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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A.NO. 1901/92

DATE OF DECISION 12.8.1993

<u>SHRI R.D. LAL DOGRA,</u>	<u>Petitioner</u>
<u>SHRI S.K. SAWHNEY,</u>	<u>Advocate for the Petitioner(s)</u>
Versus	
<u>UNION OF INDIA & ANOTHER</u>	<u>Respondent</u>
<u>MRS. SUNITA RAO,</u>	<u>Advocate for the Respondent(s)</u>

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The Hon'ble Mr. B.S. Hegde, Member (Judicial)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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[Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial)]

The petitioner has filed this application under
Section 19 of the Administrative Tribunals Act, 1985
praying for the following reliefs :-

(1) Direct the respondents to pay the applicant

his arrears on account of increments granted

vide letter dated 7/91 (Annexure A-8) after

he had passed the efficiency bar test.

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(ii) Direct the respondents to pay the

applicant his retiral benefits calcu-

lated on his last drawn pay of Rs.3,300/-

which he was drawing on his retirement

on 31.10.91.

(iii) Direct the respondents to pay interest

@ 12% on arrears of pay and retiral bene-

fits upto date of payment.

2. The brief facts of the case are that the applicant

was appointed as Assistant Inspector of Works in the

scale of Rs. 150-225 on 9.1.1956. He earned various

promotions and he was promoted to Class II gazetted

post of Assistant Engineer scale Rs.650-1200 (RS) which

was equated to Rs. 2000-3500 (RPS) on 1.9.1980. Prior

to this promotion as Assistant Engineer, he was working

as Inspector of Works scale Rs. 700-900 (RS). Due to

restructuring of cadre of the Inspector of Works,

some posts were upgraded. The contention of the

applicant is that he was entitled to one of the up-

graded posts in the scale of Rs. 840-1040 with effect

from 1.1.1984; Person junior to the applicant, Shri

Sudershan Kumar Sharma, along with other junior persons

was promoted and granted benefit of promotion to the

scale of Rs. 840-1040 w.e.f. 1.1.1984.

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3. The contention of the applicant is that he has not been confirmed as Assistant Engineer he was entitled to paper promotion on his substantive post scale Rs. 840-1200 w.s.f. 1.1.1984 as persons junior to him were granted this benefit. The applicant was served with a memo. for major penalty of reduction from his officiating appointment in class II on 9.7.1984 which is at Annexure A-2, to his substantive post in Class III for a period of three years with the stipulation that the period of reduction will operate to postpone future increments on restoration for failure to maintain absolute integrity etc. which is at Annexure A-3, vide dated 19.12.1985. He further contends that instead of being reverted to the post of Inspector of Works in the scale of Rs. 840-1040, which was a substantive post in Class III, he was illegally placed in the scale of Rs. 700-900 which was later rectified on 18.3.1986 (Annexure A-5) and he was promoted to the scale of Rs. 840-1040. Nevertheless, he was kept in a lower scale for a period of two months from 20.1.1986 to 18.3.1986.

RR The main contention of the applicant is that these grades ought to have been given to him by the respondents w.s.f. 1.1.1984 as such benefit was given

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to his juniors. After the expiry of the period of penalty of three years, he was restored to the post of Assistant Engineer vide letter dated 6.2.1989 (Annexure A-6) and his basic pay was fixed at Rs.3050 in scale of Rs.2000-3500 with effect from 6.2.1989. He passed the efficiency test on 30.4.1991 which is at Annexure A-7. Thereafter, the applicant's pay was fixed by the respondents at Rs. 3200 u.s.f. 1.9.1990 which is at Annexure A-8. He retired on 31.10.1991 and he was drawing a basic salary of Rs. 3300/-.

4. In the light of the above, the applicant submitted that the respondents be directed to fix his retiral benefits on the basis of his last pay drawn at Rs.3300/- which he was drawing at the time of his retirement i.e. 31.10.1991 for which he made a representation vide dated 12.5.1992 which was considered by the respondents and rejected vide dated 2.5.1992 (Annexure A-1). Therefore, the applicant submitted that having refixed the pay vide Annexure A-8 it is not open to the respondents to deny the benefits on the basis of the last pay drawn and also not paying the arrears on account of the refixation of his pay, which is not only arbitrary

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but not in accordance with law.

5. The respondents in their reply at para 4 stated that eligible and senior persons were to be given the benefit of promotion to the grade of Rs. 840-1040. As such the applicant was not entitled for the benefit of upgradation as he was working in the grade of Rs. 650-1200 as Assistant Engineer on 1.1.1984. Against at para 4.7 the respondents have stated that the applicant was working in the grade of Rs. 700-900 as Inspector of Works at the time of his promotion to the post of Assistant Engineer as such he was reduced from his officiating appointment in class II to his substantive post in Class III grade Rs. 700-900 with effect from 17.1.1986. The applicant was wrongly promoted to the grade of Rs. 840-1040 w.e.f. 18.3.1986. In fact he was not due for promotion to the grade of Rs. 840-1040 because of penalty of reduction imposed on him. He was wrongly promoted by an oversight to grade of Rs. 840-1040 resulting overpayment etc.

6. In the light of the above, the short question for consideration is whether the respondents are justified in denying the legitimate dues of the applicant, having regard to the orders passed by them in Annexure A-5 and Annexure A-8 especially after his retirement.

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It is an undisputed fact that the applicant was due for promotion from 1.1.1984 but for the imposition of penalty he would have been promoted from that date and his juniors were given a benefit of promotion with effect from 1.1.1984. It is an undisputed fact that all other benefits have been paid to the applicant except the dues towards the DCRG which comes to Rs. 53,450.

7. The Learned Counsel for the applicant draws my attention to various clauses/rules. The Railway Establishment Code, Volume II, rule 1302 which states that grade in which the applicant had worked i.e. Rs. 840-1040, he is entitled to get it. Similarly, rule 1309 speaks of substantive pay, rule 1316 of fixation of pay, rule 1319 of increment above efficiency bar. The respondents have sanctioned the increments vide their letter at Annexure A-8.

8. From the above, it is clear that it is an undisputed fact that the applicant has been drawing at the time of his retirement a sum of Rs. 3300/- which is clear from the pay slip issued by the respondents (Annexure A-8). Therefore, his retiral

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benefits should be fixed on that basis. Since he has cleared the efficiency bar in the year 1991, he is entitled to claim the arrears of pay and allowances therefor. Since there is no plausible explanation forthcoming from the respondents in not releasing the DCRG which is lying with the respondents so far, it is but natural that the applicant is entitled to interest thereof. The applicant has averred that the respondents have already granted pension to the applicant at the last pay drawn of Rs. 3300. The only item left is release of DCRG amount and the interest, if any, due on that.

9. In the light of the above, I hereby quash and set aside the impugned order dated 2.6.1992 (Annexure A-1) and direct the respondents to fix his pay at the last pay drawn i.e. Rs. 3300/- for the purpose of pension and release his DCRG amount as early as possible preferably within a period of two months and should pay interest at the rate of 12% w.e.f. 31.10.1991 till it is paid.

10. The O.A. is allowed with no order as to costs.

B.S. Hegde 12/8/93
(B.S. HEGDE)
MEMBER (JUDICIAL)