

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

DA No.844/92.

DT. of Order:24-6-93.

S.T.Wankhade

...Applicant

Vs.

1. The Government of India,
rep. by its Secretary to Govt. of India,
Ministry of Labour, Shram Shakti Bhavan,
Rafi Marg, New Delhi-110 001.
2. The Director General/Joint Secretary to
Govt. of India, Ministry of Labour, Director
General of Employment and Training, Shram
Shakti Bhavan, Rafi Marg, New Delhi-110 001.
3. The Director of Employment Exchanges,
Govt. of India, Ministry of Labour
(Directorate General of Employment & Training),
14/11, Jamnagar House, Shahajahan Rd, New Delhi-110 001.
4. The Dy.Secretary to Govt. of India,
Ministry of Labour (Directorate General of
Employment & Training), Shram Shakti Bhavan,
Rafi Marg, N w Delhi-110 001.

...Respondents.

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Counsel for the Applicant : Shri M.Jagannatha Sarma

Counsel for the Respondents : Shri N.R.Devraj, Sr.CGSC

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CORAM:

THE HON'BLE JUSTICE SHRI V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI P.T.THIRUVENGADAM : MEMBER (A)

(Order of the Divn. Bench delivered by
Hon'ble Shri Justice V.N.Rao, Vice-Chairman)

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in the scale of Rs.2200-4000

While the applicant was in the cadre of Superintendent /

Gr.'A', Gazzetted, he was posted to Vocational Rehabilitation

Centre for Physically Handicapped, Bombay. While he was

working there, the said Centre and similar centres at Madras,

Bangalore, Trivandrum, Ahmedabad and Hyderabad were upgraded

with effect from 1-8-90 by proceedings dt.30-7-90. The posts

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in the scale of Rs.2200-400
of Superintendents/in those six institutions were abolished
with effect from 1-8-90 under the proceedings dt.30-7-90,
and the posts of Senior Superintendents in the pay scale of
Rs.3100-3500-125-4500 are created with effect from 1-8-90.
Later the posts of Superintendents of those six institutions
were designated ^{as} /Sr.Superintendents.

2. The applicant continued to work as Head of the Vocational
Rehabilitation Centre of Handicapped ^{even} /from 1-8-90 till he
was posted to Hyderabad by proceedings dt.20-1-92 after he was
selected ^{on} /recommendation by the U.P.S.C. The applicant made
a representation that he should be given the pay in the
pay scale of Rs.3000-4500 w.e.f. 1-8-90 till 5-2-92 i.e. the
date on which he assumed charge on Hyderabad, from which date
alone the pay scale of Rs.3000-4500 made applicable to the
applicant. This application ~~xxx~~ was filed praying for a
direction to the Respondents to give him the pay in the pay
scale of Rs.3000-4500 from 1-8-90, when ^{this} /request for the said
prayer was denied by the Respondents.

3. It was urged for the applicant as under :-

From 1-8-90 there was only the post of Sr.Superin-
tendent and there was no post of Superintendent for the
Vocational Rehabilitation Centre for Physically Handicapped
at Bombay, and hence he is entitled to the pay scale of Sr.
Superintendent upto the date on which he assumed charge in
Hyderabad. The stand taken by the Respondents is that in
view of ~~the~~ Stagnation and as the work in the six institu-
tions referred to required higher responsibility, they were
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22/8/92
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upgraded and hence it is one of selection to the post of Sr. Superintendent from the post of Superintendent and till selection is made, one cannot claim the pay scale of the higher post and at the best the applicant is entitled to the pay scale of Sr. Superintendent only from the date on which his case was recommended by UPSC for Senior Superintendent.

4. Normally one can claim the pay in the pay scale attached to the post only from the date on which he joins the post. He cannot get it from even the date on which the order of appointment is issued or date on which it served on him. It is on the basis that one can claim pay only from the date he discharges duties in a particular post. In the light of that general principle the contentions for the respective parties in this O.A. have to be considered.

