

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Original Application No. 426 of 2011

FRIDAY, this the 24<sup>th</sup> day of August, 2012

CORAM:

HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER  
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

M.K. Balachandran Pillai,  
Krishnanjali,  
28/2903, Ponneth South Road,  
Kadavantara PO, Kochi - 20  
[Dy. Registrar, CAT, Bangalore  
Bench, Bangalore (Retd.)]

... Applicant

[Party in person]

versus

1. The Principal Registrar,  
Central Administrative Tribunal,  
Principal Bench, Copernicus Marg,  
New Delhi.
2. The Registrar,  
Central Administrative Tribunal,  
Ahmedabad Bench, Navrengpura,  
Near Sardar Patel Stadium,  
Ahmedabad.
3. The Registrar,  
Central Administrative Tribunal,  
Bangalore Bench, Indira Nagar,  
Bangalore.
4. Union of India, represented by its  
Secretary, Department of Personnel and  
Training, North Block, New Delhi. ... Respondents

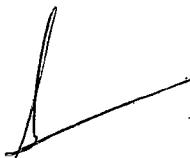
[By Advocate Mr. George Joseph, ACGSC]

The application having been heard on 13.08.2012, the Tribunal on  
24-08-12 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

While serving as Section Officer, Central Administrative Tribunal (CAT), Ernakulam Bench, the applicant was promoted on ad hoc basis as Deputy



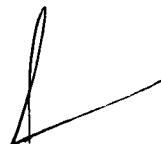
Registrar, CAT, Ahmedabad Bench on 05.03.2009. His pay was fixed at Rs. 25780/- ignoring his request to fix his pay after drawing an increment in the pre-promotional post on 01.07.2009. He and his junior, Shri M.K. Balachandran, were drawing the same pay as Section Officer at Ernakulam. When Shri M.K. Balachandran was promoted as Deputy Registrar, CAT, Madras Bench, on 10.08.2009, his pay was fixed at Rs. 26560/-. Not having completed six months after promotion, the applicant missed an increment on 01.07.2009 and got his increment in the promotional post only on 01.07.2010. He was informed vide letter dated 04.11.2009 (Annexure A-6) that since he and his junior were ad hoc in the cadre of Deputy Registrar, stepping up of pay to the level of his junior was premature at that point of time. His representation dated 22.03.2010 was also rejected on the same ground vide letter dated 21.04.2010 (Annexure A-8). After retirement on 31.10.2010, without regularisation in the post of Deputy Registrar, the applicant has filed this O.A. for the following reliefs:

- “1. To call for the records leading to Annexure A-8 and quash the same.
2. To declare that the promotion of the applicant to the post of Dy. Registrar with effect from 5.3.2009 is a regular promotion and that he is entitled for exercising his option to draw the pay in the grade of Dy. Registrar after drawing his increment in the grade of SO/CO, which was due on 1.7.2009.

OR

To declare that the applicant is entitled to get stepping up of his pay to that of his junior Mr. M.K. Balachandran from the date on which he is getting higher pay consequent on his promotion as Dy. Registrar.

3. To direct re fixation of the pay and pension of the applicant in the grade of Dy. Registrar with all consequential benefits including arrears of pay and pension.
4. To pass any other order or direction which this Hon'ble Tribunal may find appropriate in the circumstances of this case.
5. To award cost and incidentals of this Original Application.”



2. The applicant contended that he was found fit for promotion by the DPC. His ad hoc promotion on 05.03.2009 as Deputy Registrar against regular vacancy was as good as regular promotion. Non-consideration of his option for fixing his pay after granting increment due on 01.07.2009 has resulted in his being deprived of one increment and consequential loss in pay and pension. Fixation of pay of his junior on promotion months after his promotion at a higher stage than his pay constitutes an anomaly. On account of rejection of his representation for stepping up of pay, he has suffered loss of pay and is suffering recurring loss in pension. He got only one increment for 2 years service from 01.07.2008 to 01.07.2010. The DPC which met on 10.11.2009 had recommended his regularisation as Deputy Registrar. There is no rule against stepping up of pay of the senior while on ad hoc promotion, if a junior is drawing on ad hoc promotion more pay than his senior. He served as Deputy Registrar without any break from 05.03.2009 to 31.10.2010.

