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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 188/91

Transfer Application No:

DATE OF DECISION 3.2.93

A.S.Sivasubramanian Petitioner

Mr. M.S.Ramamurthy Advocate for the Petitioners

Versus

Union of India through Respondent
the Secretary Ministry of
Communications Govt. of India & another

Mr. P.M.Pradhan Advocate for the Respondent(s)

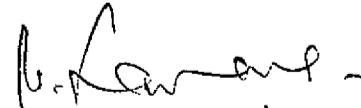
CORAM:

The Hon'ble Shri Justice S.K.Dhaon, Vice-Chairman

The Hon'ble ~~Shri~~ 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


(Ms.Usha Savara)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
BOMBAY

O.A. 188/91

A.S.Sivasubramanian

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Applicant

vs

Union of India through
the Secretary,
Ministry of Communications
Govt. of India and another. ..

Respondents

Coram: Hon'ble Mr. Justice S.K.Dhaon, Vice-Chairman

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

Appearance:

Mr. M.S.Ramamurthy, Adv.
for the applicant.

Mr. P.M.Pradhan, Adv.
for the respondents.

Dated: 3.2.93.

Judgement

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

The applicant, who retired on 31.8.88 as General Manager, Telecom Factory, Bombay has filed this application praying that he be appointed on ad-hoc basis in the pay scale of Rs. 7300- 7600 from 4.1.87, and he be paid arrears of pay and allowances after refixation of his pay from 4.1.87 to 31.8.88. It is also prayed that consequentially his retirement benefits like commutation of pension, pension, encashment of leave be revised, and his designation at the time of retirement be changed to Chief General Manager, Telecom Factory, Bombay. He has also prayed for costs to be paid to him.

The facts are undisputed. The applicant joined in the Telegraph Engineering Service, Class I, of the Indian P & T Deptt. w.e.f. 11.1.55. He was placed at serial No.5 ~~above~~ Shri V.Sastry and Shri S.G.Watve as per the appointment order. The Telegraph Engineering Service Class I is now called Indian Telecommunication Service Gr. A (for short I.T.S.Gr.A)

and the applicant belongs to this serive. The Fourth Pay Commission had prescribed a common pay scale of Rs. 5900-6700 effective from 01.1.86 for both level II and level I of the Senior Administrative Grade (SAG) of ITS Group (Annex A-10). The applicant's pay was fixed in this scale, and he was drawing Rs.6700/- plus allowances at the time of retirement. The Fourth Pay Commission had also recommended that 8 posts be created with a pay scale of Rs. 7300-7600 to meet the promotional aspirations of Group 'A' officers, and these recommendations were accepted by the Government vide Notification dated 13.3.1987.

The Department upgraded 8 SAG posts by two orders on 1.8.1988 (Annex A 12 & Annex A 13). An order was issued on 18.9.1989 on the subject of ad-hoc promotion to the grade of Rs.7300-7600 which is impugned by this application (Ann A-I) as it did not contain the applicant's name, but gave the benefit to his junior, Shri Watve. The applicant's representation dated 7.2.1990 to the Ministry of Communications has remained unanswered. It is the applicant's case that the order dated 18.9.89 was issued in accordance with the instructions contained in D.O.P. & Trg. O.M. dated 30.10.1987, when the applicant was in service, and was fully eligible for the benefits. He has been deprived for no fault of his due to the fact that the Deptt. of Telecommunications took 2 years to issue the order. The order was meant for officers of S.A.G. of ITS Gr. 'A' and was in the nature of ad-hoc promotion to the grade of Rs. 7300-7600. The applicant was an officer of SAG of ITS Gr.'A', and was eligible to be included in the order. The benefit had been given to the Officers in the order of seniority; however, the applicant was denied the benefit, though his junior, Shri Watve was mentioned at Sr. No.1. Admittedly, the applicant was on deputation at the relevant time, and was not holding any one of the upgraded posts, but some of the other officers, who were on deputation, were given the benefit of placement in the higher scale. Therefore, the applicant has been denied

the benefit arbitrarily.

