

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 3 of 1985  
~~Ex-Annex~~

DATE OF DECISION 1.5.1986.

Shri Satish Kumar

Petitioner

Shri Swatanter Kumar

Advocate for the Petitioner(s)

Versus

Secretary, Ministry of Human Resource Development (Department of Education) and others.

Respondent

Shri K.C. Mittal

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter ~~or not~~ ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether to be circulated to all Benches? *Yes*

(K. Madhava Reddy)  
Chairman.

1.5.1986.

(Kaushal Kumar)  
Member.

1.5.1986.

7

CENTRAL ADMINISTRATIVE TRIBUNAL  
DELHI.

Regn. No. 3/85.

1st May, 1986.

Shri Satish Kumar

.....

Petitioner.

VERSUS

Secretary, Ministry of  
Human Resource Development  
(Department of Education)  
and others

.....

Respondents.

CORAM:

Shri Justice K. Madhava Reddy, Chairman.

Shri Kaushal Kumar, Member.

For petitioner

.....

Shri Swantantr Kumar,  
Advocate.

For respondents

.....

Shri K.C. Mittal,  
Advocate.

(Judgment of the Bench delivered  
by Shri Kaushal Kumar, Member.)

This is an application under Section 19 of the  
Administrative Tribunals Act, 1985, whereby the petitioner seeks  
fixation of his pay in the grade of Assistant with effect from  
July, 1983 at the stage his juniors were drawing pay in the same  
grade.

2. The facts giving rise to the above petition are that  
the petitioner, who was a U.D.C. in the Ministry of Education,  
went on deputation in December, 1975 as Investigator in the same  
Ministry and remained there till June, 1980, when his services were  
requisitioned in public interest by the Ministry of Energy as  
Language P.A. to the Minister of State for Energy. It is the  
contention of the petitioner that long term vacancies in the grade  
of Assistant (Rs.425-800) occurred in the Ministry of Education  
while he was on deputation against an ex-cadre post of Investigator  
in the Ministry of Education, but he was neither intimated about the  
long term vacancy of Assistant nor was his option sought for  
reversion to his Parent Cadre in the grade of Assistant. While  
the petitioner was on deputation, his juniors were promoted, ignoring  
his claim for promotion to the post of Assistant. He remained with

...../2.

*Shri Satish Kumar*

the Minister of State for Energy till July, 1983.

3. The case of the respondents is that while the applicant was on deputation, short-term ad-hoc promotions were made from time to time against leave vacancies, which in most cases did not exceed 120 days. It has further been stated in the counter-affidavit that while the applicant was on deputation in an ex-cadre post in the Ministry of Education upto 18.6.1980, short-term ad-hoc promotions were made with effect from 1.5.1978 and the applicant was aware of this fact and he never raised any objection. Even after the applicant joined the Ministry of Energy, he was aware of the fact that short-term ad-hoc promotions were being made from time to time as per rules, but he did not raise any objection. It has further been pointed out in the counter-affidavit that the applicant had been drawing deputation benefits involving pecuniary gain as well, apart from other facilities and benefits. Having enjoyed the benefits of being on deputation, the petitioner cannot have a grievance that he had been denied the benefit of promotion in his Parent Department. It was not open to the petitioner to take double benefit. During the period when the applicant was on deputation, short-term promotions could only be made from amongst the persons available within the Department and for ad-hoc appointments, it was not obligatory - rather it was not practicable - to call the deputationists and, therefore, short-term promotions were made within the Department out of the available persons. As per provisions of the Fundamental Rules, in cases of short-term officiating promotions, increments were given taking into account the length of service in a particular grade, even though there were broken periods in the grade in which the incumbents officiated. Since the petitioner was on deputation, he could not be given short-term promotion and as such he did not earn any increment in the higher grade of Assistant. In the circumstances, there was no question of discrimination or denial of opportunity to the petitioner. No long-term vacancy arose till 17.12.1981. The petitioner was considered and actually given

...../3.

9

proforma promotion under 'the Next Below Rule' with effect from 17.12.81 when a long-term vacancy arose in his Parent Department.

When proforma promotion was given to the petitioner, his pay was also fixed from 17.12.1981 under F.R. 22-C at Rs. 450 per month in the pay scale of Assistant with reference to his pay as U.D.C.

4. The short question which is at issue in this case is whether for short-term vacancies, an incumbent who is on deputation, is to be considered by his Parent Office. The learned counsel for the respondents clarified that a vacancy for 120 days or less was considered as a short-term vacancy by the Department. It is, however, noticed from the counter-affidavit that at least in one instance, a vacancy for a period exceeding 120 days (123 days) for the period from 1.5.78 to 31.8.1978 was filled up by ad-hoc promotion. A subsequent affidavit filed by the respondents also shows that during the period from 1st May, 1978 till 16th December, 1981, as many as 52 persons were promoted to the post of Assistant from time to time according to the number of vacancies available. A perusal of the said statement clearly shows that a large number of persons officiated for periods varying from 2 to 4 years approximately with a break of one or two days after every spell of roughly three months or so. In fact, this break of one or two days was given not for want of a continuous vacancy but for administrative reasons, as the orders of promotion themselves clearly demonstrate. As an illustration, the orders dated 21.9.1978 and 23.12.1978 read as follows: -

"The President is pleased to appoint the following UDCs of the Ministry of Education and Social Welfare to officiate as Assistants, on purely ad-hoc basis after effecting a break of one day in each case for the period indicated against each." (emphasis supplied by us).

