

Central Administrative Tribunal  
Principal Bench

O.A. No. 2308/92

Decided on 11.1.2000

29

B.M. Jha

... Applicant

(By Advocate: Shri Ajit Puduserry )

Versus

U.O.I.

... Respondents

(By Advocate: Shri A.K. Bhardwaj

CORAM

Hon'ble Mr. S.R. Adige, Vice Charman (A)  
Hon'ble Mr. Kuldip Singh, Member (J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not? NO

*S.R. Adige*  
(S.R. ADIGE)  
VICE CHAIRMAN (A)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.2308/92

New Delhi: this the 11<sup>th</sup> day of January, 2000. (30)

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. KULDIP SINGH, MEMBER (J)

B.M.Jha,  
Senior Hydrologist,  
Central Ground Water Board,  
R/o 1195/IV NH IV,

Faridabad.

..... Applicant.

(By Advocate: Shri Ajit Pudugerry)

Versus

Union of India

through

the Secretary,  
Ministry of Water Resources,  
Shram Shakti Bhawan,  
New Delhi

.... Respondent.

(By Advocate: Shri A.K. Bhardwaj).

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns respondents' letter dated 6.8.92 (Annexure-E) and seeks grant of arrears of pay and allowances on the post of Sr. Hydrologist w.e.f. 27.8.84 till the date of the promotion orders.

2. Applicant was appointed as Sr. Tech. Asstt. (Hydrology) Group 'C' (non-gazetted) in respondents organisation on 9.11.72 vide order dated 21.12.72 (Annexure-I to respondents' reply) and was regularised w.e.f. 10.4.73. He was promoted as Jr. Hydrologist Group 'B' (gazetted) (Rs. 650-1200) w.e.f. 27.8.76 on adhoc and temporary basis vide order dated 12.8.76 (Annexure-II to respondents' reply). His adhoc promotion as Jr. Hydrologist was regularised w.e.f. 25.9.82. Respondents contend that applicant was continued on adhoc basis w.e.f. 27.8.76

2

to 24.9.82 on account of non-availability of a post on regular establishment. As the aforesaid service was not counted for the purpose of seniority etc. as per appointment condition laid down in respondents' office Order No.941 of 1976 (Annexure-III to their reply), his representation for regularisation of his adhoc service for the purposes of seniority and promotion to the next higher grade with retrospective effect was rejected vide respondents' letter dated 6.11.84 (Annexure-IV). After further representations from applicant, respondents finally issued letter dated 29.3.89 rejecting applicant's prayer for counting of the adhoc service put in by him as Jr.Hydrologist from 1976 to September, 1982 for seniority and eligibility for promotion to the higher grade.

3. Applicant thereupon filed OA No.957/89 (Annexure-V) seeking a direction to respondents to treat the period from 27.8.76 to 25.9.82 as regular service rendered in the post of Jr.Hydrologist for all purposes including seniority and for promotion and to direct that applicant would be given all consequential benefits including promotion.

4. That OA was disposed of by order dated 18.12.90 (Annexure-A) after hearing both parties on merit with the following directions:

"The ends of justice will be met if the period of adhoc promotion as Junior Hydrologist in the case of the applicant w.e.f. 27.8.76 is counted for the purposes of seniority and promotion etc. Accordingly we

order and direct that respondents shall count the period of adhoc period of officiation of the applicant as Junior Hydrologist for the purpose of seniority and eligibility for consideration for promotion of higher grade."

5. In the background of that order dated 18.12.90 respondents issued letter dated 5.2.92 (Ann. C Colly) wherein it was stated that since no vacancy of Sr. Hydrologist in 1984<sup>was available</sup> in order to give notional promotion to applicant, a supernumary post was created vide letter dated 15.10.91 w.e.f. 27.8.84, the date from which applicant became eligible for promotion to the grade of Sr. Hydrologist and upon the DPC's recommendations, applicant was being promoted as Sr. Hydrologist w.e.f. 27.8.84. He would be given notional seniority and benefit of notional pay fixation w.e.f. 27.8.84 but he would be entitled to actual benefit of promotion and higher pay with immediate effect. Applicant filed a representation dated 6.5.92 (Annexure-D) against the aforesaid letter dated 5.2.92 which was rejected by impugned letter dated 6.8.92 (Annexure-E) against which he has filed this O.A.

6. The O.A. came up for hearing on 17.3.98. Applicant's counsel was present, but none appeared on behalf of respondents. The Bench noted that despite several opportunities, respondents had failed to file their reply, although they had appeared on previous occasions. Accordingly after hearing applicant's counsel and perusing the materials on record, the Tribunal by its

33

order dated 17.3.98 allowed the OA and directed respondents to pay applicant the arrears of higher pay and allowances on his promotion to the post of Sr. Hydrologist w.e.f. 27.8.89 till 5.2.92.

7. Against the aforesaid order dated 17.3.98 respondents filed CWP No. 3423/98 in the Delhi High Court which initially stayed the order dated 17.3.98. After hearing both sides, the Delhi High Court by its order dated 25.1.99 held that there was adequate explanation for the absence of representative on behalf of the UOI before the Tribunal on 17.3.98. Accordingly the order dated 17.3.98 was set aside and the parties were directed to appear before the Tribunal again for hearing.

