

(7)

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW BOMBAY BENCH

O.A. No. 523/89

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198

DATE OF DECISION 1 - 5 - 1991

Shri N.Ramachandran.

Petitioner

Shri Y.G.Waknis

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri R.K.Shetty

Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. U.C.Srivastava, Vice-Chairman,

The Hon'ble Mr. M.Y.Priolkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes.*
2. To be referred to the Reporter or not ? *No.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No.*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No.*

*[Signature]*  
(M.Y.PRIOLKAR)  
MEMBER(A).

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.523/89

Shri N.Ramachandran.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Vice-Chairman, Shri U.C.Srivastava,  
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:-

Applicant by Mr.Y.G.Waknis.  
Respondents by Mr.R.K.Shetty.

JUDGMENT:-

(Per Shri M.Y.Priolkar, Member(A)) Dated: 1-5-1991

The applicant in this case retired on superannuation on 31.10.1981 as Assistant Executive Engineer under the Ministry of Defence, to which post he had been promoted on 3.8.1962. In the case of A.Janardana v. Union of India (AIR 1983 SC 769) where the dispute was about the relative claims of promotees like the applicant and of direct recruits for further promotion to the post of Executive Engineer, the Supreme Court decided in favour of the departmental promotees and upheld the seniority lists of Assistant Executive Engineers of 1963, 1967 and 1968 based on the principle of continuous officiation while the promotion panels for the post of Executive Engineer drawn up on the basis of DPCs held from 1974 and thereafter were quashed. Review DPCs were constituted on the basis of seniority lists of 1967

and 1968 upheld by the Supreme Court and on their recommendation, Government issued orders on 11.10.1984 promoting a large number of departmental candidates, (including the applicant) to the rank of Executive Engineer with effect from 5.11.1976 for the purpose of ~~Confirmation~~ <sup>Clarification</sup> and further promotion. The prayer of the applicant in this application, which is filed on 7.8.1989, is for payment of arrears of pay and allowances on refixation of his pay as Executive Engineer from 5.11.1976 as also of pensionary benefits on that basis.

2. According to the respondents, the matter regarding pay and allowances was to be dealt with in accordance with rules and regulations on the subject, as affirmed by the Supreme Court in its judgment in Contempt Petition No.25606 of 1984 in C.A. No.360/83. The respondents state that since the applicant retired on superannuation on 31.10.1981, his promotion as Executive Engineer ordered by Government Order dated 11.10.1984 has not actually taken place, and therefore he is not entitled to pay and allowances as Executive Engineer within the frame work of rules and regulations.

3. The relevant rule on the subject is Fundamental Rule 17 which lays down that "an officer shall begin to draw pay and allowances attached to his tenure of post with effect from the date he assumes the duty of the post". The rule position is thus clearly against the applicant. Whether the Supreme Court decision in A.Janardana's case makes an exception to the "No work no pay" principle was considered by a Full Bench of this

Tribunal at Madras in O.A. 842/1989 filed by a similarly situated employee as the applicant in the present case.

The Full Bench held as follows:

"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 5.11.76 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 Assistant Executive Engineer and Executive Engineer. Hence the question of payment of arrears of pay and allowances does not arise."

A division bench of this Tribunal at Madras in R.A. No. 72/90 has decided that once the Full Bench has held that the applicant would not be entitled to any arrears of pay and allowances, the question of taking into account the benefits of fixation even on a proforma basis for the purpose of arrears of pensionary benefits would not arise. We are in respectful agreement with these views of our Madras Bench.

4. The applicant has relied in support of his prayer for arrears of pay and allowances and of enhanced pensionary benefits on the case of W.R.Joshi v. Union of India (T.A. No.108/1986) decided by this Bench on 6.1.1988 in which a similar prayer has been granted. But this is no longer good law in view of the later Full Bench decision cited above. The Supreme Court in its Judgment dated 20.3.1989 in the case of Palaru Ramakrishnayah and others v. Union of India reported in <sup>quoted</sup> Judgments Today 1989(1) SC 595 dated 30.3.1989 has granted with approval the following observations of the Madhya Pradesh High Court as regards back wages and granted

to the applicants in that case the same limited benefits:-

"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 allowances 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".

5. In view of these decisions of the Supreme Court and the Full Bench, we see no merit in any of the contentions raised on behalf of the applicant. This Original Application is accordingly rejected, with no order as to costs.

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sri  
(M.Y.PRIOLKAR)  
MEMBER(A)

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(U.C.SRIVASTAVA)  
VICE-CHAIRMAN.