

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW~~ BOMBAY BENCH

O.A. No. 111/91

198

~~XXXXXX~~

DATE OF DECISION 11. 6. 92.

Shri R.V.Belsare Petitioner

Applicant in person Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr.R.K.Shetty Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.S.Oberoi, Member (J)

The Hon'ble Ms. Usha Savara, Member (A)

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 ?

No

U. Savara
11. 6. 92

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(8)

OA.NO. 111/91

Shri R.V.Belsare

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (J) Shri T.S.Oberoi
Hon'ble Member (A) Ms. Usha Savara

Appearance

Applicant in person

Mr.R.K.Shetty
Advocate
for the Respondents

JUDGEMENT

Dated: 11.6.92

(PER: Ms.Usha Savara, Member (A))

The applicant in this case retired on superannuation on 30.11.1982 as Assistant Executive Engineer in the Ministry of Defence. He was promoted to this post in 1963. The seniority list of AEEs was the subject matter of litigation before the Hon'ble Supreme Court in C.A.No.. 360/1980. The seniority list of 1973-74 of A.E.E.s was set aside by the Supreme Court and it was held that the earlier seniority list of 1968 of AEEs was valid and operative. This judgement was delivered on 23.6.1983. The respondents were directed to draw up a fresh panel for the post of Executive Engineer on the basis of the seniority list of 1968. Consequent to the above judgement, the applicant was promoted to the grade of Executive Engineer w.e.f. 27.10.1978 by letter dated 11.10.1984 (Annexure-A-3). However, the applicant was denied the benefits of promotion as he had already attained the age of superannuation. The request for grant of consequential benefit on his promotion as Executive Engineer retrospectively from 27.10.1978 was turned down and the present application has been filed to claim the financial benefits due to him on his promotion as A.E.E. from 1968.



2. The applicant argued the case in person and relied upon the cases of Mr. Ajit Singh and Mr. W.V. Joshi who were similarly situated as the applicant and to whom promotional benefits ^{were} granted. He relied upon the decision of the Supreme Court in the case of H.M. Ramaul vs. State of Himachal Pradesh & Ors. 1991 (17) ATC 259 and the decision of the Supreme Court in the case of Nirmal Chandra Bhattacharya 1992 (19) ATC 203 in support of his claim that he be given consequential financial benefits on promotion.
3. Mr. R.K. Shetty, learned counsel for the respondents has filed written statement and also the judgements of N.P. Bhat, OA. 767/89 Madras Bench decided on 9.8.1990 and the judgement in the case of Shri N. Ramchandran vs. Union of India decided on 1.7.1991. He also relied upon the judgement in the case of Paluru Ramkrishnaiah & Ors. Union of India & Anr. AIR 1990 SC 166 in support of his case that there has to be no pay for no work.
4. We have heard both the parties and perused the citations which have been relied upon by them. The facts of the case before us are covered by the judgement of the New Bombay Bench in the case of N. Ramachandran vs. Union of India delivered on 1.5.1991. The judgement is based on Rule 17 of Fundamental Rules which lays down that "an officer shall begin to draw pay and allowances attached to his tenure of post with effect from the date on which he assumes the duty of the post". It was held by the Hon'ble Tribunal that since the applicant had already superannuated in 1982 and ~~had~~ never assumed the duties of the post of Executive Engineer, he could not be given ^{W.P.} pay and allowances of that post. Whether the Supreme Court decision delivered on 26.4.1983 made an exception to the principle "No work no pay" 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 has held as follows:-

"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."

It was also held that there was no question of taking into account the benefits of fixation even on a proforma basis for the purpose of arrears of pensionary benefits. We are in respectful agreement with these views and have no hesitation in following the same.

5. The judgements relied upon by the applicant are not at all applicable to the facts of this case. The judgement in the case of W.V.Joshi which was decided by the Bombay Bench on 6.1.1988 is no longer good law in view of the Full Bench decision cited above. The Supreme Court in its judgement dated 20.3.1989 in the case of Palaru Ramakrishnayah & Ors. has confirmed the observations of the Madhya Pradesh High Court as regards back wages in the following words:

"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."

6. In view of these decisions of the Supreme Court
those of
and the Tribunal, we see no merits in the application
filed by the applicant. The application is, accordingly,
rejected, with no order as to costs.

U. Savara
(MS. USHA SAVARA) 6.92.
MEMBER (A)

T.S. Oberoi
(T.S. OBEROI)
MEMBER (J)

mrj.