAMANJA BHATTACHARYA

...APPLICANT

vs.

UNION OF INDIA & ORS.

...RESPONDENTS

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

FOR THE APPLICANT

...SHRI A.K. BEHRA

FOR THE RESPONDENTS

...SHRI P.P. KHURANA

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

JUDGEMENT

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

The applicant at present is working as Desk Officer, Ministry of Home Affairs and his grievance is that the respondents by the order dt.11.2.1991 did not refix his pay w.e.f. 6.7.1983 by stepping up the same to the level of his next junior, Shri Rakesh Chandra who has been promoted, while the applicant has gone on deputation in Chukha Hydel Project, Bhutan. In this application, the applicant has prayed for stepping up of the pay at the level of his junior Shri Rakesh Chandra w.e.f. 6.7.1983 with all consequential benefits and increase of pay as well as fixation of pay on the recommendations of the 4th Pay Commission's report.

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2. The facts of the case are that the applicant joined as Assistant, Ministry of Commerce on 20.7.1974 and on completion of the period of probation, got substantive appointment on 20.7.1976. He was selected for the deputation post in Chukha Hydel Project, Bhutan, which he joined on 26.5.1981 and was repatriated from there to join the parent department, on 19.5.1983. In the meantime, in August, 1981, his next junior Shri Rakesh Chandra was promoted as Section Officer and the applicant was never informed or called for his option to join the promotional post on his turn and he has been passed over. On repatriation, the applicant joined on 8.7.1983 as Section Officer and his pay was fixed at Rs.710. The applicant joined Ministry of Home Affairs as Section Officer on 6.2.1984 on regular basis after due selection. The applicant, therefore, in view of the junior getting more pay than him, has prayed for the grant of relief of stepping up of the pay.

3. The respondents contested the application and stated that while the applicant was on deputation, some of his juniors were promoted to the grade of Section Officer on purely ad hoc basis. It is also admitted to the respondents that Shri Rakesh Chandra, who was junior to the applicant was promoted as Section Officer in August, 1981 on ad hoc basis. The applicant for taking up the appointment as Section Officer on ad hoc basis was not called as

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he was on deputation to Chukha Hydel Project in Bhutan on foreign service and the appointment to the grade of Section Officer were made purely on ad hoc basis. These ad hoc promotions were made only against short term vacancies. Regular promotions are made in pursuance of the orders of DOPT . The representation of the applicant requesting for stepping up of his pay with that of his junior was not considered as it was not found suitable under the rules.

4. I have heard the learned counsel for the parties at length and have gone through the record of the case.

5. The respondents have admitted that Shri Rakesh Chandra is immediate junior to the applicant and in the seniority list as on 1.5.1979 (Annexure A3), the serial No. of the applicant is 67 and that of Shri Rakesh Chandra is 68. It is, therefore, not disputed that the applicant is senior to Shri Rakesh Chandra. It is also admitted to the respondents in para 4.13 of the counter that Shri Rakesh Chandra was given ad hoc promotion and the applicant was not called from deputation post for the said promotion and was passed over. The case of the respondents is that it was not necessary to call him as it was a local promotion on a short term basis. However, it is not so. Shri Rakesh Chandra was promoted on this vacancy in August, 1981 and he continued to hold that post till he was regularised in his appointment on 6.7.1983. The necessity

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of not calling the applicant from foreign service shall be against the principles of natural justice because the terms and conditions of deputation (Annexure A2) clearly lay down that it will be for the parent department to consider the question of protecting the seniority and offixing his pay at the appropriate stage from the date of his rejoining the parent department as and when the officer becomes due for promotion in the parent department, though he may be still on deputation and while on deputation, he will not be entitled to the financial benefits of the same during the deputation period. In view of these terms and conditions issued by the Ministry of External Affairs on 30.4.1979, the respondents are bound to protect the pay and seniority of the applicant while in the public interest, he has been sent to discharge the duties in the foreign service. The applicant shall, therefore, be given a deemed promotion on the date when the next junior has been promoted. Under Government of India decision below FR 30, it is laid down that on reversion to the parent department from his foreign service to the parent cadre, the portion of the period of deputation during which the conditions precedent to the grant of benefit under the Next Below Rule are satisfied, shall be taken into account in fixing his pay. For this purpose, the deemed date of promotion in the post which may fall during the tenure of deputation shall be arrived at by applying all the conditions of NBR and the pay on the date of actual appointment to the

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post immediately on reversion from the deputation is to be fixed under FR 27 by assuming that the officer has been promoted from the deemed date of promotion. The Ministry/ Department of the Government are delegated powers to refix pay in such cases. Thus the Government of India Orders below FR 30 also provide that 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 of grade borne on the cadre of service to which he belongs, he may be authorised by special order of the appropriate authority proforma officiating promotion in to such scale or grade and, therefore, be granted the pay of the scale of the 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 draws officiating pay in that scale or grade. The applicant was, therefore, not considered for promotion during the deputation period nor was asked to come back to the cadre from deputation at the time when his juniors were being considered for promotion to the post of Section Officer. Because of this fact, the juniors were continuing to draw higher grade of pay than the applicant and there was, therefore, running financial loss to the applicant.

6. The learned counsel for the applicant has also referred to the decision of a case (OA 1621/89) in P.P. Abdul Rehman Vs.

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Union of India and In the case (OA 3/85) of Satish Kumar Vs. Secretary, Ministry of Human Resources where the similar advantage has been directed to be given to the applicants of those cases, who had gone on foreign service on deputation and in the meantime, the juniors to them were promoted and drew higher pay and continued to draw the same and when the person got repatriated to the parent department and joined, he was fixed in a lower stage of pay than the aforesaid juniors and benefit of stepping up of pay was given to such deputationists. The case of the applicant is similar.

7. The learned counsel for the respondents could not show any law against the above decision of the Principal Bench in the above O.As. nor he could cite any rules or regulations, FR/SR to show that the pay of the applicant cannot be stepped up in the circumstances of the case to the level of his immediate junior.

8. In view of the above facts and circumstances, mentioned hereinabove, the application is allowed and the impugned order dt.11.2.1991 is quashed and set aside with the direction to the respondents to re-fix the pay of the applicant at the level of his immediate junior w.e.f. the date of the

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ad hoc promotion of the applicant to the grade of
Section Officer, i.e., 6.7.1983 with all consequential
benefits. The relief regarding the grant of interest on
the above arrears is disallowed. In the circumstances
the parties to bear their own costs. The respondents to
comply with the above directions in three months' time
from the date of receipt of a copy of this order.

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J. P. Sharma
(J.P. SHARMA) 24.4.92
MEMBER (J)