

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1067 of 1998.

Dated this Thursday, the 9th day of December, 1999.

Sudhir Gajanan Lagwankar, Applicant.

Shri S. P. Saxena, Advocate for the
applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. R. Shetty for Advocate for
Shri R. K. Shetty, Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? *m*
- (iii) Library. *ye*

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*

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Hon'ble Shri B. N. Bahadur, Member (A).

Sudhir Gajanan Lagwankar,
Laboratory Demonstrator,
F Civil, College of Military
Engineering, Dapodi,
Pune - 411 031.
Resident of 297, Kasba Peth,
Pune - 411 011.

...

Applicant.

(By Advocate Shri S.P. Saxena)

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi - 110 011.

2. Engineer-in-Chief,
Army Headquarters,
New Delhi - 110 011.

3. The Commandant,
College of Military
Engineering, Dapodi,
Pune - 411 031.

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Respondents.

(By Advocate Shri R. R. Shetty for
Shri R. K. Shetty).

O R D E R

PER : Hon'ble Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application seeking a direction to the
respondents to create adequate promotional avenues to Laboratory

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Demonstrators or alternatively, respondents be directed to give certain higher pay scale to the applicant and for other consequential reliefs. Respondents have filed reply opposing the application. We have heard Shri S.P. Saxena for the applicant and Shri R. K. Shetty alongwith Shri R. R. Shetty, Counsel for respondents.

2. The question for consideration in this case is, whether the applicant, who is working as Laboratory Demonstrator, is entitled for a direction to Government to create avenues of promotion or to grant a higher scale to the applicant.

To answer this question only few facts are necessary.

The applicant was appointed as a Laboratory Demonstrator in the College of Military Engineering at Pune. This is an isolated post for which there is no avenues of promotion at all. The applicant came to be appointed as Laboratory Demonstrator in 1968 and he is continuing in the same post for the last 30 years, since there is no next promotional avenue at all. In some other Colleges and Institutions affiliated to any University, the employees get the benefit of University Grants Commission Package. That in some other institutions like Army Cadet College, Dehradun, the Lab. Demonstrator is entitled to a higher scale of pay as per U.G.C. Package. The applicant has made number of representations seeking promotional avenues for higher pay scales but with no success. Hence, he has approached this Tribunal.

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The respondents contend that the question of providing promotional avenues or providing higher pay scale is purely a policy matter and no relief can be given to the applicant for such a type of grievance. It is, therefore, stated that applicant is not entitled to any of the reliefs.

3. There cannot be any dispute that question of providing avenues for promotion or the question of fixing a proper pay scale or the grant of higher pay scales after certain years of service is purely a policy matter. Courts or Tribunals cannot interfere and give directions in such a matter.

In 1997 SCC (L&S) 1186 [Tech. Executive (Anti-Pollution) Welfare Association V/s. Commissioner of Transport Department & Others) it is observed by the Supreme Court that Administrative Tribunal was not competent to give directions for laying down policy or for creation of promotional avenues because these matters fall within policy-making function of appropriate Government.

In 1996 (2) SC SLJ 501 it is observed that the question of discrimination in pay scales will arise only if the same authority makes discrimination between two sets of employees. It is further pointed out that it is for the claimant to produce necessary materials to show that the two posts are identical in all respects, including recruitment qualification to claim parity

of pay scales under Article 14 of the Constitution of India. In the present case, except some vague allegation that Lab. Demonstrators in other institutions are getting higher pay scales, no particulars are mentioned ^{about} ~~above~~ the conditions of service, nature of duties and responsibilities and about recruitment qualification for the post of Applicant and similar post in other institutions. Therefore, the question of hostile discrimination cannot be considered in the absence of necessary particulars. In S. Arumugham's case [1998 SCC (L&S) 493] the Supreme Court has made some observations regarding promotional policy. In that case, the applicants before the Tamil Nadu Administrative Tribunal challenged the Government order of Tamil Nadu about promotional policy and increase in the quota of Superintendents. The Tribunal gave a direction to the Government to review their scheme and to evolve a different scheme which would give benefit to the staff, etc. The Supreme Court observed in para 10 as follows :

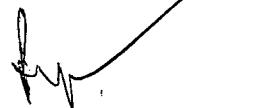
".....The Tribunal ought not to have directed the Government to change its policy. The Government has a right to frame a policy to ensure efficiency and proper administration and to provide suitable channels of promotion to officers working in different departments and offices..... The Tribunal cannot substitute its own views for the view of the Government or direct a new policy based on the Tribunal's view of how the allocation should be made....."

The Supreme allowed the appeal and quashed the order of the Tribunal.



It is, therefore, seen that in policy matter the role of Courts and Tribunals is very limited. If there is a hostile discrimination in a particular policy so as to violate Article 14 of the Constitution of India, then the policy can be quashed or interfered with. Whether to create avenue of promotion or not, is purely a policy matter. As already stated, the question of hostile discrimination does not arise in this case, since the applicant has not placed before us the comparable post in other departments and about the terms and conditions, qualifications, etc.

