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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 229/95 & 230/95

1. Manohar Shivram Desai

Date of Decision: 05-09-96
...Applicant in
O.A.229/95

2. Prabhakar Devrama Nemade

Petitioner/s in O.A. 230/95

Ms. Seema Sarnaik

Advocate for the
Petitioner/s

V/s.

U.O.I. & Ors.

Respondent/s

Mr. R. K. Shetty

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member(A)

Hon'ble Shri

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 229/95 & 230/95

Pronounced, this the 5th day of Sept 1996

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

1. Manohar Shivram Desai,
'Suyog' Jeevan Vihar Society,
Jai Bhavani Road, Nashik Road Camp,
PIN: 422 102. .. Applicant in
O.A.229/95
2. Prabhakar Devrama Nemade,
8, Makarand Society,
Upnagar,
Nashik - 422 006. .. Applicant in
O.A. 230/95

(By advocate Ms.Seema Sarnaik)

-versus-

1. The Secretary,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi - 110 011.
2. The Directorate of Printing,
Urban Development Ministry,
Nirman Bhavan, New Delhi 110 011.
3. Shri A.B.Naik-Satam, and/or
his successor Manager,
Govt. of India Press,
Gandhi Nagar,
Nashik - 422 006.
4. Shri S.B.Nehete and/or his
successor Assistant Manager
(Admn.) Govt. of India Press,
Gandhi Nagar,
Nashik - 422 006.

(By counsel Shri R.K.Shetty)

.. Respondents in
both the above
OAs.

ORDER

(Per M.R.Kolhatkar, Member(A))

As these two OAs have identical facts
with necessary change of details as to date of
appointment etc. and the issue raised is common
they are being disposed of by common judgment.

The facts in O.A.230/95 are taken as illustrative.

(V)

2. The applicant prays for quashing and setting aside of the order dt. 11-11-94, at Annexure 'E' (Office Order No.374) under which the pay of the applicant was refixed and also for a direction to the respondents to pay to him pensionary benefits with interest as the applicant stood retired with effect from 30-11-94. It is not disputed that the pensionary benefits have been paid to the applicant as below :

	<u>Amount paid</u>	<u>Date of payment and on account of</u>
(a)	Rs. 25,637/-	DCRG paid on 13-2-95
(b)	Rs. 42,175/-	Commutted Value of Pension paid on 13-2-95
(c)	Rs. 29,539/-	Encashment of leave salary paid on 1-3-95
(d)	Rs. 15,524/-	Group Insurance Scheme paid on 14-3-95.

The grievance of applicant is, therefore, about pay fixation and the office order may be reproduced:

"Office Order No. 374

In the light of instructions contained in H.Q.O.M. No.33/6(5)/90-AIV dt. 24-10-94 that the promotion of Shri P.D.Nemade has been treated directly from the post of Compositor Gr.I to the post of Section Holder in accordance with notified recruitment rules. As such General Manager is pleased to re-fix the pay of Shri P.D.Nemade under Rule FR 22(I) (a)(1) on promotion to the post of SH/TC(Case) from the post of Comp.Gr.I w.e.f. 3-5-86 onwards as per Annexure I attached."

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3. The applicant was holding the post of Compositor Gr.I in Govt. of India Press, Nashik (respondent No.3) w.e.f. 1-1-1966. In accordance with recruitment rules the applicant was eligible for promotion to the post of Asstt. Section Holder, Section Holder and finally to the post of Foreman. The applicant held the various posts on adhoc basis as below :

Section Holder	12-4-82 to 4-2-84
Asstt. Section Holder	5-2-84 to 2-5-86
Section Holder	3-5-86 to 15-6-89

The applicant was regularised in the post of Section holder w.e.f. 16-6-89 and retired as Foreman.

4. The respondents submit that his initial promotion to the post of Section Holder in 1982 was purely on adhoc basis and consequent on regular promotion of a senior to the post of Section Holder he was reverted to the post of Asstt. Section Holder on adhoc basis w.e.f. 5-2-84. In the normal course of reversion he would have been posted as Compositor Gr.I which is a substantive post but he was accommodated on adhoc basis in the post of Asstt. Section Holder because the post of Asstt. Section Holder was created by order dt. 9-9-83. However, his posting in the post of Asstt. Section Holder was purely adhoc basis and thereafter he was again promoted on adhoc basis as Section Holder on 3-5-86. and he was regularised only on 16-6-89. Since he had successively worked on various posts on adhoc basis the applicant was treated to have been promoted on regular basis to the post of Section Holder from his substantive post of Compositor Gr.I w.e.f. 16-6-89

