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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.841/88 & O.A.128/89

- I. Vasudeo Gajanan Pendharkar
14/4 Laxmi Narayan Nagar,
Erandwana,
Pune - 411 004.

.. Applicant in
O.A.841/88

vs.

1. Union of India
through
The Secretary,
Ministry of Defence,
New Delhi - 110 011.
2. The Engineer-in-Chief,
Army Headquarters,
DHQ P.O.,
New Delhi - 110 011.
3. Chief Engineer,
Pune Zone,
Southern Command,
Pune - 1.
4. Chief Engineer,
Central Command,
M.G.Road,
Lucknow - 226 002.
5. Chief Engineer,
Lucknow Zone,
M.G.Road,
Lucknow - 226 006.

.. Respondents in
O.A.841/88

- II. S.M.Bhorkar,
Superintending Engineer,
Chief Engineer Southern
Command Office,
Pune - 411 001 & 5 Others.

.. Applicants in
O.A.128/89

vs.

1. Union of India
through
The Secretary,
Ministry of Defence,
New Delhi - 110 011.
2. The Engineer-in-Chief,
Army Headquarters,
New Delhi - 110 011.
3. The Chief Engineer,
Southern Command,
Pune - 411 001.
4. The Chief Engineer-MES
Pune Zone,
Pune 411 001.

.. Respondents in
O.A.128/89.

Coram: Hon'ble Member(A) Shri P.S. Chaudhuri
Hon'ble Member(J) Shri N. Dharmadan

Appearances:

1. Mr. Babu Marlapalle,
Advocate for the
applicants in both the
cases.
2. Mr. R.K. Shetty
Advocate for the
Respondents.

JUDGMENT:
Per P.S. Chaudhuri, Member(A)

Date: 14-3-1991

These two applications filed under Section 19 of the Administrative Tribunals Act, 1985 can conveniently be disposed of by a common judgment as both the applications involve a common question of law. The first, O.A. 841/88, was filed on 15-11-1988 and the second, O.A. 128/89, was filed on 7-2-89. The applicant in O.A. 841/88 is an Executive Engineer in the Military Engineering Service who took voluntary retirement from that Department w.e.f. 31-1-1986. The applicants in O.A. 128/89 are Superintending Engineers/Additional Chief Engineer in the office of the third and fourth respondent in that application. In both the applications the applicants are seeking a direction to the respondents to fix the basic pay of the applicants in the grade of Executive Engineer with effect from the date they were confirmed and deemed to be promoted to that post, payment of arrears from the said date in the post of Executive Engineer (and, in the case of O.A. 128/89,

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higher posts also) and other connected and consequential reliefs.

2. It is the case of the applicants that they joined the Military Engineering Service as civilian employees and were subsequently promoted to the post of Assistant Executive Engineer, Class I. The posts in the grade of Assistant Executive Engineer Class I are filled by promotion as well as by direct recruitment through UPSC in the ratio of 50:50 and an integrated seniority list of Assistant Executive Engineers is prepared for the purpose of further promotion to the post of Executive Engineer. Such a seniority list was published in 1968. But consequent on the judgment of the Supreme Court in Bachan Singh v. Union of India this seniority list was quashed and drawn afresh in 1973-74. It is alleged that in this revised seniority list personnel appointed much after and junior to the applicants by several years were shown senior to the applicants. By the judgment in A. Janardhan v. Union of India the Supreme Court quashed the 1973-74 seniority list and upheld the 1967-68 seniority list for all purposes. They also directed that the promotions made subsequent to the filing of the petition in the High Court be readjusted by drawing up a fresh panel of Executive Engineers keeping in view of 1967-68 seniority list of Assistant Executive Engineers. The applicants

were promoted to the post of Executive Engineer on ad-hoc basis during 1982 and 1983 but they were given seniority in that grade from much earlier dates between 1975 and 1977. (There is a dispute regarding the exact date from which the fifth applicant in O.A.128/89, viz. Mr. P.G. Govande, was promoted as Executive Engineer but as this dispute is not at all material to our decision in this case we are not going into that question.) It is the case of the applicants that by virtue of their promotions to the post of Executive Engineer from various dates in 1982 and 1983, their pay in that grade should be fixed automatically from the dates from which they have been given seniority within a reasonable period after the promotion orders had been issued. However, their pay in the grade of Executive Engineer was fixed in July, 1985 with effect from only 30-12-1983 in the case of the applicant in O.A.841/88 and in December, 1983 ~~with effect from August, 1983~~ with effect from August, 1983 in the cases of the applicants in O.A.128/89. The applicants have alleged that some other Executive Engineers who have been listed junior to them have been fixed on a basic pay much higher than them and they have been given the benefits from the date of confirmation and deemed promotion. On 26-8-1985

