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Central Administrative Tribunal
Principal Bench, N. Delhi

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O.A. No. 1625/93

New Delhi, this the 30th Day of January, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI S.R. ADIGE, MEMBER (A)

Kuldeep Singh Bawa
Sr. Accountant, P.A.O. CWC
Ministry of Water Resources
Sewa Bhawan, R.K. Puram,
New Delhi.

Applicant

(By Advocate: Mr. Ashish Kalia)

Versus

Union of India through:

1. The Financial Advisor,
Ministry of Water Resources,
Shram Shakti Bhavan,
New Delhi - 110 001.
2. The Controller General of Accounts,
Ministry of Finance,
Lok Nayak Bhavan,
New Delhi - 110 003.
3. The Controller of Accounts,
Ministry of Water Resources,
Shastri Bhawan,
New Delhi.

Respondents

(By Advocate: Mr. M.K. Gupta)

JUDGEMENT (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant joined in 1959 as U.D.C. in the scale of pay 130-300/- From 1.1.1973 he was designated as Auditor in the pay scale of Rs. 330-560/- in the

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revised pay scale of the Third Pay Commission. He came on transfer to Central Water Commission in 1976 in the same scale of pay and was designated as Junior Accountant. He was granted Non-functional selection grade in the revised scale of pay Rs. 425-700/- w.e.f. 1.8.1977 and designated as Senior Accountant. This pay scale was revised sometimes in 1980 from Rs. 425-640/-. The 4th Pay Commission made certain recommendation to the Govt. which came into force from 1.1.1986 and the replacement scale of the post of Senior Accountant was Rs. 1400-2300/- though the pay scale for the post of U.D.C. has been Rs. 1200-2040/-. This scale of Rs. 1400-2600/- has been created by creating a functional selection grade to be designated as Senior Accountant. Certain posts were upgraded to the extent of 80% of the Junior Accountants designated as functional Senior Accountants. The applicant was granted this scale of Rs. 1400-2600/- w.e.f. 1.4.1987. He reached the maximum of this scale on 1.4.1991. There was some dis-satisfaction among the staff and the Govt. of India considered these facts that persons who have got not even one promotional avenues in Group 'C' & 'D' posts, should be given certain benefits by giving in Situ promotion to the next higher grade. The policy has been laid down in the OM dated 13.9.1991. In order to claim this particular beneficial scheme, three conditions has to be satisfied (i) employees be directly recruited to a Group 'C' or to Group 'D' posts, (ii) employees whose pay on employment to such a post, is fixed at the minimum of the scale and (iii) employees who have not been promoted on

regular basis even after one year on reaching the maximum of the scale on such post.

2. The grievance of the applicant is that the benefit of the scheme has not been extended to him though he has reached the maximum of the scale in 1991 and is now to superannuate on 31st January, 1995. In the meantime the respondents have given a promotion to the applicant on a leave vacancy to the post of Junior Accounts Officer w.e.f. 12th December, 1994. This promotion has been given during the pendency of this application which was filed by the applicant in December, 1993. The relief claimed by the applicant in the application after the amendment of the Original O.A. is that the direction be issued to the respondents to consider the claim of the applicant for promotion as Junior Accounts Officer under the ⁱⁿSitu Scheme stipulated in Govt. of India's letter dated 13th September, 1994 and 4th September, 1992 when the next DPC is held but before applicant's superannuation and further the applicant be allowed promotion to the standard scale Rs. 1640-2900/- in accordance with circular dated 14.3.1989 by convening Review D.P.C.

3. A notice was issued to the respondents who contested this application and supported the impugned order holding that the case of the applicant is not covered by the ⁱⁿSitu Scheme of 1991 as further clarified in September, 1992.

4. The applicant has also reiterated his contention in filing an amended O.A. taking other grounds too and the

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respondents have also filed additional affidavit in reply to the same. The applicant has also filed supplementary rejoinder re-iterating the facts alleged in the amended O.A.

