

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.2252 of 93

New Delhi, dated this 20th day of October 1994.

HON'BLE MR. B.K. SINGH.

Shri K.C. Upadhyay,
Assistant Engineer,
Pancheshwar Hydrological
Observation Sub-Division,
Tanakpur (U.P.)

... Applicant.

By Advocate: Shri B.S. Mai nee.

VERSUS

Union of India: Through

1. The Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi.

2. The Chairman,
Central Water Commission,
Sewa Bhawan, R.K.Puram
New Delhi.

... Respondents.

By Advocate: Shri Jog Singh.

ORDER

Hon'ble Mr. B.K. Singh.

This O.A. No.2252 of 1993 K.C. Upadnyay vs.
Union of India and others is directed against order
No. 19012/991/82-EST-V dated 5.3.93 (Annexure A-1)
of the paper book.

2. The admitted facts are that the applicant had
gone on deputation in National Hydro Electric Power &
Corporation Ltd. (NHPC), Devighat Hydro-Electric
Project, Kathmandu, Nepal and he remained there with
effect from 28.2.79 to 14.4.82. while he was on

deputation, his junior Shri R.S. Verma, who was available in the cadre was promoted to the higher grade of EAD/A.E. on adhoc basis with effect from 9.12.81. Shri R.S. Verma's pay was fixed on promotion as EAD/A.E. and he continued to draw EAD/A.E.'s pay by virtue of his actually performing the duties ~~as & of~~ the higher post to which he was promoted on adhoc basis. It is admitted by both the parties that the applicant was promoted as EAD/A.E. with effect from 15.4.82 (Forenoon) on adhoc basis, on his repatriation to his parent department. The applicant was appointed on regular basis as EAD/A.E. in C.W.C. with effect from 26.12.83; whereas Shri R.S. Verma was promoted as regular EAD/A.E. with effect from 31.12.83. In the application, the applicant has prayed for quashing the impugned order at Annexure A-1 and to fix the salary of the applicant at Rs.650/- with effect from the date from which his junior Shri R.S. Verma was fixed at Rs.650/- i.e. the applicant should be paid salary from September 1980 ^{other} and given consequential benefit of increment and arrears ^{another} to be deemed to be ~~as~~ promoted from the date from which his junior Shri R.S. Verma was promoted.

3. A notice was issued to the respondents, who filed their reply and contested the application and grant of relief prayed for. I heard the learned counsel Shri B.S. Maini for the applicant and Shri Jag Singh for the respondents and perused the record of the case. The main thrust of the ^{argument of} learned counsel for the applicant was that the applicant was sent on deputation in public interest and his lien was maintained by the respondents and thus the applicant is entitled to the benefit ^{of} Next Rule and stepping up of his salary

B

at par with his juniors. He also argued that the vacancies were not adhoc, though the promotion was described as adhoc, but these were regular vacancies. The juniors to the applicant on promotion were continuously working against the promoted post without any break and were subsequently regularised. Thus he claims that the applicant is entitled to the salary though on adhoc basis which his immediate juniors got on promotion when the applicant was on deputation to Kathmandu.

4. The promotion of Shri R.S. Verma and others was made on adhoc basis in the exigencies of public service. It is a co-incidence that the applicant, during the period in question, was away to Kathmandu on deputation. If a regular promotion had been made by DPC, the applicant would have been entitled to proforma promotion, but since there was no meeting of DPC for regular promotion to the post of CDO/A.O.E., no proforma promotion was given to the applicant. The applicant during the period must have been drawing deputation allowance and also over-seas allowance, which is admissible to an officer on deputation to Kathmandu. In addition, he must have been drawing project allowance and other perks. It is also a co-incidence that Shri R.S. Verma and others, who were promoted earlier on an adhoc basis were never reverted and got regularised in their post in continuation of their adhoc promotion given in exigency of public service. The pay, thus fixed will certainly be higher than the pay admissible to the applicant, when he returned to the parent cadre/department on repatriation, after completing the period of deputation. This is not anomaly. Rule 22(c) of the FR/SR is not attracted in this case. i.e. the senior most The NBR is available only to one person who is working in the cadre and is not on deputation.

The deputationist is entitled to proforma promotion in case a junior to him is promoted on a regular basis. Unfortunately, the juniors in this case were not promoted on regular basis and promoted only on adhoc basis to meet the functional requirement of the department. The vacancy may have been regular, but Promotions were on an adhoc basis. It is also submitted that the applicant was appointed on a regular basis earlier than Shri R.S. Verma. The applicant was regularised with effect from 26.12.83 and Shri R.S. Verma was regularised as EAD/A.E. with effect from 31.12.83. Thus the applicant got the benefit of his seniority in the regular promotion. The pay of his junior Shri R.S. Verma was stepped up with reference to the pay of his immediate junior in pursuance of this Hon'ble Tribunal's judgement dated 1-3-92, ~~and~~ according to which Shri R.S. Verma was drawing a pay of Rs.680 w.e.f. 9.12.81 (the date of his adhoc promotion with next increment due from 1.9.82 (pay Rs.710/-); whereas the applicant was drawing pay ~~as~~ Rs.650/- with effect from 15.4.82 and Rs.680/- with effect from 2.8.82 and Rs.710/- with effect from 1.8.83. Thus the applicant has been drawing less pay as compared to his junior Shri R.S. Verma. The question of pay fixation at par will arise only when proforma promotion is given to a deputationist, if he is not available and his junior is promoted on a regular basis. This facility will not be available if a person is promoted in fortuitous circumstances though junior on ~~an~~ adhoc basis and he draws a pay in the promoted post even though on an adhoc basis and earns increment in that post and gets regularisation sooner or later without ~~an~~ adhoc any break in continuation of his promotion and without

B

any reversion to a lower post. In such a case, the increment earned by a junior officer though promoted on an adhoc basis earlier will certainly be higher and it does not give any right to a Senior who is on deputation to claim that benefit from the date his junior got promotion. He will be entitled to draw the pay of the higher post when he is given promotion and he joins in pursuance there of. His adhoc promotion on the basis of the seniority list may give him the benefit of earlier regularisation but it cannot compensate him for the increment earned by the juniors who got adhoc promotion earlier than the senior. It is only in case of regular promotion that the proforma promotion is given. Here no proforma promotion was given to the applicant, and as such, he would not be entitled to those increments, which had been earned by Shri R.S. Verma and his juniors and it is not a case of anomaly. He was not functioning in the promoted post prior to his re-joining his Department. Thus the claim of the applicant for arrears of pay and fixation of pay at par with Shri R.S. Verma and his juniors is not legally justified. He has been given regular promotion prior to Shri R.S. Verma and others, which is perfectly justified. On this base, he cannot claim any arrears from the date Shri R.S. Verma, his immediate junior was promoted nor can he get increment which Shri Verma earned in the promoted post since he was not reverted

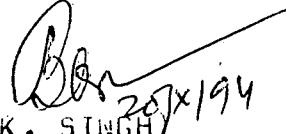
B

....6

(17)

-6-

and he was regularised in continuation of the adhoc promotion. I do not find any merit in the application and accordingly the same is dismissed leaving the parties to bear their own cost.


(B.K. SINGH) 20/1/94
MEMBER (A)

Pup