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A reply has been filed on behalf of the respondents Shri Pradhan, learned counsel for the respondents, submitted that ad-hoc promotion was to be given only to eligible serving officers with reference to the number of posts available at a particular point of time i.e. 18.9.1989. Though the posts were identified by order dated 1.8.1988, it took time to finalise the promotion list due to administrative reasons and the order was issued on 18.9.1989. Since the applicant was not in service at that time, he was not considered for ad-hoc promotion. Further, the applicant had been working as General Manager, Telecom Factory from 17.6.1985 to 31.8.1988. This is an ex-cadre post, and was not included in the upgraded posts. Therefore, there was no question of granting the benefits of higher pay scale to the applicant, who was holding ~~an~~ ^{non-cadre} post. Anyhow, since the applicant had retired on 31.8.1988, he was not entitled to the benefits of higher pay scale, which were to be given to serving officers only.

Shri Ramamurthy vehemently contested the stand taken by the respondents. He pointed out that the order dated 18.9.1989 gave ad-hoc promotion retrospectively i.e. from 4.1.1987 on which date the applicant was in ~~service~~ and therefore, he could not be deprived of his legitimate rights in a cavalier manner by the respondents, as he was fully eligible for the ad-hoc promotion. Shri Ramamurthy reiterated that the order was meant for the officers of ITS Gr."A" in the order of seniority irrespective of the post held by the officers or their place of work. Officers on deputation were also given promotion like Shri J L Gupta, who was on deputation to ITU, and Shri D.R. Mahajan, who was on deputation to C-DOT. In short, the orders have been

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issued in order of seniority to give the benefits of promotion in situ. Shri Ramamurthy placed reliance on the judgement of Hon'ble Supreme Court in the case of Kishanlal vs State of Bihar & Ors (1990) 14 A.T.C.822 to support his case.

We have heard the learned counsel at length. We have also perused the documents and notifications filed by them. The short question before us is whether the applicant, who retired on 31.8.1988 was entitled to refixation of his pay from 4.1.1987 till the date of his superannuation on the basis of order dated 18.9.1989. The respondents do not dispute his eligibility to be placed on the higher pay scale, their ground for rejecting his claim is mainly that he had already retired from service on the date the order was issued i.e. 18.9.1989. So far as the ground of his being on deputation is concerned, it is seen from the rejoinder filed by the applicant that at least 2 other officers, who were on deputation, were given the benefit of the higher pay scale, and this fact has not been contradicted by the respondents. The other ground taken by the respondents that the post of General Manager, Telecom Factory held by the applicant was not an upgraded one can also not be accepted as at least 4 other officers were given the promotion though the posts held by them had not been upgraded. So the only question before us is whether ~~whether~~ the applicant could be denied the benefit of the ad-hoc promotion on the ground that he had already retired.

The 4th Pay Commission recommended the creation of 8 posts with a pay scale of 7300-7600, and this recommendation was accepted by the Government on 13.3.1987. The applicant was a serving officer on that day. 8 posts were certified on 1.8.88 and the applicant was still in service on that date. The actual order giving ad-hoc appointment

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was issued only on 18.9.1989 by which date the applicant had retired. It is only for this reason that he could not be given the benefit of higher scale. Officers junior to him who were in service on 18.9.1989 have admittedly been given the higher pay scale, with retrospective effect from 4.1.1987.

Looking to all these circumstances, and in view of the judgement of the Hon'ble Supreme Court in the case of Kishanlal Kalal, we are of the view that the applicant is entitled to the benefits of the order dated 18.9.1989. The respondents are directed to give him the pay scale of 7300-7600 from the date his junior Shri Watve was given the scale i.e. 4.1.1987 as prayed by the applicant. He will be paid the arrears of pay and allowances from 4.1.1987 to 31.8.1988, and his retiral benefits will be refixed in accordance with the rules within a period of 4 months from the receipt of a copy of this judgement. No order as to costs.

Usha Savara
(Ms. Usha Savara)
Member(A)

S.K.Dhaon
(S.K.Dhaon)
Vice-Chairman