

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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10.07.1992

OA 302/92

SHRI ASWINI KUMAR GOSAI

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

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

FOR THE APPLICANT
FOR THE RESPONDENTS

...SHRI K.L.BHANDULA
...MS.JASVINDER KAUR, PROXY
COUNSEL FOR SH.JOG SINGH

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

JUDGEMENT

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

The applicant is working as Extra Assistant Director/Assistant Engineer in B&CD (N&W) Directorate CWC, New Delhi. He is aggrieved by the order dt.21.6.1991 by which his representation was rejected with regard to the fixation of his pay at par at the level of his junior in the grade of EAD/AD while similar benefits have been extended to his colleague who was similarly placed.

The applicant in this application has prayed for the relief that the pay of the applicant be refixed in the grade of EAD/AE w.e.f. 30.8.1985 at the level of pay drawn by his

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junior, Shri S.K. Sil and also arrears of pay and allowances and increments and other financial and consequential benefits on the refixation of his pay be granted.

At the hearing, Ms. Jasvinder Kaur, proxy counsel for Shri Stephan Jog and Company conceded to the fact that there are a number of judgements of the Tribunal giving similar benefits to the colleagues in the same department in which the applicant is employed. The applicant has mentioned about these judgements in para 1(b) of the application and one of these cases is TA 188 (WP 11833/85) Shri B.V. Rangaiyya Vs. UOI & Ors. decided by the Hyderabad Bench. An SLP was also passed in the Hon'ble Supreme Court and the same was dismissed and the judgement has, therefore, become final. Thus in short the grievance of the applicant is that the same benefits are not being accorded in spite of the fact that it has been observed, in the above judgement based on the various other judicial pronouncements referred to therein with the Government who sue-mot to extend such benefits to the similarly placed employees without driving them to seek redress in a Court of law.

The brief facts of the case are that the applicant was appointed as Supervisor (now designated as Junior Engineer) w.e.f. 25.3.1965. The applicant was selected for a deputation post in Chukha Hydel Project, Bhutan where he

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joined on 2.2.1981. While the applicant was on deputation, his junior, Shri S.K. Sil was promoted as EAD/AE w.e.f. 7.7.1981. The applicant was eligible for promotion to the post and is also senior to Shri S.K. Sil. The applicant returned from deputation back to the parent department on 30.8.1985 and he was given promotion as EAD/AE and his pay was fixed at Rs.740. The grievance of the applicant is that he was not given an option to come back though he was eligible for promotion and so was not considered while his junior has been considered and his pay on the relevant date when the applicant joined on the promotional post has been fixed at Rs.775. Thus the applicant, who is in the seniority list at Serial No.323 is getting lesser pay than his junior, Shri S.K. Sil, who is at Serial No.324 of the said seniority list.

The respondents in their reply stated that the applicant is drawing less pay than his juniors by virtue of his promotion as EAD/AE from a later date. According to the respondents, there is no provision in the normal rules to step up the pay of such officers to be at par with that of their juniors. Though in the case of B.V. Rangaiyya, the benefit has been granted, but the matter was referred to the Department of Personnel and Training for fixation of pay of officers similarly situated, but the Ministry of Water Resources vide their letter dt.3.8.1990 said that the judgements were applicable in the case of those petitioners only.

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In view of the fact that the case is covered by a number of judgements already delivered by the Principal Bench as well as undisputedly by the case of B.V.Rangaiya of Hyderabad Bench, the SLP against which has already been dismissed by the Hon'ble Supreme Court and the judgement has become final, *the applicant of this case is also entitled to get the same relief.*

At the time of hearing of the arguments, the learned counsel for the respondents had clearly conceded this position. The applicant cannot be discriminated on the fact that he has not come to the Court earlier. The respondents should have given the benefit to the applicant in view of judicial pronouncements and they cannot discriminate the applicant in not giving the benefit. Also on the principle that a junior should not be allowed to draw more pay than his senior, the pay of the applicant has to be stepped up to the level of the junior because the late promotion of the applicant has not been due to any of his faults. The applicant was on deputation on the orders of the Central Government and so the applicant cannot be made to suffer because his deputation to Chukha Hydel Project, Bhutan was in the public interest.

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In view of the above facts, the application is allowed and the respondents are directed to re-fix the applicant's pay in the grade of EAD/AE w.e.f. 30.8.1985 at the level of the pay drawn by his junior, Shri S.K. Sil with consequential benefits of arrears and pay and allowances, increments and other financial benefits consequent on the re-fixation of pay. The respondents are directed to comply with the above directions preferably within a period of three months from the date of communication of this judgement. In the circumstances, the parties shall bear their own costs.

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

10.7.92