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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A./48/93 in
O.A. NO. 186/89

~~**Tax NO.**~~

DATE OF DECISION 12th January 1998

S.L.Erande

Petitioner

Mr. P.K.Handa

Advocate for the Petitioner (s)

Versus

Union of India & another

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr.

V.Ramakrishnan, Vice Chairman

The Hon'ble Mr.

T.N.Bhat,

Member (J)

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S.L.Erande
10, Ganesh Shivam Society
Karelibaug
A Vadodara- 390 022.

(27)
Applicant

Advocate: Mr. P.K.Handa

Versus

1. Union of India
Notice to be served to
The Director General
Department of Posts
Ministry of Communication
Dak Bhavan
New Delhi.

2. The Chief Postmaster General
Gujarat Circle
Khanpur
Ahmedabad.

Respondents

Advocate: Mr. Akil Kureshi-

JUDGEMENT

IN

R.A./48/93 in OA/186/89

Dated 12th January 1998

The Review Applicant is a retired Postal department employee who was applicant in OA/186/89. He had then approached the Tribunal challenging the department's rejection of his request that he should be given notional promotion in the H.S.G. Grade-I w.e.f. the date on which his immediate junior was promoted to that post by the order dated 27.6.84 so that he could get the benefit of pay notionally fixed in that post on his subsequent promotion to the P.S.S. Group B post. He was holding a post in the Postal Training Centre (PTC) Baroda w.e.f. 18.5.81 which is a different cadre as compared to his parent cadre of Inspector of Post Offices/

Assistant Superintendent of Post Offices (ASP). He went on deputation to this ex-cadre post after he was promoted as ASP in his parent cadre and the post of Senior Inspector in the PTC was also in the grade of ASP. In the PTC he was promoted on ad hoc basis as a lecturer from 1.7.83 which is a Postal Superintendent service Group B cadre (PSS Group B). Subsequently he was regularly selected to the PSS Group B cadre on the basis of the All India seniority as Inspector of Post Offices on 22nd September 1986 but he was allowed to continue as Lecturer in PTC. His grievance in OA/186/89 was that while he was on deputation to the PTC one HSG Post fell vacant in the parent cadre and he should have been promoted on a notional basis to that level w.e.f. the date on which his immediate junior was promoted by order dated 27.6.84. He claimed that he would have then got the benefit of F.R.22-C on such notional promotion in the HSG-I post and on his retention in the PTC as lecturer in PSS Group B level, he would have got the benefit of one more fixation of pay under F.R. 22-C. In the absence of a notional promotion to level of HSG-I he got the benefit of F.R.22-C fixation only once. He did not revert back to the ~~parent~~ parent cadre but continued in PTC on absorption and retired from service from 1.4.90.

2. The Tribunal considered this O.A. in detail and held that as he was holding the ex-cadre post on deputation basis, the question of notional promotion

would arise only in the context of the next below rule and in terms of that rule, he was not entitled to such benefit. The Tribunal also had ascertained that no persons junior to the applicant as ASFO was promoted first to the HSG-I grade and then to the PSS Group B and was given more pay than the applicant due to fixation of pay twice under F.R.22-C. In the light of this position the Tribunal found no merit in the petition and dismissed the same. The present Review Applicant seeks review of this judgement.

3. We have heard Mr. Handa for the Review Applicant and Mr. Kureshi for the respondents.

4. Mr. Handa's contention is that the Tribunal fell into error in holding that the Next Below Rule would be relevant in the applicant's case. According to him the applicant was entitled to promotion in his parent cadre where he had retained a lien till his absorption in the PTC. Mr. Handa also draws attention to orders of Tribunal in OA/519 of 90 disposed of on 29.10.93- Shri Dharanidhar Kanjibhai Patel vs. Union of India. In that O.A. the Tribunal directed the department to give proforma promotion to the applicant therein to the post of HSG-I and on applicant's promotion to the post of PSS Group B his pay had to be revised on the basis of the pay fixed on his deemed promotion to HSG-I post. Mr. Handa says in that case the Tribunal had not invoked the provisions of next below rule and the applicant had got the benefit which had not been extended to the Review Applicant.