8. We have heard applicant's counsel Shri Puddussery and respondents' counsel Shri A.K. Bhardwaj. Shri Puddussery has also filed written submissions which are taken on record.

9. The grounds taken by respondents in their reply to the OA to reject applicant's claims for arrears of pay and allowances are substantially the same as those taken in CWP No. 3423/98. We shall discuss each of these grounds.

10. The first ground taken by respondents is that in OA No. 957/89 applicant had prayed for seniority and promotion with all consequential benefits but the CAT in their order dated 18.12.90 granted applicant only the benefit of arrears of pay. Applicant in his rejoinder has pointed out that the Tribunal in its order dated 18.12.90 held that the ends of justice would be met if the period

2

34

of adhoc promotion as Jr. Hydrologist was counted for the purposes of seniority and promotion etc. (emphasis added) and the use of the word etc. could reasonably include arrears of pay and allowances also. In view of the above, in our <sup>opinion</sup> ~~view~~ the first ground is by itself not sufficient to reject applicant's claims for arrears of pay and allowances.

11. The second ground taken is that the claim is hit by limitation under sec. 21 A.T. Act. This ground is rejected because applicant's cause of action arose pursuant to respondents' order dated 5.2.92 giving him benefit of higher pay only from the date of issue of the order. The present OA has been filed well within the limitation period reckoned from 5.2.92.

12. The third ground taken by respondents is that in the Hon'ble Supreme Court's ruling in M.R. Gupta Vs. UOI SLJ (SC) 1995(2) page 33 it has been held that the question of limitation would arise for recovery of arrears of pay and allowances. It is clear that the ruling in M.R. Gupta's case (supra) would not apply to the facts and circumstances of the present case, because as noticed above, applicant's cause of action has commenced with the issue of respondents' letter dated 5.2.92 denying him those arrears. Hence this ground also fails.

13. The next 3 grounds can be taken together. It is firstly contended that applicant is not entitled to arrears in terms of F.R. 17(1); secondly it is contended

35

that the ruling in UOI Vs. K.V.Jankiraman AIR 1991 SC 2010 which was relied upon heavily by the Bench when it allowed the OA by its order dated 17.3.98 has no application; and thirdly it is contended that as applicant did not actually work on the higher post for the period in question, he is not entitled to the pay and allowances for that post.

14. We are unable to agree with these grounds taken by respondents. In Jankiraman's case (supra), the Hon'ble Supreme Court has observed thus:

"We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R 17(1) will also be inapplicable to such cases."

15. This is also a case where the applicant was willing to work on the promoted post, but was not promoted for no fault of his.

16. Recently in State of A.P. Vs. K.V.L.Narasimha Rao & Ors. JT 1999 (3) SC 205, the Hon'ble Supreme Court has held

36

"In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom including monetary benefits must (emphasis added) be extended to an officer who has been denied promotion earlier."

17. Nothing in the present case marks it out to be one which would warrant exclusion from the aforementioned ratio in Rao's case (supra).

18. Other rulings relied upon by Shri Puudissery and referred to in the order dated 17.3.98 include P.S.Mahal Vs. UOI -1984(3) SCR 847; State of Mysore Vs. C.R.Seshadri & Ors. 1974(3) SCR 87, and the CAT Calcutta Bench's order in Deb Kumar Gupta Vs. UOI & Ors. ATR 1992(2) CAT 573 (Calcutta Bench), point to the same conclusion.

19. Again in the CAT Jodhpur Bench's order dated 17.1.92 in Ramesh Chander Vs. R. S. Gahlawat AIR (IV) 1992(1) page 484 relied upon by Shri Puudissery it has been held that when the promotion had been wrongfully denied and consequential benefits had been ordered, and consequently respondents had given promotion and notional pay, but arrears had been denied on the plea of "no work no pay", such arrears could not be denied. Yet another ruling relied upon by him is the order dated 11.7.95 of the CAT, Chandigarh Bench in OA No. 985/CH/94 C.P. Srivastava Vs. UOI & Ors. which is somewhat similar to the present case in which again arrears were allowed. Other rulings have also been relied upon by Shri Puudissery to emphasise the point that when promotion has been delayed though no fault of the Govt. employee, he cannot be denied arrears

2



of pay and allowances of the promoted post. These rulings include order dated 23.12.93 of CAT Bombay Bench in OA No.5/94 Km.P.M.Patil Vs. UOI (Swamy news page 309); Prem Singh Vs. Comm. of Police 1993(1) ATJ 472; and order dated 5.8.93 of CAT (Guwahati Bench) in OA No.38/91 S.B.Prasad Vs. UOI (Swamy news page 580).

20. Nothing has been shown to us to establish that all these rulings relied upon by Shri Puudissery have been stayed, modified or set aside. It is clear therefore that the weight of judicial opinion in the present case is overwhelmingly in favour of applicant's claim.

21. Under the circumstance the OA succeeds and is allowed. The impugned order dated 6.8.92 is quashed and set aside. Respondents are directed to release to applicant the arrears of pay and allowances for the higher post for the period 27.8.84 till 5.2.92 after adjusting the sum already paid, within 3 months from the date of receipt of a copy of this order. No costs.

  
( KUL DIP SINGH )  
MEMBER(J)

  
( S.R. ADIGE )  
VICE CHAIRMAN (A).

/ug/