(P)

and his pay was refixed as provided for in FR 22(1)(a)(1) and notified in the order dt. 11-11-1994 which has been impugned by the applicant. According to the respondents since the applicant had never held the post of Asstt. Section Holder which post was subsequently abolished on 31-10-1989 it was decided to treat his promotion to the post of Section Holder as directly from the post of Compositor Gr.I. According to Recruitment Rules of 1984, extracted at Ex.R-6 to the written statement it is provided that the Section Holders are promoted from amongst Asstt. Section Holders with two years experience failing which Compositor Gr.I with 5 years service in the grade. It appears to be the contention of the respondents that the respondents have considered the case of the applicant under the failing which clause because there is no dispute that the applicant has completed five years service as Compositor Gr.I but these rules do not appear to have in existence as in 1987 because in that year new rules called Govt. of India Presses (Group 'C' and Group 'D' Industrial posts) Recruitment Rules, 1987 notified on 28-12-1987 appear to have came into force. These rules provided that a Section Holder is recruited from the post of Asstt. Section Holder with two years experience in the grade failing which Assistant Section Holder with a combined service of three years in that grade and in the grade Compositor Gr.I. Here again there is a provision for Gr. 'C' departmental promotion committee. The pay fixation of the applicant done in terms of the order dt. 11-11-94 appears to have resulted in a lower pay fixation than he was drawing at the time of retirement. In particular

it appears that from 1-5-87 the applicant's pay is being fixed at Rs.1530/- as against what he was drawing viz. Rs.1640/- At the time of retirement applicant's pay was fixed at Rs.2050/- as against what he was drawing viz. Rs.2150/- In his rejoinder the applicant has stated that the difference in pay fixation has arisen because the respondents have made applicable the notification dt. 30-8-89 amending FR 22-C and this has caused the difference in the pay scale because the amended FR 22(1)(a)(i) was not applicable to the applicant as the same was not in existence on the relevant date. The respondents however, contend that the amendment to FR 22C effected on 30-8-89 was only in the nature of clarification and it has not made any difference to the substance of FR 22C and therefore the difference in pay scale has arisen not because of operation of amended FR 22(1)(a)(i) but because the applicant in terms of applicable recruitment rules was required to be given a particular pay fixation which has resulted in fixation at a ~~xxxxx~~ level lower than the one ~~actually drawble~~ when he was working on adhoc basis. Respondents have further stated that the applicant was promoted as Assistant Section Holder on the basis of draft recruitment Rule which was later on notified in the official Gazette dt. 28-12-1987 but before that he was promoted to the post of SH/TC on adhoc basis ^{and} hence his pay has been fixed with reference to his lower regular post of Compositor Grade-I as per Rules.

5. It appears to me that the contention of the applicant regarding FR 22C has no basis. However, the stand of the respondents that the applicant was required

to be promoted in the light of the draft recruitment rules which were subsequently notified on 28-12-87 cannot be accepted. Clearly, the respondents have operated the rules which were not in force. Clearly the respondents have also resorted to the "failing which" provisions without holding regular Group 'C' DPC and without appreciating the significance of the clause of "failing which." The pay differential appears to have arisen mainly because in pay fixation the respondents have skipped the intermediate post of Asstt. Section Holder and they have taken the stand that he could not be promoted to the intermediate grade because he never held the post on regular basis. For the purpose of regularising the applicant, however, they ought to have considered the case of the applicant for the intermediate post of Asstt. Section Holder. It cannot be disputed that the applicant had held the post of Asstt. Section Holder atleast from 1982. This is because his adhoc post of Section Holder was higher than the post of Asstt. Section Holder and therefore the applicant can be said to have held the post of Asstt. Section Holder from 12-4-82 to 2-5-86 on which date he was promoted on adhoc basis to Section Holder's post from which he was never reverted. Since the applicant had held the post of Asstt. Section Holder on adhoc basis for more than four years and since the applicant's ^{had} qualification for being considered for the post of Section Holder viz. minimum length of service as Compositor Gr. I, which the applicant can be deemed to have possessed, the respondents ought to have first promoted ~~to~~ him to Asstt. Section Holder and thereafter

(VS)

considered the regularisation of the applicant in the post of Section Holder. Thus the FR-22-C would operate for pay fixation twice and the disadvantage to which the applicant is subjected as a result of operation of the order dt. 11-11-94 would no longer arise. I am, therefore, of the view that the application succeeds to the extent of quashing of the office order dt. 11-11-94 and he is entitled to a direction that the respondents should reconsider the case of promotion of the applicant first to the post of Asstt. Section Holder and thereafter to the post of Section Holder and on that basis fix the pay scale of the applicant at successive stages and also fix the pension of the applicant on the basis of revised pay as would be drawn on the basis of revised pay fixation. All consequential benefits including arrears if any should also be paid to the applicant. Action should be completed within four months of communication of the order.

O.A. 229/95

6. The facts in the case are similar except that the applicant is still in service. The directions in O.A. 230/95 would apply in this case except for the fact that direction relating to pension would not apply, since the applicant has not retired.

M.R. Kolhatkar
(M.R. KOLHATKAR)
Member(A)

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