3. Per contra, the respondents contended that in terms of F.R. 22, the applicant could not be given the benefit of option in fixation of pay as sought by him as his promotion as Deputy Registrar was on ad hoc basis. His junior, Shri M.K. Balachandran, got promotion as Deputy Registrar on 10.08.2009 after earning his annual increment in the lower grade of Section Officer on 01.07.2009. He got one increment at the time of his promotion also and the present anomaly arose. Admittedly, there is an anomaly, but the same could not be removed by stepping up the pay of senior since both the officers were working on ad hoc basis and the representation of the applicant for stepping up his pay was rejected being premature. The respondents had sent a proposal for dereservation of 3 vacancies (1-SC and 2-ST) to the Government on 31.12.2009. The DoP&T vide letter dated 08.09.2010 informed that earlier

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recommendation of the DPC on 10.11.2009 was not in order since it had recommended 5 general category candidates plus reserve panel of 4 with the assumption that all the vacancies were in the general category. It was advised to send fresh proposal as per the recommendations of the DPC for filling up 2 general category vacancies. In the meantime, more vacancies arose. The recommendation of the DPC convened on 27.10.2010 for appointment of 7 officers, including the name of the applicant could not be materialise as the DoP&T vide letter dated 10.11.2010 had requested to send a proposal by preparing yearwise panel. Finally, the DPC met on 21.03.2011 and recommended promotion of 13 officers on yearwise panel and the name of the applicant was recommended for promotion with effect from 01.07.2010 against the panel year 2010-11. The said recommendation was accepted by the Government, but the order of appointment was issued on 19.05.2011. As 4 officers including the applicant had retired from service, only 9 officers were promoted. In *State of Utaranchal and Another vs. Dinesh Kumar Sharma*, 2007 KHC 3035, the Hon'ble Supreme Court had held that no retrospective effect can be given to the order of appointment.

4. We have heard the applicant and Mr. K. George Joseph, learned ACGSC appearing for the respondents and perused the records.

5. The ad hoc promotion of the applicant from the post of Section Officer to the post of Deputy Registrar on 05.03.2009 continued till 31.10.2010, when he retired from Government service. Any arrangement which lasts for more than one year cannot be treated as ad hoc. The ad hoc promotion of the applicant had all ingredients of regular promotion; there was a regular vacancy of Deputy Registrar over which no officer had a lien; the applicant was

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qualified and found fit by a DPC. His regularisation was recommended by the DPCs convened on 10.11.2009 and 21.03.2011. He worked as Deputy Registrar till his retirement and was paid as Deputy Registrar. The proposal for dereservation sent on 31.12.2009 was not considered till 08.09.2010. The delay of more than 8 months in the matter of regularisation is not explained at all. The vacancy based reservation, dereservation, yearwise panel for vacancies of different years etc. are matters to be dealt with by the establishment branch of the respondents. The failure on the part of the respondents to deal with establishment matters with expertise and speed has resulted in the denial of higher pay, higher retirement benefits and higher pension to the applicant. Promotion is not a matter of right, but consideration for promotion is a right of an employee. In the instant case, the applicant was considered; he was found fit for promotion as Deputy Registrar. But administrative delay forced him to retire on ad hoc promotion which in effect is a negation of the right to be considered for promotion as he was not given the entitled benefits of promotion in full measure. The respondents should have noted that during the 2 year period from 01.07.2008 to 01.07.2010, the applicant earned only one increment instead of 2. The loss of one increment was not due to any reason attributable to him. Therefore, suitable relief should have been given to him.

6. The junior of the applicant, Mr. M.K. Balachandran, due to fortuitous circumstances, was a beneficiary of fixation benefit without any loss of increment. He got promotion on ad hoc basis after earning his annual increment in the grade of Section Officer. He got one more increment at the

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time of his promotion also. Thus he got higher pay than the applicant who was his senior. Senior getting less pay than junior is an anomaly. The respondents admitted that there is an anomaly. According to them, the anomaly could not be removed as both the officers were working on ad hoc basis, but did not substantiate the contention. The observation of the Hon'ble Supreme Court in (2009) 3 SCC 94, *Gurcharan Singh Grewal and Another vs. Punjab State Electricity Board and Others*, which is quite relevant to the present case, is reproduced as under :

"17. Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales in which Appellant 1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid a lesser salary than his junior. In such circumstances, even if there was a difference in the incremental benefits in the scale given to Appellant 1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of Appellant 1 was also stepped up to that of Shri Shori, as appears to have been done in the case of Appellant 2."

