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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. 548/1992

DATE OF DECISION: 18.9.92

Diwani Ram

.. Applicant

vs.

Union of India & Ors.

.. Respondents

For the Applicant

.. Shri S.C.Luthra,
Advocate

For the Respondents

.. Shri M.L.Verma,
Advocate

C O R A M

THE HON'BLE MR.S.P.MUKERJI, VICE CHAIRMAN

THE HON'BLE MR.T.S.OBEROI, JUDICIAL MEMBER

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

JUDGMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application filed on 20th February, 1992 the applicant who has been working as a Technical Restorer in the National Gallery of Modern Arts under the Ministry of Human Resources Development has challenged the impugned order at Annexure A1 rejecting his representation for fixation of his pay by relaxation of FR 22 and has prayed that the respondents be directed to count his past ad-hoc service as Technical Restorer and period of deputation and service as Senior Technical Restorer, for drawing increments in the grade of Technical Restorer. The brief facts of the case are as follows:-

2. The applicant joined the National Gallery on 18.9.1973 as Laboratory Attendant. He was given ad-hoc promotion as Technical Restorer in the scale

of Rs.425-700(revised to Rs.1400-2300) on 15.7.1983 and continued to work in that capacity till 14.8.87. He was promoted as an L.D.C in the scale of Rs.950-1500 with effect from 24.7.1987, but was allowed to continue as Technical Restorer without any interruption. He was sent on deputation to the President's Secretariat as a Senior Technical Restorer, Class-II (Gazetted) in the pay scale of Rs.2000-3500 on 14.8.87 and a certificate was given by the respondents that but for his deputation, he would have continued to work as a Technical Restorer on ad-hoc basis till the post is filled up on a regular basis. He was repatriated from the President's Secretariat on 1.12.89 to his substantive post of L.D.C when he was drawing a basic pay of Rs.2060/- in the President's Secretariat, but on the following day, i.e., on 2.12.89, he was again promoted as Technical Restorer on an ad-hoc basis in the scale of Rs.1400-2300. He was appointed as Technical Restorer on a regular basis on 23.4.1990. His pay on his reappointment as Technical Restorer on 2.12.89 was fixed ^{at the minimum of the pay scale} at Rs.1400/-, whereas had he not gone on deputation but continued as Technical Restorer on an ad-hoc basis, his basic pay on 2.12.89 would have been Rs.1680/-. On the other hand, his pay was fixed at Rs.1400/- when ^{he} was regularly appointed as Technical Restorer on 23.4.90. The applicant has taken the plea that under F.R.22, his previous ad-hoc service in the grade of Technical Restorer and his service on deputation in the still higher post of Senior Technical Restorer in the President's Secretariat, should be taken into account for giving him increments on his

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regular promotion as Technical Restorer from 23.4.90.

3. The respondents have argued that in accordance with the amended F.R.22 since his service prior to 23.4.90 was not regular, the same cannot be taken into account for fixation of his pay on his regular appointment as Technical Restorer. They have conceded that the applicant would have continued to work as Technical Restorer on ad-hoc basis till the post was filled on a regular basis on 2.12.1987. They have also conceded that even though the applicant was promoted on regular basis as LDC on 24.7.87, he continued to work as Technical Restorer without any interruption. On his deputation to the President's Secretariat in the higher grade of Senior Technical Restorer, he severed connection with the post of Technical Restorer. On his repatriation he was appointed as Technical Restorer on ad-hoc basis with effect from 2.12.1989. They have stated that this was not a fit case for relaxing the provisions of F.R.22.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. On the basis of the certificate given by the parent unit of the applicant at Annexure A-4 that the applicant would have continued to work as Technical Restorer on ad hoc basis during the period of his deputation as Senior Technical Restorer in the Rashtrapati Bhavan, we have no doubt in our mind that the applicant's ad-hoc service as Technical Restorer from 15.7.83 to 30.11.89 and from 2.12.89 till 22.4.90 after which he was regularly appointed as Technical

Restorer , shall count for the purpose of increments under F.R 22. A break in service for one day on 1.12.89 should not matter. The contention of the respondents that the ad-hoc service as Technical Restorer shall not count for purpose of increments, is not correct in view of the notification issued by the Government of India, Ministry of Personnel, P.G. & Pensions dated 28.11.90 which reads as follows:-

"2. In rule 22 of the Fundamental Rules, in paragraph (1), in clause (a), in sub-clause(3), in paragraph(1) of the proviso, for the words "has previously held on a regular basis", the words "has previously held substantively or officiated in" shall be deemed to have been substituted with effect from 30th day of August, 1989."

The Explanatory Memorandum^{below the amendment notification} makes the position clear:-

Explanatory Memorandum:- Exercise was undertaken for rationalisation/simplification of provisions of Fundamental Rules with regard to the fixation of pay of a Government servant who is appointed on a post on a time scale of pay. Accordingly, amendment to FRs was issued by Ministry of Personnel, P.G. & Pensions (Department of Personnel & Training) vide Notification No.1/10/89-Estt. (Pay-I) dated 30.08.89 which was published in the Official Gazette on 16.09.89 vide G.S.R.No.679. The amended provisions as in clause (1) of proviso to clause (b) of sub-rule(3) of rule 22 led to the conclusion among some Ministries/ Departments that the proviso(1) to FR 22, as it existed before amendment, has been deliberalised. As no deliberalisation of the said provision was intended, the said Notification is being amended to the extent by rule 2 above. The retrospection will not prejudicially or adversely affect the interest of any Government servant as the retrospective amendment is in the nature of liberalisation." (emphasis added)

In the circumstances no relaxation of F.R.22 is called for.

5. In the above light, we allow the application, set aside the impugned order dated 19.1.1991 at Annexure A1 and direct that the entire period of ad-hoc officiation

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as Technical Restorer including the period of deputation as Senior Technical Restorer by the applicant commencing from 15.7.83 and ending on 22.4.90 shall be taken into account for the purpose of fixation of pay and increments of the applicant as regularly appointed Technical Restorer with effect from 23.4.90. There will be no order as to costs.

Singh 18.9.92
(T.S.OBEROI)
JUDICIAL MEMBER

Singh
18.9.92
(S.P.MUKERJI)
VICE CHAIRMAN

NJJ