

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 34 of 198

DATE OF DECISION 6-4-1989

Mr. C.R.Samajpati, I.A.S. Petitioner

Mr. S.Tripathy Advocate for the Petitioner(s)

Versus

State of Gujarat, Gandhinagar Respondent

Mr. Anil Dave & Mr. J.D.Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

The Hon'ble Mr. P. M. Joshi : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

1. Mr.C.R.Samajpati, I.A.S.
Urban Land Tribunal &
Ex-Officio Secretary to
the Government of Gujarat,
Revenue Department,
Urban Land Tribunal,
L.D.Engineering College,
Ahmedabad-15

..... Petitioner

(Advocate: Mr.S.Tripathy)

Versus

1. State of Gujarat,
Chief Secretary to Government
General Administration
Department, Sachivalaya,
Gandhinagar.

..... Respondents

(Advocate: Mr.Anil Dave &
Mr.J.D.Ajmera)

JUDGEMENT

O.A. No. 34 of 1986

Date:- 6-4-1989

PER : Hon'ble Mr. P.H. Trivedi : Vice Chairman

We are constrained to observe that in this case the course of the petitioner's grievance has taken several twists and turns and the stand taken by the respondent at different stage of the hearing has assumed the character of a somer sault. Cutting through tangled web of rival contentions the position emerges that the petitioner who belongs to the 1962 batch of Indian Administrative Services of the Gujarat cadre was first allowed super time scale from 4th July, 1980 when his junior Shri Mukundan of the 1963 batch was promoted to the Super time scale on 22nd March, 1980. In this petition

therefore, the petitioner has claimed the relief of of the promotion to have been deemed to have been given with effect from a date between November, 1979 when his senior was promoted and 22nd March, 1980 when Shri Mukundan was promoted. Subsequently, however, by notification dated 11th February, 1987 the respondents, after considering the representation of the petitioner have notified that he should be deemed to have been promoted to the super time scale with effect from 22-3-1980 the date of promotion to the super time scale of his next immediate junior Mr. Mukundan. The respondents have produced the notification and have stated so in para 8 of the reply of respondent No.1. However, in reply to the claim of the consequential benefit of pay and emoluments the respondents have substantially altered their stand. In para 10 of the reply dated 1-9-1987 that the Union of India was the competent authority and had clarified that the period covered by the deemed promotion would be counted for fixation of initial pay and regulation of future increments but arrears of salary for the period covered by the deemed promotion viz. 22-3-1980 to 7-7-1980 is not admissible. In their reply dated 1.6.1988 they have stated that the representation of the applicant was duly considered by the respondent No.1 in consultation with Government of India and that the Govt. of India was not of the opinion to give promotion to the applicant with retrospective effect and, therefore, the applicant's representation was not accepted. In para 7 of the said reply they have stated that the Government of India is a competent authority which had held that it is not ~~xxxxxxxxxx~~

admissible to give difference of salary to the applicant for the period of deemed promotion and, therefore, the difference of salary is not payable to him and that in pursuance of the policy of the Govt. of India, it is not open to the respondent - Govt. of Gujarat to pay the difference of salary to the applicant. However, in their reply dated 20-12-1988, the State Govt. have taken a totally different stand. In para 4, they have cited IAS (Conditions of Service Residuary Matters) Rules. 1960 which subjects the IAS officer serving in connection with the State to the Rules, regulations and orders applicable to officers of the State Civil Services Class-II subject to such exception and modification as Central Govt. may after consultation with the State Govt. concerned by order in writing make and that no such rules or regulation have been made under IAS Act, 1951 including IAS (pay) Rules, 1954 providing for the payment of difference of pay and allowances. The respondents have cited the Govt. circular dated 30-3-1970 issued by the State of Gujarat and reproduced at Annexure I to this reply. At this stage, it is quite clear that the respondents have totally departed from their stand that it is Govt. of India's advice or instructing which stood in the way of allowing the Govt. of Gujarat to pay the difference of salary etc. to the petitioner. In fact by our order dated 22-11-1988, when the learned advocate for the respondent had made this plea of making the Govt. of India a necessary party on the ground that it is their instruction that stood in the way and that the Govt. of India was the competent authority and that the Govt. of Gujarat was acting in consultation with them, we ordered as follows :

22-11-1988

"Heard Mr. S. Tripathy and Mr. Sandip Shah for Mr. Anil Dave learned advocates for the applicant and the respondent Govt. of Gujarat. Mr. Sandip Shah states that Govt. of India is a necessary party because without their consent and approval merely on effect being given to the deeming of the promotion from 22-3-1980, the difference in pay cannot be given to the petitioner. He states that no reversion or stipulation has been made in the relevant order for this purpose. He also states that there is nothing in rules requiring any approval of Govt. of India and they are silent on the question of the right accruing regarding pay and emoluments consequential to the deeming of the promotion effected. However, on correspondence being made on the matter with the Govt. of India, the Govt. of Gujarat has been advised that the difference of the pay should not be paid on deeming the promotion to have been effected from 22-3-1980.