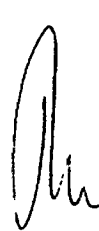
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the applicant in O.A.841/88 and in or about, 1986 the applicant no.1 in O.A.128/89 made a representation regarding stepping up of pay from the date of deemed promotion. But this was rejected.

Applicant No.1 in O.A.128/89 submitted another representation on 7-7-1988 based on the judgment and order of this Bench in W.G.Joshi v. Union of India, Tr.A.No.108/86 decided on 6-1-1988. But this representation, too, was rejected by order dated 9-9-1988.

3. The respondents have opposed the application by filing their written statement. It is their case that it was decided to promote all the officers in the 1967-68 seniority list who remained unpromoted by that time as Executive Engineer on ad hoc basis pending implementation of the judgment of the Supreme Court in A.Janardhan v. Union of India(supra). The applicants were accordingly promoted to the post of Executive Engineer on adhoc basis during 1982 and 1983. In accordance with this Supreme Court Judgment panels for promotion to the grade of Executive Engineer pertaining to the original DPCs held in the years 1974, 1976, 1977 and 1978 were cancelled and review DPCs were conducted in 1984. The officers recommended by review DPCs were awarded seniority in the grade of Executive Engineer with effect from the dates of



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respective original panels but these dates were notional in nature and for the purpose of confirmation and further promotion only. It is the case of the respondents that the applicants are entitled to monetary benefits attached to the post of Executive Engineer only from the dates from which they assumed such appointments, and so started performing duties attached to the higher posts. It is the further case of the respondents that the applicants in O.A.128/89 were further promoted to the grade of Superintending Engineer taking the advantage of notional seniority awarded to them without completing the specified years of regular service in the grade of Executive Engineer.

4. We have heard Mr.Babu Marlapalle, learned counsel for the applicants, and Mr.R.K. Shetty, learned counsel for the respondents.

5. Mr.Marlapalle sought to rely on the judgment of this Bench in W.G.Joshi v. Union of India(Tr.A.108/86). In that case, the applicant (petitioner)W.G.Joshi,too, was an employee of the Military Engineering Service who took voluntary retirement prematurely in 1979 as Assistant Engineer. It was his claim that because of wrongful change of his original seniority which was ultimately

put right after he had retired, he was deprived of promotion as Executive Engineer which was due to him from 1-6-1970. In that case this Bench held that "it has been established by a plethora of judicial pronouncements that where promotions had been denied to an officer for no fault of his and the denial has been corrected subsequently, the promotion has to be made good with retrospective effect with all back wages, etc." This Bench, however, found that the applicant had been duly considered for empanelment in 1974 and not found fit for promotion. The review DPC had, however, placed him in the panel for 1976. In conclusion, this Bench ordered that W.G.Joshi should be given proforma promotion as Executive Engineer w.e.f. the earliest of the dates on which Officers below him in the revised panel of 1976 was so promoted and that he should be given arrears of pay and allowances from that date and his pension on his voluntary retirement in 1979 should be revised on the basis of the pay and allowances to which he is entitled as Executive Engineer.

6. Mr. Shetty, on the other hand, relied on the judgment of the Principal Bench in Ram Labhaya v. Union of India & Ors. (O.A. 855/86) and Nanak Chand Gandhi v. Union of India & Others (O.A. 549/87) in which it has been held that the notional promotion was

for the purpose of seniority only and for no other purpose and that it did not bestow any financial rights on the applicant.

