

(30)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi

OA No.446/92 with OA 446A/92

New Delhi this the 22nd day of December 1994.

Hon'ble Mr. J.P.Sharma, Member (J)
Hon'ble Mr. S.R.Adige, Member (A)

Shri Gopal Prasad
S/o Shri Shiv Charan Lal
Resident of XY 14 Sarojini Nagar
New Delhi-110 023.

2. Shri K.C.Negi
S/o Shri Saman Dharje
Working as News Editor
N.S.D., All India Radio
New Delhi
Resident of 526-B, Sector-III
R.K.Puram
New Delhi.

.....Applicants

(By Mr. T.C.Agarwal, Advocate)

Versus

UNION OF INDIA
Through Secretary
Ministry of Information & Broadcasting
Shastri Bhavan
Dr. Rajendra Prasad Road
New Delhi - 10 001.

.....Respondents

(None)

26

J U D G E M E N T

Hon'ble Mr. S. R. Adige, Member (A)

As common questions of law and facts are involved in these two original applications, they are being disposed of by a common judgement.

2. In these two OAs, Shri Gopal Prasad and Shri K.C. Negi have prayed to direct the respondents to extend the benefit of Grade-III and scale to them w.e.f. 1.1.1973 as ordered by the Hon'ble Supreme Court and Central Administrative Tribunal by their judgements dated 5.12.1986 and 10.10.1991.

3. Their cases are that the Third Pay Commission had recommended upgradation of the post of Field Publicity Officers of CIS cadre to Grade-III with a higher scale of Rs. 650-1200 in the Ministry of Information & Broadcasting. It also recommended same scale of pay for 135 posts of Field Publicity Officers (Border). Having regard to the requirement of services and keeping in view the general pattern they had adopted, the Third Pay Commission recommended the following scales of pay for the various grades of the CIS:

Sl. No.	Grade	Existing pay	Proposed scale of pay
x	x	xx	xx
6.	Grade-III	Rs.370-800	Rs.650-1200
7.	Field Pub- licity officer	Rs.270-485	Rs.650-1200
x	x	x	xx

Its recommendations were given effect w.e.f. 1.1.1973. Shri Gopal Prasad claims that on that date he was holding the post of Field Publicity Officer at Allahabad/Agra from 12.7.1963 till 8.4.1976, when he was sent on deputation in the same organisation as Programme Assistant and then promoted to Grade-III of CIS in 1977. Shri Negi contents that belonging to ST category, he joined the service as Field Publicity Officer at

32

Kalpa (Himachal Pradesh) on 5.7.1965 on ad-hoc basis and was subsequently regularised (except for the period October 1976 to February 1977 when he was posted as Sub Editor). Thereupon he was promoted and was holding Grade-I. Thus both the applicants contend that on 1.1.1973 they were holding the post of Field Publicity Officer which entitles them to the claim and having not received any satisfactory response, they have been compelled to file these applications.

4. The respondents on the other hand contend that these OAs are grossly time barred and are hit by limitation, in the light of the provisions of Section 20 & 21 of the CAT Act. Furthermore it has been contended that each and every incumbant could not be automatically appointed to the upgraded post, leaving the claims of the senior and more eligible officers in Grade-IV. The posts were upgraded w.e.f. 1.10.1975. They contend that the applicants were not regularly appointed in Grade-IV of CIS but only ad-hoc appointees and as such cannot claim for higher promotion of Grade-III. They contend that prior to the Third Pay Commission's recommendations, the post of Field Publicity Officer was in Grade-IV of CIS, and before upgrading the post from Grade-IV to Grade-III in the light of the Third Pay Commission's recommendations, it was imperative to decide about the incumbants to this post. The Field Publicity Officer post being a cadre post, even junior officers in Grade-IV were holding the post at that time. The applicants could not automatically be appointed to the upgraded post leaving aside the claims of their seniors in the grade. As this took time, the Pay Commission's recommendations for upgradation of this post were implemented w.e.f. 1.10.1975 so that eligible officers in Grade-IV could be promoted to hold the upgraded post of FPO which was in CIS Grade-III. It has been emphasised that the applicant Shri Gopal Prasad was appointed as FPO on ad-hoc basis in 1963 in the

33

Directorate of Field Publicity and was posted as Programme Assistant, DFP, New Delhi on 8.4.1976. As the appointment was ad-hoc, and he was not regularly appointed in accordance with CIS rules, 1959, he was not entitled to any benefit of seniority. Similarly, the applicant K.C.Negi was appointed as FPO on ad-hoc basis in 1965 in DFP and he was not regularly appointed in accordance with CIS rules. He was therefore not entitled to any benefit of seniority.