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3. Mr. Kureshi counsel for the original respondents does not agree with the contention of Mr. Handa. He says there is no error apparent on the face of the record which would warrant allowing the Review Application. He also says that facts in OA/519/90 were quite different as compared to the facts pertaining to the Review Applicant.

4. We have bestowed our careful thought to the rival contentions. The Tribunal while disposing of OA/186/89 had specifically come to the conclusion that the applicant can get the benefit of the notional promotion if he were to satisfy the provisions of the next below rule. There is detailed discussion on this question in para 7 to 10 and para 13 of the ^{judgement} O.A. The Tribunal also had gone into the question whether any junior to the applicant in the parent cadre was drawing more pay in PSS Group B on account of getting the benefit of FR 22-C and found that there was no such case. This is seen at para 11 of the judgement. The Tribunal had thereafter decided that the applicant did not satisfy the conditions of Next Below Rule nor ~~there~~ was there any question of any junior of his drawing more pay in PSS Group B and he was not entitled to that benefit. When a person is on deputation and he wants to get proforma promotion in his parent cadre, he can get such benefit only under the provisions of Next Below Rule under F.R.30. We do not see that there is any error in relying on this rule. In any case, the

Tribunal's considered view was that the applicant had to satisfy the conditions of that rule for getting the benefit sought for ^{and} there is no error apparent on the face of the record which would warrant allowing the Review Application.

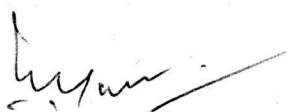
As regards the case of D.K.Patel in OA/519 of 90 cited by Mr. Handa, this is a subsequent judgement delivered on 29.10.93 whereas the O.A. sought to be reviewed was decided on 5.2.93. The later judgement is not a ground for reviewing the earlier decision. In any case, we find that the facts in OA/519/90 are quite different. We may extract part of para 3 of that judgement:-


"There is no dispute about the fact that the applicant was within the zone of consideration for the post of HSG-I as his junior Mr. N.P.Patel was also within the zone of consideration for promotion to that post. The mere fact that the applicant was already selected (but not actually promoted still) can have no bearing whatsoever on the question whether the applicant was fit for promotion to the post of HSG-I. If a contrary view is taken, it would result in grave injustice to an officer excluded from consideration because, in the exigencies of service, the actual promotion of such an officer to the still higher post (PSS Group-B in this case) might materialise after the promotion of the junior officer (Mr. N.P.Patel in this case) to the immediately next promotion post (the post of HSG-I in this case). In that case,

an officer, like the applicant, would be subordinate to his junior at least till his promotion to the higher post (PSS Group-B in this case) which might occur later than the promotion of the junior to the immediate higher post (HSG-I in this case). In fact, this anomaly did arise in the present case consequent upon the promotion of Mr. N.P. Patel to HSG-I and the promotion of the applicant to the next higher post of PSS (Group B) materialising on 18.1.90. Therefore, between 15.1.90 and 18.1.90 the applicant who was senior to Mr. N.P. Patel held the lower post of ASPO while Mr. N.P. Patel was holding the higher post of HSG-I. (Emphasis supplied).

So far as the Review applicant is concerned, he continued in the ex-cadre post in PTC and got absorbed there. He was at no time holding a lower post as compared to any of his juniors. *and on 27.6.94 he was holding a PSS Group B post* In fact he also did not draw less pay than any of his juniors. The reliance in D.K. Patel's case is thus of no avail to the Review Applicant.

5. In the circumstances, we hold that the Review Application is devoid of merit and we dismiss the same.


(T.N. Bhat)
Member (J)


(V. Ramakrishnan)
Vice Chairman