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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH.
NEW DELHI.

OA 2553/91

Date of Decision: April 29, 92.

SUKHVINDER SINGH

... APPLICANT.

VS.

UNION OF INDIA

... RESPONDENTS.

CORAM:

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

For the Applicant

... Shri A.K. Behra,
Counsel.

For the Respondents

... Shri J.C. Madan,
proxy counsel for
Shri P.P. Khurana.
Counsel.

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporters or not?

JUDGEMENT (ORAL)

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

The applicant, Stenographer-D in the Ministry of Communication (Department of Telecommunications), in this application has assailed the wrong fixation of pay vis-a-vis his junior Shri Ravinder Kumar on return from deputation from the Chukha Hydel Project (CHP), Bhutan.

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2. The applicant has prayed that the order dated 3.1.91 (Annexure A-14) whereby the representation of the applicant was rejected regretting that the request of the applicant with regard to Next Below Rule is not admissible on adhoc promotion of junior vis-a-vis senior on deputation. The applicant has sought a direction of refixation of pay at the level of his immediate junior w.e.f. from the date of his adhoc promotion to the grade of Stenographer-C with consequential benefits of arrears of pay with interest @ 12% per annum.

3. It is not disputed to the respondents that while the applicant was working as Stenographer-D, he went on deputation to Chukha Hydel Project (CHP) on 30.4.1984 and his term of deputation extended from time to time and he was ultimately repatriated to the parent department from the Foreign Service w.e.f. 30.4.1989. The respondents in the brief background in the counter in para-1 admitted that the option of Shri Sukhvinder Singh for taking the appointment as Stenographer-C on adhoc basis was not called for as he was on deputation to Foreign Service. It is further stated that the appointment to the grade

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of Stenographer-C were made purely on adhoc basis. It is further stated that adhoc promotions are made against short term vacancies.

4. The respondents in reply of para-4.16 of the application also admitted that since the applicant was on deputation in Bhutan, some of the officials junior to him were promoted as Stenographer-C on adhoc basis. Again in reply to para-5(A), the respondents stated that no intimation about the promotions of the junior was required to be given to the applicant while on deputation. The option to return to the parent cadre is given only when official is considered for regular promotion.

5. I have heard the learned counsel for both the parties at length. The facts in this case are almost not disputed and the only proposition of law relied by the learned counsel for the respondents is that adhoc basis promotions are on short term basis and while making such promotions, it is not required to call such seniors who have gone on Foreign Service. This contention of the learned counsel by itself is not

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established from the factual position existing in this case. Shri Ravinder Kumar undisputed junior to the applicant was given promotion as Stenographer-C on 16.7.1986 on adhoc basis. The applicant though repatriated on 30.4.1989 ultimately joined the parent department on 18.9.1989 though after his representation on adhoc basis as Stenographer-C, having been fixed, as given out by the learned counsel for the applicant, at the stage of Rs.1400/-, stood regularised since November, 1989. Admitted junior Ravinder Kumar as per the disclosure in the course of the arguments has not yet been regularised nor he has been reverted. Vacancy of shorter period may be of some months but here in this case almost six years are coming to close in July, 1992 and the contention of the learned counsel for the respondents that adhoc promotion was of shorter duration, cannot, therefore, be accepted.

6. Under FR 27, a senior should not get emoluments lessor than his junior. The learned counsel for the applicant has rightly pointed out a number of decisions in OA 1621/89 (P.P.Abdurahman Vs. UOI) with some other

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OAs decided by a common judgement by the Principal Bench on 28.2.90 and OA 3/85 (Satish Kumar Vs. Secretary, Ministry of Human Resource Development) decided on 1.5.86. Similar questions came for adjudication before the Principal Bench and the matter has been decided in favour of those applicants who are almost similarly situated to the present applicant. The respondents were free to assail those judgements before the Appellate Court and as such when they became final, it is not now open to them to argue in the same tune again and again.

7. On the principles of service jurisprudence persons who gets birth in service must get pay more than the one who come later and is junior having joined subsequent to the entry of the applicant in the same service and cadre. It shall be unjustified, arbitrary and violative of principles of natural justice to allow a junior still un-regularised to draw more than his senior who by virtue of his length in service and performance has been regularised according to the extant rules.

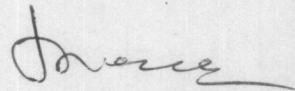
8. In view of the above discussion, the contention raised by the learned counsel for the respondents cannot be substantiated either by rules or precedents and so un-acceptable.

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9. The application is, therefore, allowed with the direction to the respondents to step up the pay of the applicant at the level of the junior Shri Ravinder Kumar on the date of his joining in the parent department on 18.9.1989 and he shall be entitled to draw the arrears on the refixed pay but the prayer for interest is disallowed. The respondents to carry out the order within a period of six months from the date of receipt of a copy of this order.

In the circumstances, parties are left to bear their own costs.



(J.P. SHARMA) 29.4.92

MEMBER (J)