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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

\* \* \*

16.07.1992

OA 1296/92

SHRI PARTASARTHI GHOSH

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

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

FOR THE APPLICANT

...SH. K.L. BHANDULA

FOR THE RESPONDENTS

...MS. JASVINDER KAUR,  
PROXY COUNSEL FOR  
SH. JOG SINGH

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

JUDGEMENT (ORAL)

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

The applicant, while working as Assistant Engineer/EAD in the Central Water Commission filed this application for the redress of his grievance that while returning from the deputation post to the parent department, the refixation of the applicant's pay has not been done at par at the level of his juniors in the grade of AE/EAD while the benefit had already been extended to similarly situated other colleagues, who had moved out on deputation and after completing that period joined the parent department. The applicant made a representation dt. 23.1.1992 (Annexure 1) whereby the department was not pleased to accede to the request of the applicant for refixation of pay at the level of his junior.

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The applicant has claimed the relief that the applicant's pay in the grade of AE/EAD be fixed w.e.f. 26.6.1986 at the level of the pay drawn by his junior, Shri B.Dutta and consequential benefits including the increments and other allowances be paid to him.

The case of the applicant is that he joined as Supervisor (now designated as Junior Engineer) w.e.f. 26.10.1967 in CWC. He was selected for deputation to the post in Chokha Hydel Project, Bhutan where he joined on 20.2.1981 initially for one year, but the said deputation period was extended from time to time. On completing the said period, the applicant returned to the parent department and he was promoted on ad hoc basis as AE/EAD from the post of Supervisor from which he had gone on deputation w.e.f. 20.6.1986 and his pay was fixed at Rs.710 in the pre-revised scale of Rs.650-1200. The applicant has also since been appointed on regular basis on the same post w.e.f. 28.11.1990. The grievance of the applicant is that while he was on deputation to Bhutan, the persons who are admittedly junior to him, Shri B.Dutta and others were promoted as AE/EAD on ad hoc basis and the applicant was never given an option or rather informed for such a promotion otherwise the applicant would have expressed his desire for the said promotional post. Since the juniors were promoted earlier, their pay and

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emoluments increased year by year and when the applicant returned to the parent department, he was not given the fixation of pay on the basis of Next Below Rule and as such his juniors are allowed to draw more pay which is discriminatory, arbitrary and unjustified.

The respondents contested the application. The counter has been filed in the course of the day in the Registry, so it is not on record. Since it is a covered case by the other judgements also and the learned counsel for the applicant does not want to file any rejoinder, the copy available with the learned counsel has been taken up. In the counter, it is mentioned that the representation of the applicant for stepping up his pay to the level of his junior was referred to the Department of Personnel and Training, but the request of the applicant was not acceded to. In the whole of the counter, it is not denied that Shri B.Dutta is junior to the applicant.

I have heard the learned counsel for the applicant at length and also the learned proxy counsel for the respondents. The matter was decided as early as in 1988 by the Hyderabad Bench in the case of B.V. Rangaiya vs. Union of India & Ors. (TA 190/88) decided on 7.10.1988. The SLP filed by the respondents before the Hon'ble Supreme Court has also been

rejected. After this case, a bunch of cases have also been decided by the Principal Bench by the order dt. 28.2.1990, a copy of which is annexed to the application at p-23 of the paper book. After this case also, a number of other cases have been decided.

It is unjust and inequitable if the applicant, who has gone in the public interest on deputation on the order of the respondents and when he successfully completed that period of deputation and joined the parent department, he is paid less than what the juniors are being paid on the post to which he is allowed to join, though on promotional basis (AE/EAD). The applicant in the application at p-5 gave a comparative chart of Shri B.Dutta and his own. The scale of AE/EAD is Rs.650-1200. The pay of Shri B.Dutta was fixed on 1.12.1984 at Rs.710 and after revision of pay scale on the recommendation of the 4th Pay Commission, Shri B.Dutta was drawing Rs.2675 p.m. as basic pay on 1.12.1991. The applicant's pay was fixed at Rs.700 p.m. when he joined the department on return from deputation on 20.6.1986 and in the revised pay scale on 1.6.1991, he was drawing Rs.2375.

Basically it shall be discriminatory and arbitrary and also inequitable if the persons in the same scale and grade are allowed different pay scale on the basis of having not been promoted earlier for no fault of theirs. In the case of

the applicant, he is never refused promotion. Thus to pay more emoluments to his junior on the promotional post than the applicant who was never superseded or passed over, would be discriminatory and violative of the equality clause of the Constitution of India. I am in full agreement with the judgements already delivered in similar cases. The point of limitation also arises in such cases. The question is when once principle has been laid down as a ratio in a judgement and that principle has been even upheld by the highest court, then the respondents have to give the relief to all the similarly situated employees in the same grade, cadre and scale. The contention in the counter that those cases were personal to those applicants, cannot be accepted.

In view of the above facts, the application is allowed and the respondents are directed to fix the pay of the applicant in the grade of AE/EAD w.e.f. 26.6.1986 at the level of the pay drawn by his junior, Shri B. Dutta with all the consequential benefits of arrears etc. The respondents shall comply with the above directions preferably 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.

J. P. Sharma  
(J.P.SHARMA) 16.7.92  
MEMBER (J)  
16.07.1992