5. We have heard Shri T.C. Agarwal for the applicant. None appeared for the respondents.

6. Shri Agarwal has relied upon a number of rulings including the case of Purushotom Lal Vs. UOI AIR 1973 SC 1088. The respondents on the other hand have argued that as the applicants were amongst the 74 officers appointed to CIS Grade-IV only w.e.f. 4.1.1977 by the amendment of CIS rules, they cannot claim any seniority in Grade-IV of CIS prior to 4.1.1977 and in this connection they have cited Hon'ble Supreme Court's judgement on 9.11.1990 - A.K. Bhatnagar Vs. UOI wherein their Lordships have dismissed the claim of ad-hoc Grade-IV officers appointed to Grade-IV on regular basis w.e.f.4.1.1977 for counting their posts on ad-hoc temporary service towards seniority and consequential benefits. The respondents have emphasised that in the background of this judgement, any appointment outside the provisions of this statutory rules does not confer any benefit of seniority to a post in the service. As the applicants were appointed to Grade-IV of CIS on regular basis w.e.f.4.1.1977, they cannot claim benefit to the upgraded post prior to their regular appointment to Grade-IV.

24

7. We note that a similar prayer for grant of higher scale of Rs. 650-1200 w.e.f. 1.1.1973 had been made by a number of similarly situated applicants in the past, before the Tribunal, in OA 2753/91 and R.C. Panigrahi Vs. UOI and connected cases decided by the Principal Bench on 16.4.1992, after rejecting the respondents' claim that the prayer was barred by limitation, ~~but~~ the Tribunal had noted that the point to be determined was short and simple. In accordance with the Third Pay Commission's recommendations, 135 posts of FPOs were to be given upgraded scale from 1.1.1973 in consideration of the duties and responsibilities attached to the post. It was not that all Grade-IV posts of CIS were given the upgraded scales. The Hon'ble Supreme Court in its judgement dated 5.2.1986 had directed that the applicants before them (FPOs) be given upgraded scales of pay w.e.f. 1.1.1973, though the respondents had given them higher pay scale from 1.1.1975 and by the judgement in Panigrahi's case (Supra) also it was held that the applicants were entitled to upgraded scales from 1.1.1973, provided they worked as FPOs since upgraded scale was for FPOs only. The judgement further held that it was for the respondents to consider that seniors in Grade-IV of CIS willing to serve as FPOs and suitable for assignment were posted as FPOs, but the applicants could not be denied upgraded scales from 1.1.1973, as long as they functioned as FPOs against the 135 posts referred to in the Third Pay Commission's recommendations and accepted by the Government of India. Furthermore in OA 3009/91 P.K. Tripathi Vs. UOI decided on 16.12.1992, the Tribunal held that the pay scales were to be given from 1.1.1973 in reality and not notionally, and they were

25

thus entitled to arrears, because the Pay Commission had recommended that FPOs be placed in Grade-III on revision of pay scales as such and not on promotion.

8. We are in respectful agreement with the reasoning adopted in Panigrahi's case (Supra) and Tripathi's case (Supra) that if the two applicants worked as FPOs from 1.1.1973 against any of the 135 posts of FPOs which were given the upgraded scales from that date in consideration of the duties and responsibilities attached to the post, in accordance with the recommendations of the Third Pay Commission, which were accepted by the Government of India, then the two applicants would be entitled to the upgraded scales of pay from 1.1.1973, together with arrears. The ruling in Bhatnagar's case (Supra) relied upon by the respondents is not directly relevant to the facts of this case, because the question is basically one of revision of pay scales, and not of seniority or promotion, as has been pointed out in Tripathi's case (Supra).

9. With the above observations and directions, these two OAs are accordingly disposed of.

No costs.

S.R. Adige
(S.R. ADIGE)
Member (A)

J.P. Shrma
(J.P. SHRMA)
Member (J)

aa.