

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: DELHI.

9

O.A.No.2910/92 17(x)

Date of decision: 29.10.93

V.V.Kashyap & 15 Others

...Applicants

(x)

Versus

Substituted vide
orders dt.
29/4/94 in
RA 10/94 in
OA 2910/92

Delhi Administration and
Another

...Respondents.

CORAM:

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

HON'BLE MR. S. GURUSANKARAN, MEMBER (A).

For the applicants

...Shri R.K.Kamal,
Counsel.

For the respondents

...Shri Vijay Sabharwal,
Counsel.

JUDGMENT

(Hon'ble Mr. J.P.Sharma, Member (J) :

The applicants have jointly filed this application for redress of their grievance regarding re-fixation of their present salary on the notional seniority granted to them in Gr.I of the DASS (Delhi Administration Subordinate Service) by Order dated 8-7-91. All the applicants were recruited as direct recruits to Gr.II of DASS. They are now working in Gr.I. The applicants have prayed for the grant of the relief that the respondents be directed to re-fix the present salary of the applicants on the basis of the notional seniority granted to them by the Order 8-7-91, so that their present salary is not less than those persons who are junior to them in the integrated seniority list. The

10

applicants have also claimed interest on the arrears of pay from the date of filing of this application till the date of payment.

2. The respondents contested this application and they have taken the preliminary objection that the application is barred by time as the reliefs sought by the applicants are against the order dated 8-7-91. On merits, it is contended that the applicants were given notional promotion w.e.f. the date as mentioned in the order dated 8-7-91. It is further stated that the officers junior to the applicants are drawing higher salaries by virtue of their promotions to Gr.I posts earlier to their seniors on the basis of the seniority list which were subsequently challenged in court of law and were quashed. Thus, in view of this, it is prayed that the application be dismissed as devoid of merit.

3. We have heard the learned counsel for the parties at length and perused the records. The learned counsel for the applicants has relied on a decision in OA No.709/88 decided on 23-4-92, a copy of which is annexed with the application as Annexure A-I. The applicant of that case was also appointed to Grade.II (Executive) in DASS as a direct recruit on the basis of a competitive examination held in 1973. In that application, the applicant Lal Singh had prayed for grant of the reliefs, e.g., a direction to the respondents to consider officials of that batch for

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promotion to Grade I in order of his merit position and a further direction for his consideration to Gr.I of DASS before considering the cases of officials of 1973 examination batch who are assigned merit position lower than him. This application was disposed of with the direction to the respondents to re-fix the present salary of the applicant on the basis of his notional seniority granted to him by order 8-7-91, so that his present salary is not less than that of the person who was immediately below him.

4. The issue involved in the present case is also similar. A photo copy of the order dated 8-7-91 issued by the respondents regarding the promotion on regular basis of officials to the post of Gr.I of DASS w.e.f. the dates mentioned against each of them. Part II of the order dated 8-7-91 states that the officials promoted to Gr. I by that order would not be entitled to the payment of arrears of pay and allowances for the period for which they have not actually worked on the post of Gr. I of DASS. By this order of 8-7-91, the seniority list has been revised and the applicant was given notional promotion from 1-10-86. It was not only the applicant but many others who were given notional promotion retrospectively as a result of seniority. Thus, due to the merger of Executive and Ministerial Wings of DASS w.e.f. 4-12-1980, the names of the applicants figure at sr. nos. 1303, 1305, 1309, 1311, 1313, 1315, 1319, 1321, 1329, 1341, 1345, 1347, 1351, 1355, 1357

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12

and 1383(Annexure A-3). The tentative seniority list of Gr. I of DASS was also circulated on 3-3-92 (Annexure A-5). The names of the applicants are shown at sr. nos. 903, 905, 909, 911, 914, 917, 918, 922, 929, 931, 933, 936, 940, 942 and 960. The grievance of the applicant, therefore, is justified that the officials belonging to Gr.II of DASS were juniors to the applicants, ^{but} are drawing higher pay than the applicants. The learned counsel for the applicant has referred to the seniority list of 20-10-89 (Annexure A-3) and pointed out at sr. no.1304 Shri V.K.Kandpal, at sr.no.1308 Shri J.S.Sharma, at sr.no.1348 Shri S.R.Sharma, at sr. no.1360 Shri S.K.Hari, at sr. no.1376 Shri K.K.Sharma and at sr. no.1406 Shri B.R.Verma. The juniors of the applicants named above sr. no.1304, 1308, 1348 and 1376 are drawing basic salary of Rs.2360/- in the scale of Rs.1640-2900 w.e.f. 1-2-92. Thus, the judgment in OA 709/88 of Lal Singh apply in full force with the case of the applicants as Lal Singh also belonged to 1973 of direct recruits batch of Gr.II of DASS. Thus, on the principle of equity and fair play, the applicants are also entitled to similar and identical relief. The learned counsel for the applicant referred to a number of decisions that if similarly situated persons have not come to the court, then they are also entitled to the benefit of the judgment if they are similiary circumstanced persons and in this case as Shri Lal Singh and will be entitled to similar reliefs (1985(2) SCC p.648 -Inder Pal Yadav Vs. Union of India).

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5. In view of the above discussion, it is clear that the applicants being senior are entitled to draw the same salary as their juniors to avoid discrimination under Article 14 and 16 of the Constitution.

6. The application, is, therefore, allowed and the respondents are directed to re-fix the present salary of the applicants on the basis of their notional seniority granted to them by the Order dated 8-7-91 so that their present salary is not less than those of the immediate juniors to them in the integrated seniority list of Gr.I of DASS. The prayer for interest of arrears is disallowed. The respondents should comply with the said judgment within three months from the date of receipt of a copy of this judgment. No costs.

S. Gurusankaran
(S. GURUSANKARAN)
MEMBER (A)

J. P. Sharma
(J. P. SHARMA)
MEMBER (J) 29.10.93

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Reviewed by me
J. P. Sharma
29.10.93.

NOTE:- Pl. see orders dt. 29.4.94 in RA 10/94
in OA 2910/92

Anil/dy *J. P. Sharma*