

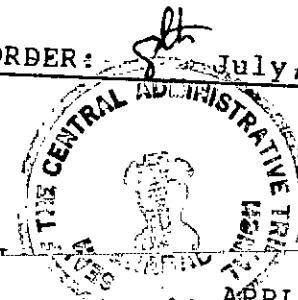
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 1113 OF 1993

DATE OF ORDER: *11* July, 1997

BETWEEN:

D. MANIKPRABHU (as since deceased by his
Representative: Manikprabhu)



.. APPLICANT

AND

1. Union of India represented by its Secretary, Environment & Forests, Govt. of India, Paryavaran Bhavan, New Delhi 110 003,
2. Govt. of A.P. represented by its Secretary to Govt., General Administration (IFS) Dept. Secretariat, Hyderabad,
3. The Principal Secretary to Govt., Govt. of Andhra Pradesh, Energy, Forests, Environment, Science & Technology Department, Secretariat, Hyderabad,
4. The Principal Chief Conservator of Forests, Andhra Pradesh, Saifabad, Hyderabad-1,
5. The Accountant General, A.P., Saifabad, Hyderabad-1,
6. The Pay & Accounts Officer, Exhibition Grounds, Nampally, Hyderabad-1.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. K. K. CHAKRAVARTHY

COUNSEL FOR THE RESPONDENTS: Mr. V. BHIMANNA for R-1
Mr. P. Naveen Rao for R2 to R6

CORAM:

HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B. S. JAI PARAMESHWAR, MEMBER (JUDL.)

ORDER

ORDER (PER HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN.))

R

D

Contd....2

arrears of pay and allowances in the senior time scale for the period from 12.8.1977 to 24.9.1984 on his notional fixation in that scale due to his retrospective promotion to the IFS and in the super time scale in the rank of Conservator of Forests during the period from 14.8.85 to 16.10.87. By the G.O.Ms.No.121, EFES&T Deptt., dated 20.4.91 (Annexure III at Page 17 to the OA), the applicant was given notional promotion of Conservator of Forests with effect from 14.8.85 and his pay was also notionally fixed with the arrears of pay for the period he actually discharged the duties of the post of Conservator of Forests. By the memorandum No.424/I.F.S./93.I, dated 27.2.93 (Annexure I to the OA) the applicant was promoted to the IFS cadre with retrospective effect from 12.8.1977 and the year of allotment was revised to 1972 but the arrears on his promotion as Senior Scale IFS Officer due to the elevation to the IFS cadre with effect from 12.8.77 to 24.9.84 were not paid.

4. Aggrieved by the above, the applicant has filed this OA to set aside the impugned memorandum at Annexure I and III insofar they stipulates only the notional fixation of pay from 12.8.77 to 25.9.84 in the senior scale and from 14.8.85 to 16.10.87 in the cadre of Conservator of Forests without arrears and for consequential direction to the respondents to arrange payment of arrears of salary from 12.8.77 to 25.9.84 in the senior time scale in IFS cadre and from 14.8.85 to 16.10.87 in the Conservator of Forests' Cadre/Super Time Scale together with interest.

5. The learned counsel for the applicant submits that the denial of arrears is contrary to the directions of the

R

J

and above Mr.C.Damodar Reddy. He was promoted to the senior scale in the year 1983 and he was also promoted to the Indian Forest Service cadre with effect from 25.9.84 by the notification dated 25.9.84 which was republished in G.O.Ms No.331 dated 12.10.84. Thereafter the applicant filed W.P.No.8242/85 on the file of A.P.High Court for revision of the seniority in the IFS cadre. The list published by the Govt. of India in G.O.Ms.No.319 dated 2.12.83. Based on the judgement of the AP High Court in WP No.8242/85, a review selection committee meeting was held on 20.11.86 to consider the case of the applicant for retrospective promotion to IFS. His seniority in IFS was assigned with retrospective effect from 12.8.77 on the basis of the review and he was accommodated against two vacancies which were available for the period from 12.8.77 to 24.9.84. By the notification No.17013-IA/86-IFS-II dated 11.6.87 republished in G.O.Ms.No.254 dated 8.7.87) the applicant was appointed to the IFS cadre with retrospective effect from 12.8.77 thereby he was given the senior scale in the IFS grade. His year of allotment on the basis of his elevation to the IFS cadre was fixed as 1972. Due to the retrospective promotion to IFS and fixation of his seniority in the cadre from 1972, the applicant was promoted to the super time scale rank of Conservator of Forests in G.O.Rt.NO.538, EFES&T Dept., dated 16.10.1987. The applicant retired on 30.6.88 on attaining the age of superannuation. The applicant submitted for retrospective promotion to the cadre of Conservator of Forests with effect from 14.8.85 on par with his immediate junior Mr.T.Ramakrishna, IFS. That was allowed. The applicant also prayed for consequential

32



with the observations of the M.P.High Court

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 or allowance during the period for which he did not perform the duties of a higher post although after due consideration he is given a proper place in the gradation post having deemed to be promoted to the higher post with effect from the date his seniority was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to refixation of their present salary on the basis of the optional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them."

