

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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C.A. NO. 576/91

DATE OF DECISION : 29.05.1992

Shri S.C. Mishra ...Applicant
vs. ...Respondents
Union of India & Ors.

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Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant ...Shri Gyan Prakash
For the Respondents ...Shri K.L. Bhandula

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

JUDGEMENT

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

The applicant joined as Supervisor on 17.9.1976 in Central Water Commission. He was promoted as Extra Additional Director on regular basis w.e.f. 1.3.1982 and at the time of filing this application is working as Assistant Director with SSDO Directorate, CWC, New Delhi. The applicant has challenged the order dt.7.5.1990 rejecting the representation of the applicant relating to stepping up/fixation of his pay at par with reference to his juniors. The applicant has prayed for quashing the impugned order dt.7.5.1990 with a direction to the respondents to give deemed promotion to the applicant from the date his junior, Shri M.C. Pandey was promoted and to fix the pay of the applicant at the level of Rs.710 w.e.f. 1.9.82, the date when his junior was drawing this pay. Consequential benefits and refixation of pay on the basis of the recommendation of 4th Pay Commission be also ordered along with interest.

2. It is not disputed that Shri M.C. Pandey, junior to the applicant was also working as Supervisor. The DPC met and the applicant as well as Shri Pandey was given ad-hoc promotion to the post of Assistant Engineer/Extra Assistant Director in 1980. Shri Pandey joined this post after being relieved in September, 1980 itself before the applicant. The pay of Shri Pandey was fixed at Rs.650 p.m. in September, 1980. The applicant at that relevant time was working in Bhopal Gauging Division and could not be relieved in public interest and after he was relieved, he joined the promoted post on 9.3.1981 and on that date, his pay was fixed at Rs.650 p.m. The applicant was also given regular promotion w.e.f. 1.3.1982 while Shri Pandey was given regular promotion on 3.3.1982. Because of this late joining of the applicant, the applicant is drawing lesser pay than his junior Shri Pandey and so on the recommendation of the 4th Pay Commission, his pay was also fixed less than that of Shri Pandey. The applicant made representation to the respondents on 26.10.1989 to remove the anomaly in pay with reference to his juniors. His representation was rejected by the order dt.29.1.1990. The applicant made another representation which was also rejected by the impugned order.

3. The respondents contested the application and stated that the order of promotion of the applicant was issued on 29.10.1980,

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but the applicant himself did not join and due to late joining in March, 1981, the date of increment always remained behind that of Shri Pandey and so the difference in pay. The respondents have also taken an objection about limitation. It is also stated that the pay has been fixed according to the rules and instructions of the Government. There is no arbitrariness. The cause of action arose to the applicant in 1981 when the applicant and his junior were promoted and their pay on promotion was fixed. Thus the applicant has no case. The fact is also denied that the applicant was not relieved from his duties in public interest from the post where he was working. In the rejoinder the applicant has again reiterated the points raised in the application.

4. I have heard the learned counsel for both the parties and have gone through the record of the case. The extract of the seniority list of EAD/AE in Central Water Commission (Annexure A10) goes to show that S.C. Mishra is at Serial No.60 while Shri M.C. Pandey is at Serial No.62. The letter dt.29.1.1990 (Annexure A2) issued by Under Secretary, CWC clearly goes to show that Shri M.C. Pandey was promoted earlier as EAD/AE on ad hoc basis w.e.f. 10.9.1980 and

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his pay was fixed at Rs.650 p.m. whereas Shri Mishra was promoted later w.e.f. 10.3.1981 being on deputation with NDA and his pay was fixed at Rs.650 p.m. The anomaly in pay accordingly is not on account of the application of FR 22(c) as the condition (c) of Government of India Decision No.10 below FR 22(c) is not satisfied in this case. The order dt.29.10.1980 goes to show that Shri S.C. Mishra was working as Supervisor under Bhopal Gouising Division, Bhopal and he was posted as EAD/AE at CNDD Directorate CMC, New Delhi. The representation of the applicant has been rejected on the ground that since on ad hoc basis, Shri Pandey was promoted earlier and joined earlier while the applicant was on deputation to Bhopal. The extension given by the applicant is that he was not relieved by the department where he was working in Bhopal and when he was relieved he joined on 10.3.1981. In the reply given by the respondents on 7.5.1990, it is admitted by the respondents that the date of promotion cannot be changed to that of his junior, Shri M.C. Pandey as promotions under Next Below Rules are permissible when such promotions are made on regular basis. Now as per the seniority list.(Annexure A10), the applicant has been shown to have been promoted on regular basis vide entry in column No.4 on 1.3.1982, while Shri Pandey was promoted on 3.3.1982 on regular basis on the post of EAD/AE in CMC. Thus in spite of Shri Pandey having been promoted earlier on ad hoc basis on

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10.9.1980 and the applicant on 10.3.1981, the applicant has been given an earlier date of regularisation of his appointment on ad hoc basis. In view of this fact, the applicant should have been given the protection which he has been denied at the time of ad hoc promotion in March, 1981 at least from 1.3.1982 when he has been promoted on regular basis. This also is the only inference which can be drawn from the impugned letter dt.7.5.1990 rejecting the representation of the applicant.

5. It is the recognised rule in service jurisprudence that the pay of the senior should not be less than that of his junior. By virtue of this anomaly which has crept up by early joining of Shri Pandey, the pay of the applicant on the revised scale of Rs.2000-3500, the applicant was fixed at Rs.2300 with the date of increment as 1.3.1986 and the pay of Shri Pandey was fixed at Rs.2375 with the date of increment as 1.9.1986. Shri Pandey was promoted as AD/AE w.e.f. 21.3.1986 and his pay was fixed at Rs.2500 in the pay scale of Rs.2200-4000 with date of next increment as 1.3.1987. The applicant was at the time of deputation with National Water Development Agency as AE. The applicant was promoted as AD/AE w.e.f. 29.9.1988 and his pay was fixed at Rs.2550 p.m., while Shri Pandey his immediate junior

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is drawing Rs.2650 w.e.f. 1.3.1988 itself. Thus all this anomaly in fixation of pay has arisen for no fault of the applicant and due to apathy on the part of the administration by not granting him promotion on the due date when the junior was promoted. In such matters, the applicant should not be allowed to suffer.

6. In view of the above discussion, the application is allowed and the impugned order dt.7.5.1990 is quashed and the respondents are directed to fix the pay of the applicant at the level of Rs.710 p.m. w.e.f. 1.9.1982 and also accordingly, the pay of the applicant be fixed in the revised pay scale from 1.1.1986. The applicant shall also be paid all consequential benefits of arrears etc., but the claim for interest is disallowed. The respondents to comply with the above directions within a period of three months from the date of receipt of a copy of this judgement. In the circumstances, the parties shall bear their own costs.

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Signature
(J.P. SHARMA) 29.5.92
MEMBER (J)