4. The Learned Counsel for the applicant invited our attention to some authorities. In A.I.R. 1988 SC 1033 {Raghunath Prasad Singh V/s. Secretary, Home (Police) Department, Government of Bihar and others} the Supreme Court deprecated the absence of promotional prospects in public service. In that case, the Division Bench of the High Court has rejected a Writ Petition of the officer. The Supreme Court confirmed the order of the High Court and dismissed the appeal. In para 3 of the reported judgement the Supreme Court clearly says that there is no case for interference and hence the appeal is liable to be dismissed. In para 5, in the operative portion of the order, the appeal is again dismissed, but in para 4, the Supreme Court has made observations starting with the sentence "Before we part with the appeal". Then the Supreme Court has observed that reasonable promotional opportunities should be available in every wing of



public service. Then a direction was given to the State of Bihar to provide atleast two promotional opportunities to the concerned officers within six months. But if the Government of Bihar fails to comply with that directions, then a fresh opportunity be given to the officers to exercise option to go back to the original cadre. In our view, these are observations made by the Supreme Court in its wide power under Article 142 of the Constitution of India. The Supreme Court has not laid down any law that if there are no promotion opportunities, a Court or Tribunal can give a direction. Even having given a direction to the Government of Bihar to provide promotional opportunities, the Supreme Court itself stated that if it is not done, then the officers should be given option to go back to the partent cadre. Therefore, in our view, the observations of the Supreme Court in para 4 is not on the point of laying down a law as such, but these are directions given under the unlimited and wide powers given to the Supreme Court under Article 142 of the Constitution of India. Other Courts in India do not have such wide powers like the Supreme Court to give any direction under Article 142 of the Constitution of India. That is why we have referred to other judgements of the Supreme Court earlier where Supreme Court has clearly ruled that Courts and Tribunals should not interfere in policy matters.

Then reference was placed on K.G.S. Bhatt's case reported in 1989 (11) ATC 880 (SC). That was also a case where the officer Mr. Bhatt had approached a Bench of this Tribunal at

Bangalore making a grievance that he has not been given promotion for nearly two decades. In para 9 of the reported judgement, the Supreme Court has commented on the lack of promotional opportunities. It is stated that promotional opportunities must be provided as an incentive. The Tribunal had made some interpretation of the rules and gave a direction for promotion to Mr. Bhatt. The Supreme Court found that the order of the Tribunal was erroneous and its ^{interpretation} interpolation of the rules was not correct but still the Supreme Court did not interfere, since it was not a fit case calling for interference under Article 136 of the Constitution of India. The Supreme Court also noticed that Mr. Bhatt in that case had stagnated for about 20 years in the same scale from the inception due to defective promotional policy. Therefore, the Supreme Court declined to interfere with "the erroneous order of the Tribunal granting a direction for promotion."

No doubt, the Learned Counsel for the applicant relied on Deena Nath Dogra's case reported in 1992 (20) ATC 156 where a Division Bench of the Principal Bench of the Tribunal gave a direction for creating supernumerary post and gave promotion, since the officer in that post did not have promotional avenue. Though those decisions support the case of the applicant, we cannot give a direction about policy matters, as observed by the Supreme Court in two other cases, which we have referred to earlier.

5. As already stated, the question of providing promotional avenues is a policy matter. Expert Bodies like the Pay Commission, should go into this question. Infact, the Fifth Pay Commission has gone into the question and observed that there are certain isolated posts where there are no promotional avenues at all. It also noticed that in some cases there is no sufficient promotional avenues, as a result, many officers stagnate for years together without promotional avenues. Therefore, the Fifth Pay Commission has made some recommendations to provide higher scales in the form of time-bound promotion where there are no promotional avenues or the promotional avenues are not sufficient. On the basis of the Fifth Pay Commission recommendations, the Government of India has since issued an Government Order dated 09.08.1999. This is issued by the Ministry of Personnel and the number of the order is 35034/1/97-Estt. In this order, the Government has noticed that certain isolated posts do not have promotional avenues and in some cases, there is no adequate promotional avenues. To meet these two situations, Government order is passed providing two promotions called two financial upgradations, one in 12 years and another after 24 years. The scheme is called Assured Career Progression Scheme. In all cases where there are no adequate promotional avenues or in case of isolated posts where there are no promotional avenues, the officers are entitled to one promotion after 12 years and another promotion after 24 years in

the form of getting higher pay scale. Annexure-II to the order shows 18 pay scales from S1 to S-15, S-19, S-21 to S-24. Those who are in the lower pay scale will get higher pay scale even though there is no promotional avenue at all. In view of this recent Government order which has come into force during the pendency of this case, the applicant's grievance can be partially met by giving suitable directions.

6. In the result, the O.A. is disposed of with a direction to the respondents to give effect to the D.O.P.T. Circular dated 09.08.1999 and give promotion to the applicant in the form of giving the higher pay scale under the "Assured Career Progression Scheme for the Central Government Civilian Employees". Respondents should consider the case of the applicant under the said Government order and if he is otherwise found suitable and comes within the parameters laid down in the Government Orders, he should be granted the two financial upgradations as provided in the circular, within a period of three months from the date of receipt of a copy of this order. In the circumstances of the case, there will be no order as to costs.

B. N. Bahadur

(B. N. BAHADUR)

MEMBER (A).

OS*

R. G. Vaidyanatha
G-12-99

(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

CP. No. 24/2000
fwd for order a
9.6.2000
k
15

9/6/2000-32

Heard Shri S. P. Saxena
for Applicant :

Issue notice on CP-24/2000
returnable by 24/7/2000.

N
N
(S. L. Jain)
m(J)

B.S.
(B. N. Bahadur)
m(A)

alip.

Notice is issued to
Contemners on
16/6/2000

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14/6

Recd. Reply to CP. No. 24/2000 and therefore he does not wish
from Respondents on
20/7/2000.

PB
21/7.

24-7-2000 (52)

Applicant by Shri S. P. Saxena.

Shri Saxena submits that
respondents have already complied
with the order of the Tribunal

to pursue the Contempt Application.
In view of this, Contempt Application
is dismissed and the notices
issued on the respondents are
discharged.

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24/7

P.S. Jain
(S. L. Jain)
m(J)

D. S. B. W. S.
(D. S. B. W. S.)
m(A)

dt. 24/7/00
to AD
9/8/00
10/8/00