It is noted that the observations of the Apex Court in similar circumstances where the date of promotion was notionally and the arrears were not granted during the period the applicant in that case had not performed or discharged the duties of that post from the date. It is also to be noted that the said Apex judgement was delivered by a three member Bench while A.P.High Court's judgement was delivered only by a single member Bench and that too earlier to the Apex judgement referred to above. Hence it is advised to follow the directions of the Apex Court not only as a final court of appeal but also due to the fact that it is the latest one delivered by three Members of the

A.P.High Court reported in 1991(1) APLJ 364 [Assistant Secretary to Govt. Home (Courts-C) Department, Govt. of A.P. v. A.Venkata Rao and another] and the judgement of the Supreme Court reported in 1991(4) SCC 109 (Union of India and others v. K.V.Jankiraman and others). He further submits that one Mr. Mohd. Hussain Khan and Mr.G.K.Reddy were given arrears even though they were promoted with retrospective effect under similar circumstances.

7. The respondents have filed a reply and submit that the arrears of salary for the period the applicant had not officiated in the post is based on the provisions of the Fundamental Rules according to which the Government servant is not entitled for the same during the period or periods he had not officiated in the post or posts. They rely on the F.R.26(aa) and the decision of the Supreme Court reported in AIR 1990 SC 166 (Paluru Ramkrishnaiah and others v. Union of India and others). They also submit that the cases of Mohd. Hussain Khan and G.K.Reddy are different as they were given the arrears in obedience to the directions of the Tribunal. Hence the applicant cannot compare his case with them.

8. In the reported case of A.P.High Court cited supra, the Division Bench had held that "the State Government had taken remedial measures by effecting notional promotions in their favour and so the State Govt. is bound to pay the employee the arrears of salary and other monetary benefits which they would have got had they been promoted at the relevant time." But that judgement was delivered on 21.2.91 earlier to Paluru Ramakrishniah's case which was delivered by the Apex Court on 27.8.1991. However, the Supreme Court in Paluru Ramkrishnaiah's case

D

directions given by this Tribunal in Mohd. Hussain Khan and S.K.Reddy's cases. Hence we do not find that the precedents quoted by the applicant may not also be appropriate.

11. In view of what is stated above, we are convinced that the applicant is not eligible to get the arrears due to his notional fixation as prayed for in this OA. Hence, the OA is dismissed. No order as to costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

S. V. Dandekar

न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
हैदराबाद न्यायालय
HYDERABAD BENCH

केस नंबर	CASE NUMBER	1113/93
नियंत्रण का कार्यालय	Date of Judgement	8/7/97
प्रति त्रुट्यार देखा गया दिन	Copy Mailed Rec'd by	17/7/97
 अनुभाव अधिकारी (न्य दिक्षा) Section Officer (J)		

9. The applicant also relies on the judgement in K.V.Jankiraman's case to state that the applicant is entitled for the back pay and allowances from the notional date of promotion. Mr.K.V.Jankiraman's case is not having much relevance for comparison with the case of the applicant herein. That case arose because of the late finalisation of the disciplinary proceedings and on that basis the Apex Court had held that in the case of acquittal, employees may get the benefit of back wages that too having regard to the circumstances of the case to be decided by the competent authroity. The payment of back wages in view of the above may not be granted as a matter of routine. Hence we are of the opinion that K.V.Jankiraman's case may not come to the rescue of the applicant in this OA.

10. The cases of Mohd. Hussain Khan and G.V. Reddy were perused. In the case of Mohd. Husain Khan, the T.A.NO.315/86 was disposed of on 12.6.87 and that of Mr.G.K.Reddy the T.A.No.155/86 was disposed of on 6.12.89, much earlier to the disposal of Paluru Ramakrishnaiah's case which was disposed of by the Apex Court on 27.8.1991. In both the cases, the arrears were ordered to be paid. But the Tribunal could not have taken note of any of the judgements either of the Apex Court or the High Court of A.P, as they were delivered later to that date. When the Apex Court had given certain directions, no other lower court can go against the directions of the Apex Court. Now that this Bench has the benefit of the directions of the Apex Court, it may not be appropriate to follow the

R

D

Heard Mr.K.K.Chakravarthy, learned counsel for the applicants, Mr.P.Naveen Rao, learned special counsel for R-2 to R-6 and Mr.V.Bhimanna, learned standing counsel for R-1.

2. Mr.D.Manik Prabhu, the applicant, filed this OA on 1.9.93 and during the pendency of this OA he died on 28.1.96. Hence his wife Smt. D.PadmaVathi was brought ^{on record} as L.R. to prosecute this case as per the order dated 17.6.97 in M.A.No.345/97 in this OA.

3. The concise facts of this case are as follows:-

The applicant was initially appointed as Range Officer with effect from 5.7.1952 in the erstwhile Hyderabad State. Consequent to the reorganisation of the State, he was allotted to Andhra Pradesh with effect from 1.11.1956. In the panel formed in the year 1959, the name of the applicant was not included for promotion to the post of Assistant Conservator of Forests. In the 1964 panel also the applicant was not selected to the post of Assistant Conservator of Forests due to his unsatisfactory service. Aggrieved by the above, the applicant filed W.P.No.6339/73 on the file of the Hon'ble High Court of Judicature, Andhra Pradesh. That case was transferred to the Andhra Pradesh Administrative Tribunal during 1976 on its formation and was numbered as TWP No.289/76. In pursuance of the direction given in that TWP, the case of the applicant was reviewed for promotion to the post of Assistant Conservator of Forests. On the basis of the review, G.O.Ms.No.319 dated 2.12.1983 was issued and the seniority of the applicant was fixed with effect from 14.4.65 in the Assistant category of Conservator of Forests. In that seniority list, his name stood at Sl.No.32 below Mr.B.Venkatanarayana