The respondents ought to have rectified the anomaly by stepping up the pay of the applicant to the level of the pay of Shri M.K. Balachandran. The ad hoc promotion of the applicant for the reasons stated earlier was as good as a regular promotion. As per F.R. 22(l)(a)(1), in cases where an ad hoc promotion is followed by regular appointment without break, the option for fixation of pay is admissible as from the date of initial appointment / promotion, to be exercised within one month from the date of such regular appointment. As there was no break in the service for the applicant as Deputy Registrar and as his promotion on ad hoc basis as Deputy Registrar lasted for more than one year losing the ad hoc nature of promotion, his ad hoc promotion could have been considered as good as regular promotion. The respondents being a model employer should have taken corrective action to remove the anomaly

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in the pay of the applicant on noticing the same. Note 18 of F.R. 22 (I)(a)(1) reads as under:

"(18) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior.-(a) As a result of application of FR 22-C. [Now FR 22(I)(a)(1)].- In order to remove the anomaly of Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

[GI, M.F., O.M.No.F.2(78)-E.III(A)/66, dated the 4<sup>th</sup> February, 1966].

The conditions for stepping up the pay as stated above are satisfied in the case of the applicant.

7. When F.R. 22(I)(a)(1) is read with Note 18, there is justification for



stepping up the pay of the applicant to the level of his junior. The respondents could not cite any specific rule that prohibits stepping up of pay to remove anomaly while on ad hoc promotion. The least that the respondents could have done was to forward the representation of the applicant for favourable consideration to the DoP&T which they did not do. Owing to the indifference on the part of the respondents, 4 officers including the applicant out of 13 officers recommended by the DPC, had retired without getting regular promotion. The respondents should have averted this position. The decision of the Hon'ble Supreme Court in *State of Utaranchal and Another vs. Dinesh Kumar Sharma*, 2007 KHC 3035, relied upon by the respondents for not giving retrospective effect to the order of appointment is not at all relevant to the facts of the case on hand. The Hon'ble Supreme Court decided in the aforesaid case that no retrospective effect can be given to the order of appointment in deciding seniority based on Rules 17 and 21 of the U.P. Agriculture Group-B Service Rules, 1995 and Rule 8 of the U.P. Government Servants Seniority Rules, 1991, which is not the case here. In *State of Bihar and Others vs. Akhouri Sachidananda Nath and Others*, 1991 Suppl. (1) SCC 334, Hon'ble Supreme Court observed that "It is well settled law that no person can be promoted with retrospective effect from a date when he was not borne in the cadre so as to adversely affect others". In the instant case, there was no question of seniority or any question of adversely affecting anyone. It was only a question of regularising an ad hoc promotee before his retirement. In **C.S.I.R. vs K.G.S.Bhatt, (1989) 4 SCC 635**, the Apex Court has held as under:-

*"The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. Every management must provide*



*realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, mis-allocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors." There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions."*

The failure on the part of the respondents to give regular promotion as Deputy Registrar or stepping up of pay should not be allowed to derail granting of justice to the applicant. In the facts and circumstances of the case, we are of the considered view that the ends of justice would be met if the pay of the applicant is stepped up to the level of the pay of Shri M.K. Balachandran with effect from the date he started getting higher pay than the applicant on promotion as Deputy Registrar.

8. Accordingly, the O.A. is allowed as under. The respondents are directed to grant stepping up of pay of the applicant to that of his junior, Shri M.K. Balachandran from the date he is getting higher pay on his promotion as Deputy Registrar and refix his pay and pension with all consequential benefits including arrears within a period of 3 months from the date of receipt of a copy of this order. No order as to costs.

(Dated, the 24<sup>th</sup> August, 12012)

  
K.GEORGE JOSEPH  
ADMINISTRATIVE MEMBER

  
JUSTICE PR RAMAN  
JUDICIAL MEMBER

cvr.