5. One way of looking in regard to this point is that as the applicant was not given order of appointment for the post of Sr. Superintendent from 1-8-90, there was no authorisation requiring the applicant to discharge the duties of Sr. Superintendent of the institution at Bombay. The applicant was appointed as Sr. Superintendent, just before he was posted to the institution at Hyderabad which is also one among the six upgraded posts. But it is urged for the applicant that when he actually discharged the duties of Sr. Superintendent can it be stated that the applicant is not entitled to the pay of the pay scale of Sr. Superintendent, merely on the ground that there was no order appointing him as Sr. Superintendent.

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6. It is not a case where the applicant had not discharged the duties of any post when he was at Bombay. He was holding the post of Superintendent and his case was considered for the post of Sr. Superintendent and his case was ultimately recommended by the U.P.S.C and he was ultimately appointed to the post of Sr. Superintendent. It was pleaded in the additional counter ^{that} as the applicant was already discharging the duties in the post of Sr. Superintendent, he can be given promotion from the date on which his case was recommended for the post of Sr. Superintendent by the UPSC. Thus it means that even the respondents had come-up with a plea that promotion can be given with retrospective effect if the circumstances warrant. We feel that it is one of equity if the promotion is given with retrospective effect so long as that employee discharged the duty of the promoted post even before date, of the actual promotion, and ^{it} is not a case where the employee is having ~~the~~ promotion a-head of senior. When there cannot be ~~held to be~~ a bar for giving promotion with retrospective effect, we feel that it is not reasonable to give it only from the date ~~only~~ on which the ~~xxxx~~ recommendation was made by the concern ^{-ed} authority for the promotion of such employee, when he was actually discharging the duties ~~xxxx~~ of the post earlier. Hence we feel it proper to hold that retrospective promotion ~~had~~ to be given from the date on which that employee

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discharged the duties of promotional post without any break, up to the date on which he is promoted ~~and~~ so long it is not a case of having promotion of junior ahead of the senior.

It means that the de facto position is regularised as de jure position. It is also one of equity in paying the employee in the pay scale for the post in which he discharges duties.

We have to make it further clear that in this case the applicant discharged duties of Sr. Superintendent even without any formal order from the concerned authority. For one reason or other the necessary arrangement could not be made for filling up the posts of Sr. Superintendent after upgradation of the six institutions. But if an employee discharged duties of higher post without any authorisation or any order from the higher authority he cannot normally claim pay in the pay scale of promotion post.

7. It is stated that the rank of the applicant ^{is} No. 2 ^{the} out of six promoted Sr. Superintendent, and his senior was working in post which was upgraded on 1-8-90. Thus it is not a case where the applicant will be entitled to promotion ahead of the senior when his promotion is given with effect from 1-8-90.

8. Hence we direct the Respondents to give the applicant promotion of Sr. Superintendent with effect from 1-8-90, and he is entitled to the monetary benefits through-out. The Original.

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Application is ordered accordingly. The Respondents shall implement the order within three months from the date of receipt of this order. There will be no order as to costs.

P. T. Thiruvengadam
(P.T. THIRUVENGADAM)
Member (A)

V. Neeladri Rao
(V. NEELADRI RAO)
Vice-Chairman

88/7/83
Dated: 24th June, 1993.
Dictated in Open Court

88/7/83
Deputy Registrar (Judl.)

avl/-

Copy to:-

1. Secretary to Government of India, Ministry of Labour, Government of India, Shram Shakti Bhavan, Rafi Marg, New Delhi-001
2. The Director General/Joint Secretary to Govt. of India, Ministry of Labour, Director General of Employment and Training, Shram Shakti Bhavan, Rafi Marg, New Delhi-001.
3. The Director of Employment Exchanges, Govt. of India, Ministry of Labour, (Directorate General of Employment & Training), 14/11, Jamnagar House, Shahajahan road, New Delhi-011.
4. The Dy. Secretary to Govt. of India, Ministry of Labour (Directorate General of Employment & Training), Shram Shakti Bhavan, Rafi Marg, New Delhi-011.
5. One copy to Sri. M. Jagannatha Sarma, advocate, 3-6-226, Himayatnagar, Hyd-29.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTY : MEMBER (AD)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (J)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated : 24/6/-1993

ORDER/JUDGMENT:

~~M.A. / R.A. / C.A. No.~~

O.A. No. in
844/92

T.A. No. (w.p.)

Admitted and Interim directions
issued

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/ Ordered

No order as to costs.

pvm