After hearing the learned advocate, we do not find that it is established that Govt. of India in this case is a necessary party as no relief is sought from it and it is not being made out that a relevant decision regarding the relevant relief sought cannot be made by the Govt. of Gujarat. The respondent-Govt. of Gujarat has associated the Govt. of India in deciding the deeming promotion being effective from 22-3-1980 and there is no rule or instructions produced requiring any separate approval from the Govt. of India regarding consequential payment of difference in pay arising from this order. The Govt. of Gujarat-respondent is of course free to take the position that on such deeming effect being made no automatic or necessary consequences or liabilityx regarding payment of difference arises but this will need to be established with reference to rules or instructions or even from the fact of the consequential decision having been taken for receiving such pay on separate grounds. After

hearing the learned advocates the case now deferred for judgment. Parties are free to file their written submissions in which respondent-Govt.of Gujarat may also include any rule or instruction making it necessary for Govt. of India to approve payment of the difference of pay separately as a pre condition to the respondent-Govt.of Gujarat granting such relief as sought. Four weeks time granted for filing written submissions."

2. If the respondents on reconsideration of their reply had desired to depart from the position that they had earlier taken the proper course, for them would have to seek permission to amend their reply. It is clear that otherwise, by changing their stand at that stage the petitioner would be taken by surprise and would be put to a position of disadvantage. However, instead of doing so, the respondents have sought to not only introduce an important modification but in fact changed the entire course of their reply. ~~It~~ It is not the Govt.of India or any of its instruction or advise which stands in the way of the respondent as the reply clearly says and that the Govt.of India were sought to be impleaded as a necessary party due to a misconception. It would not be fair or proper to allow the respondent to rely upon the circular of 30th March, 1970 for being heard on the merits of their right to refuse the claim of the petitioner on its basis. This part of the respondent's case could therefore be held to fail by the collapse of the vital plank on which it was made to stand by the respondent. We have, however, decided to consider the reply dated 20-12-1988 and the applicability of the validity of the circular dated 30th March, 1970 not on the basis of its status as amendment of reply of the respondent but as a clarification provided by the respondent in reply to our order dated 22-11-1988.

3. It is therefore, not necessary to engage ourselves with the contentions history of the petitioner's grievance, whether the petitioner's promotion was withheld on valid or illegal or malicious grounds. We are now required to consider whether the effect of the Govt. orders subsequent

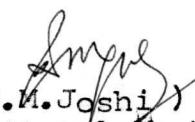
(17)

to the petition deeming his promotion to be from 22nd March, 1980 automatically entitled him to the difference of pay etc. as consequential benefit. The petitioner has relied upon the judgment of this Tribunal (Chandigarh Bench) in O.A. No.375 of 1986 which drew upon (1) Charan Das Chadha Vs. State of Punjab and others, 1980(3) SLR 702, (2) Dilip Singh Vs. Punjab and Haryana High Court and others, 1983(1) SLR 242, (3) K.K.Jaggi Vs. State of Haryana and other 1972 SLR 578 and (4) the Supreme Court's decision in State of Mysore Vs. C.R. Seshadri and others, AIR 1974 SC 460 for the decision that when a promotion has been deemed to have been given with retrospective effect, the benefit of pay and other emoluments from that date cannot be denied and the plea that the Govt. servant has not worked in the said promotion post cannot be accepted and that there is a clear title for arrears of pay whether the applicant had worked or not but he is deemed to have worked against the promotion post from the date when he was due for promotion. The petitioner has also relied on AIR 1987 S.C. 479 in which the Supreme Court insisted by directing the Government of Gujarat to consider a-fresh the claim of the petitioner and directed it to give consequential benefits. Of course in AIR 1988 S.C.1069, the Supreme Court has ruled that the Tribunal cannot take over the function of the selection committee or order deemed promotion nor equate its jurisdiction with the Supreme Court. In view of the State Government's order dtd.11-2-1987 this Tribunal is in a position to adjudicate regarding payment of consequential benefits of such deemed promotion.

4. The whole case, therefore, turns upon the weight of the decisions of the several courts and the law on the subject determined as a result of the Supreme Court's decision referred to and the effect of the circular Dtd. 30th March, 1970 relied upon by the respondent. It must be noted that the decisions of the courts are of subsequent years, that the respondents have not pleaded or submitted that the circular has any statutory force and that there is any scope to regard the ratio in the Court's decisions to be different from the issues with reference to which the circular lays down, the policy. We see no reason why the decisions of the courts and the principles stated in the Supreme Court's decision of AIR 1974 SC 460 must not be held to hold the field.

5. We accordingly find that the petition has merit to the extent that the deemed date of promotion viz. 22-3-1980 must carry with it the consequential benefits of payment of arrears of salary and emoluments consequent to the promotion. We direct that such arrears be paid to the petitioner within a period of 4 months of the date of this order. There shall be no order as to costs.


(P.H.Trivedi)
Vice Chairman


(P.M.Joshi)
Judicial Member