5. Even though at the time of making officiating promotion, it might not be known that a leave vacancy would continuously exist for a very long time because one incumbent after another would be proceeding on leave, actual experience would show that in most cases,

these officiating promotions resulted in giving the benefit of higher pay and increments in the higher grade for long periods of three to four years to the detriment of seniors who were on deputation. The learned counsel for the respondents referred to the Next Below Rule and the Government of India decision No.7 as given under F.R. 30. The same is reproduced below: -

**"(7) Guiding principle for the working of the 'next below Rule' -**

The intention of the so called rule was apparently that an officer out of his regular line should not suffer by forfeiting acting promotion which he would otherwise have received had he remained in his regular line. From that it follows that the fortuitous acting promotion of some one junior to an officer who is out of the regular line does not, in itself, give rise to claim under the 'next below rule'. Before such a claim is established it should be necessary that all the officers senior to the officer who is out of the regular line have been given acting promotion, and also the officer next below him, unless in any case the acting promotion is not given because of inefficiency, unsuitability or leave. In the event of one of these three bars being applicable to the officer immediately below the officer outside his regular line, then some other officer even more junior should have received acting promotion and the officers, if any, in between should have been passed over for one of these reasons."

6. It was contended that the fortuitous promotion out of the regular line does not in itself give rise to the claim under the 'next below rule'. Here the question is not of giving benefit to the person who is on deputation under the 'next below rule'. Under the 'next below rule', proforma promotion is given even while the person continues on deputation. In case of short-term vacancies, even though promotions may result in continuous officiation for long periods with or without break or gaps of one or two days, the non-applicability of the 'next below rule' cannot be questioned. The point for determination is whether in such

circumstances, the person who is on deputation should be given an option to revert to his Parent Office, so that he may get the benefit of pay in the higher grade by actually officiating in the higher grade. The person opting for such a course would be taking a calculated risk by foregoing his deputation and going to his Parent Office where officiation in the higher grade might not always continue for very long periods and a chain of short-term continuous vacancies may also not always arise.

7. Shri Swatanter Kumar, learned counsel for the petitioner, referred to the ruling of the Supreme Court in Narendra Chadha and others versus Union of India and others (AIR 1986 SC 638). It was held -

"that when an officer has worked for a long period for nearly fifteen to twenty years in a post and had never been reverted it cannot be held that the officer's continuous officiation was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. In such circumstances the entire period of officiation has to be counted for seniority. Any other view would be arbitrary and violative of Arts. 14 and 16(1) of the Constitution because the temporary service in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances."

The learned counsel for the petitioner also referred to the ruling of the Delhi High Court in O.P. Gupta versus The Municipal Corporation of Delhi and others (1973 (1) S.L.R. 209) wherein the following observation was made:

"The appellant is complaining of an infringement of his fundamental right guaranteed under Article 16 of the Constitution to be considered for promotion. It is no answer to say that because appointments were made from time to time until the finalisation of the Rules only on ad hoc basis, the appellant had no right to be considered for promotion. Whatever be the nature of the appointment i.e. permanent, temporary or ad-hoc, a person eligible for promotion has a right to be considered." (para 38)

*M. Narwal*

...../6.

8. In the present case, the petitioner is not deprived of his seniority and on reversion to his Parent Office, his inter-se seniority vis-a-vis those who had officiated in the higher grade of Assistant would not stand disturbed. Even so, denial of higher pay as given to his juniors and benefit of increment in the higher grade would certainly result in permanent financial disadvantage to the petitioner at least for so long as he continues in the grade of Assistant. While it is true that the juniors who got the benefit of higher pay and increments in the higher grade did actually officiate in the grade of Assistant, which the petitioner did not, this happened as a direct result of the action of the respondents in not giving an option to the petitioner to revert to his Parent Office for officiation against short-term leave vacancies in the higher grade or officiating promotions. We have not been shown any rule which prohibits the deputationists being given such an option. Since the action of the respondents in the denial of this opportunity or option has resulted in serious financial disadvantage and pecuniary loss, it is held to be discriminatory and violative of Articles 14 and 16(1) of the Constitution. Accordingly, the respondents are hereby directed to fix the pay of the petitioner in the scale of Assistant from the date of his reversion to his Parent Office at the stage at which his immediate junior was drawing pay by virtue of officiating in the said grade, with the date of next increment being also fixed as that of his immediate junior. He will, however, not be entitled to any arrears of pay for the period prior to his reversion to his Parent Office. No order as to costs.

  
(K. Madhava Reddy)  
Chairman. 1.5.1986.

  
(Kaushal Kumar)  
Member. 1.5.1986.