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**In the Central Administrative Tribunal
Principal Bench: New Delhi**

OA No.2947/91

Date of decision: 26.04.1993.

Shri D.V. Singh

...Petitioner

Versus

Union of India through its
Secretary, Ministry of Urban
Development, Nirman Bhavan,
New Delhi & Others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner


In person.

For the respondents

Shri M.L. Verma, Counsel.

Judgement (Oral)

The petitioner who was working as Assistant Engineer (Civil) in the CPWD was appointed to officiate as Executive Engineer (Civil) in the C.E.S. Group 'A' on purely adhoc basis with effect from the date he assumes charge alongwith certain others vide order dated 30.6.1986. The petitioner is due to retire on 31.1.1994. The Department of Personnel and Training issued instructions vide OM No.1/2/87-Estt.(Pay-I) dated 9.11.1987 in regard to the fixation of pay of the Central Government employees who are promoted to the next higher grade or post. The said order stated that the pay in these cases has to be fixed under the provisions of FR 22-C and for this purpose a promotee may be given an option for fixation of his pay as under:-



"a) either his initial pay may be fixed in the higher post on the basis of FR 22-C straightaway without any further review on accrual of increment in the pay scale of the lower post, or

b) his pay on promotion may be fixed initially in the manner as provided under FR.22(a)(i) which may be refixed on the basis of the provisions of FR.22-C on the date of accrual of next increment in the scale of pay of the lower post."

2. Paragraph-3 of the said OM further stipulates that where a Government servant is promoted or appointed to another post carrying duties and responsibilities of greater importance than those attached to the post held by him, the provisions contained in FR 22-C shall apply without pay limits for fixation of pay. The question arose whether the option would be available to those who are promoted on or after 1.1.1986. On consideration the President decided that in all cases of promotion to a next higher grade or post taking place on or after 1.1.1986 where pay has to be fixed under FR 22-C the Government servants may be given an option for fixation of their pay on such promotions as under:-

"(a) either their initial pay may be fixed in the higher grades or posts on the basis of FR.22-C straightaway without any further review on accrual of increment in the pay scale of the lower grades or posts, or

(b) their pay on promotion may be fixed initially at the stage of the time scales of the promoted grades or posts above their pay in the lower grades or posts, which may be refixed on the basis of the provisions of FR.22-C on the dates of accrual of next increment in the scales of pay of the lower grades or posts."



3. The petitioner exercised his option in accordance with the said OM. He was, however, not given the benefit in accordance with the option exercised by him vide order dated 9.1.1991 issued by D.G. (W). The said order stated that since the petitioner's promotion was on adhoc basis, he is not entitled to the benefit of the provisions made in D.P.&T. OM dated 19.11.1987. If, however, his adhoc promotion is followed by regular promotion he will be allowed to exercise option in accordance with the said OM and his pay will be refixed.

4. The case of the respondents is that the petitioner cannot be granted the benefit of fixation of pay, as claimed by him in accordance with the clarification contained in OM dated 8.2.1983 annexed as Annexure-I to the counter-affidavit, which in effect means that the benefit of fixation of pay in accordance with OM dated 9.11.1987 shall be available to the petitioner only when his promotion is regularised.

5. The principal issue for decision, therefore, is whether the fixation of pay for ad hoc promotees like the petitioner can be done under different Rules from those applicable to the regular promotees. This has further to be viewed in the context that in the CPWD there are no regular promotees in the grade of Executive Engineers as the seniority of the petitioners in the Grade of Assistant Engineers is sub-judice in the Supreme Court. The respondents in their reply to paragraph-5.15 of the counter-affidavit have submitted

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that the ad hoc promotion are being made due to the seniority dispute in the grade of Assistant Engineers. All ad hoc promotions will be reviewed on finalisation of the seniority list after confirmation in the grade of Assistant Engineers. Secondly, since these promotions are being made against regular vacancies, pending finalisation of the seniority dispute the petitioners are not promoted on ad hoc basis in short term vacancies. They are promoted against long term vacancies and they are appointed "to another post carrying duties and responsibilities of greater importance than those attached to the post held" earlier. Accordingly the benefit of fixation of pay under the normal operation of rules applicable to regular promotion cannot be denied to them.

6. The petitioner who appeared in person drew my attention to the decision of the Tribunal in *Y.D. Piplani & Ors. v. Union of India & Ors. - ATR 1987 (1) CAT 253* in support of his case. I have perused the said judgement and I am of the opinion that the issue raised in this petition stands concluded by the said judgement. The only difference is that the petitioner in *Y.D. Piplani (supra)* has claimed the benefit in the context of the recommendations of the Third Central Pay Commission whereas the petitioner is claiming the similar benefit in the context of the implementation of the recommendations of the Fourth Central Pay Commission.

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7. In view of the above facts and circumstances of the case the Application is allowed and the respondents are directed to fix the pay of the petitioner in accordance with OM No.1/2/87-Estt.(Pay-I) dated 9.11.1987, giving him the benefit of exercising option to choose the methodology of fixing his pay in terms of paragraph-3 (a) or (b) from the date he assumed charge of the post of Executive Engineer. Consequent to re-fixation of his pay, he shall be entitled to the difference in the pay and allowances ^{actually drawn} in accordance with the various orders of the respondents and that will be due to him in accordance with the above directions. The above directions shall be implemented as early as possible but preferably within a period of 4 months from the date of communication of this order.

8. The petitioner prays for interest. In the facts and circumstances of the case, I, however, decline the same. No costs.


(I.K. Rasgotra)
Member (A)

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