7. The question arising in view of this difference in opinion between the two Benches had been referred to a Full Bench of this Tribunal by the Madras Bench in N.P.Bhat v. Union of India and others (O.A.767/89) and N.R.Natanam Iyer v. Union of India & Others(O.A.842/89). In their order on the question referred to them in these two cases which were decided on 9-8-1990 the Full Bench have stated:

"There can be no manner of doubt that when promotion was given with effect from 5-11-1976, it became incumbent upon the respondents to fix the revised pay of each of the 75 Assistant Executive Engineers, including the two applicants. However, the two applicants had retired from service on the last working day in July and August, 1982 respectively, Since they were not in service on 11-10-1984, the date of the order promoting the applicants, the question of actually promoting them did not arise. They could be given only notional promotion with effect from 5-11-1976 and as a consequence of refixation of pension, they would be entitled to enhanced pension, gratuity, encashment of leave and also enhanced value of commutation of pension. We see no difficulty in their being granted the above relief consequent to the refixation of the applicants' pay/pension on the date of their recruitment from service as Executive Engineers.

A question arises as to whether they are entitled to the actual pay of the post of Executive Engineer from 5-11-1976 although they did not work on that post even for a single day. In other words, would they

be entitled to the difference between the pay and allowances received by them as Assistant Executive Engineer and the pay and allowances of the post of Executive Engineer ? "

In conclusion, relying on the judgments of the Supreme Court in S.Krishnamurthy v. General Manager, Southern Railway - AIR 1977 SC 1868 - and Paluru Ramkrishnaiah and ors. v. Union of India & another -(1989)10 ATC 378- the Division Bench held:

"For the reasons stated above, we are of the view that the applicants are not entitled to enhanced pay and allowances for the period from 5-11-1976 to the date of their superannuation when they did not actually work in the post of Executive Engineer and consequently they are also not entitled to the difference in pay and allowances between the two posts of Assistant Executive Engineer and Executive Engineer. Hence the question of payment of arrears of pay and allowances does not arise. We are therefore in agreement with the view taken by the Principal Bench and the Madras Bench of this Tribunal referred to above. We are, however, not able to subscribe to the view taken by the Chandigarh and New Bombay Benches of this Tribunal. We answer the question accordingly and let the answer be returned to the Division Bench of this Tribunal at Madras."

8. In paras 19 and 20 of Paluru:
Ramakrishnaiah's case(supra) the Supreme Court held:

"19.The grievance of the petitioners, however, is that this promotion tantamounts to implementation of the order of this Court dated February 2, 1981 only on paper inasmuch as they have not been granted

the difference of back wages and promotion to higher posts on the basis of their back date promotion as Chargeman II. As already noticed earlier certain writ petitions filed in Madhya Pradesh High Court were allowed by that Court on April 4, 1983 relying on the judgement of this Court dated February 2, 1981 ... against the aforesaid judgement dated April 4, 1983 Special Leave Petitions were filed in this Court... and were dismissed on July 28, 1986. The findings of the Madhya Pradesh High Court in its judgment dated April 14, 1983 thus stand approved by this Court..... as regards back wages the Madhya Pradesh High Court held:

"It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively, at the most they would be entitled to refixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them."

Insofar as Supervisors 'A' who claimed promotion as Chargeman II the following direction was accordingly given by the Madhya Pradesh Court in its judgement dated April 4, 1983 aforesaid:

"All these petitioners are also entitled to be treated as Chargeman Grade II on completion of two years satisfactory service as Supervisor Grade 'A'. Consequently, notional seniority of these persons have to be refixed in Supervisor Grade 'A', Chargeman Grade II, Grade I, and Assistant Foreman in cases of those who are holding that post....

The petitioners are also entitled to get their present salary re-fixed after giving them notional seniority so that the same is not lower than those who are immediately below them."

20. In our opinion, therefore the appellants... deserve to be granted the same limited relief....."

9. In view of this position, we hold that the application succeeds partly and that the applicants would be entitled to refixation of their ~~present~~ salary on the basis of the notional seniority granted to them in different grades so that their salary is not less than those who are immediately below them but arrears, if any, on this account would only be payable from the dates that they actually assumed charge of the higher post/posts. We direct the respondents to take appropriate action in the matter-including refixation of pension, gratuity, encashment of leave and enhanced value of commutation of pension in the cases of the applicants who have already retired- within a period of six months from the date of this order.

10. In the circumstances of the case there will be no order as to costs.