5. We have heard the learned counsel of both the parties at considerable length. As regards the discrimination pointed out by the learned counsel viz-a-viz Yoginder Singh. He has no case in as much as Yoginder Singh continues to be governed by rules of A.G.C.R. while the applicant come over to C.W.C. on transfer. During the course of the arguments it was pointed out that said Yoginder Singh was getting promotion in the promotional avenues laid down in the recruitment rules by which he is governed as a part of his service conditions, that analogy cannot be applied to the case of the applicant. The applicant is to be governed by the rules applicable to him. Thus, this point raised by the applicant that O.A. dated 14th March, 1989 which has been effective from 1.4.1989 cannot give any benefit to the applicant because of the fact that there is no centralised seniority list firstly and secondly there is nothing to show that said Yoginder Singh is junior to the applicant. The seniority list depicts the position of officials in a particular cadre. When the cadre of both are different there cannot be a common seniority list in different cadres, unless there are rules to that effect. The contention of the learned counsel that said Yoginder Singh was appointed subsequently in 1963 and while the applicant was appointed in 1959, the

former get the benefit of higher promotion in the scale of which Rs. 1640-2900/-/cannot be made available to the applicant. The applicant has no case on this account.

6. We have given sufficient time to understand the actual position of ⁱⁿ Situ scheme. The different pay scales have already been notified in the earlier part of this order and for the sake of repetition, the scale earlier available to the group 'C' post to which the applicant belonged was Rs.1400-2300/-. It was the creation of the functional post of Senior Accountant that the scale was also revised to Rs. 1400-2600/-. By virtue of the upgradation of 80% of the post the applicant has been granted this benefit of higher scale without any recommendation of D.P.C. but because of creation of a functional post of Senior Accountant. The contention of the applicant's counsel is that the applicant was earlier also Senior Accountant and that earlier he was in the non-functional selection grade so this creation of the scale of pay Rs.1400-2600/- cannot be said to be promotional post. We find no reasonable nexus between the two contentions raised by the learned counsel. If the maximum scale of pay is higher that post is normally a promotional post. The Situ promotion scheme provides that there should not have been any promotional avenues and there should be atleast one. The applicant has already got this promotion w.e.f. 1.4.1987. There is no request for ^{grant of} stagnation of increment and whether that is

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allowable to the applicant in the circumstances of the case or not. We are not on that point. The applicant reached the maximum of the scale on 1.4.1991. Now he has been given promotion on a leave vacancy to the post of Junior Accounts Officer with effect from 12th Dec., 1994. In view of these facts and circumstances of the case we do not find that the in Situ Scheme of the year 1991 is applicable to the case of the applicant.

7. During the course of the hearing of this case, we desired to be enlightened by a fact whether any such person holder of such scale of Rs. 1400-2600/- has been granted in Situ promotion in the next higher post i.e. Junior Accounts Officer in the scale of Rs. 1640-2900/- but nothing has been shown to us which could substantiate that contention. Mere contention of the learned counsel on the prompting of the litigant represent alongwith that other departments have granted such promotion cannot be taken as a good exemplar in disposing of this application. The fact has to be substantiated by a document if the document is there. The counsel for the respondents has also referred to a case entitled V. John Job Vs. Director, National Malaria Eradication Programme, New Delhi and others decided by Ernakulam Bench of Central Administrative Tribunal reported in (1993) 25 ATC page 385 where it is held that if the selection grade is provided in scale of pay then it amounts to promotion. He has further

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relied upon a decision of the Hon'ble Supreme Court of India in the case of Tarsen Singh & another Vs. State of Pb. reported in 1994(27) A.T.C. and highlighted para 9 at page 890. In this case the question is not of grant of selection grade one way or the other. Here the question is whether the applicant has got any benefit of promotion in the pay scale in which he has joined in a Group 'C' post. The applicant's original pay scale was Rs. 1400-2300/- as revised by the 4th Pay Commission. Senior Accounts' post designated after re-structuring has the scale of pay Rs. 1400-2500/- and there is a material change for the maximum scale of pay. Irrespective of the earlier selection grade which was granted to the applicant sometimes in 1977. The applicant has got one promotional chance as said above.

8. In view of the facts and circumstances explained above, we find that the present application has no merit and the application is, therefore, dismissed leaving the parties to bear their own costs."

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

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

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