

35

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH

O.A.1494/94

Date of decision: 7-10-97

Between:

C.V. Gopal

... Applicant

-versus-

1. Union of India  
through  
The Controller General,  
Indian Bureau of Mines,  
Indira Bhavan,  
Civil Lines,  
Nagpur - 440 001.
2. The Asstt. Admn. Officer  
(Non-Gazetted)  
O/O The Controller General,  
Indira Bhavan,  
Civil Lines,  
Nagpur - 440 001.
3. The Regional Controller of  
Mines,  
Indian Bureau of Mines,  
1st Floor,  
Kendriya Sadan,  
Sultan Bazar, Koti,  
Hyderabad - 500 195. ... Respondents

Counsel for applicant : Shri K.S.R. Anjaneyulu  
Counsel for respondents: Shri V. Rajeswara Rao

Coram:

Hon'ble Shri H. Rajendra Prasad, Member (A) *Q/A*

Date: 7-10-97

- : JUDGMENT :-

(Per Hon'ble Shri H. Rajendra Prasad, M(A))

The applicant in this OA was appointed LDC on 12-2-1970, promoted UDC on 19-11-1979 and Head Assistant on 11-2-1987. His promotion to the last-named post got accelerated since some of his seniors, who were earlier promoted, declined the offer. As per the seniority list published on 3-3-1994 the applicant was senior to ~~U.D.C. & M.A.~~ Marchy Rao, K.N. Borkar and ~~U.D.C. & M.A.~~ Anis. The last two officials viz., Borkar and Anis, both senior to the applicant in UDC cadre, declined promotion and the applicant was therefore promoted on 11-2-1987. Since, however, no post of Head Assistant existed at Hyderabad the applicant was posted as Office Superintendent in the same pay scale as that of Head Assistant and retained in the same office. The applicant claims that he was obliged to shoulder higher responsibilities on his promotion as Office Superintendent which was the direct result of the refusal of promotion and also to shoulder higher responsibilities by his seniors.

2. The grievance of the applicant is that his juniors, S/Shri Murthy Rao, Borkar and Anis were promoted to Head Assistant in May, 1987 and January, 1988, whereas he was promoted earlier to them on 11-2-1987; and further that while his pay on promotion was fixed at Rs.1400/- from 11-2-87 and at Rs.1440/- from 1-11-87 (DNI:1-11-88) in the scale of Rs.1400-2300, the pay of Murthy Rao was fixed at Rs.1480/- and that of Borkar and Anis at Rs.1680/-. Thus his own pay came to be fixed at a lower stage despite the fact that he figured higher, being senior to the said juniors, in the seniority list of Head Assistants which was published subsequently, besides the fact that he had also earned his promotion earlier than them. The applicant thereupon made a representation on 21-2-94 which was rejected by respondent No.1, vide his memorandum No.A-20012-M/202/11/02-22pm NO. 4+ 21-2-94 on the ground that Murthy Rao was drawing more pay than the applicant in the UDC cadre and that the other two officials viz. Borkar and Anis, were also in receipt of special pay of Rs.70/- granted to them.

3. The applicant relies on the judgment in OA Nos. 342, 337 and 1134/93 delivered by Ernakulam Bench of this Tribunal. It was interalia

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held therein that in all cases (except where reduction is by way of disciplinary proceedings) a senior will be entitled to have his pay stepped up to the level of the pay received by the junior owing to any fortuitous circumstance. This was in keeping with several reported and un-reported judgments which were duly taken note of in the said judgment.

4. The respondents in their counter-affidavit raise the question of limitation and laches on the part of the applicant. They state that the applicant was appointed later than Borkar and Anis in the cadre of UDCs. Similarly, Murthy Rao was senior to the applicant in the post of LDC. They further disclose that the said Borkar and Anis were considered by the DPC and recommended for promotion to the post of Head Assistant on 15-5-1985. They did not, however, accept the promotion since it involved a transfer out of the station where they were then serving. The respondents also confirm that no post of Head Assistant existed at Hyderabad while there is a sanctioned post of Office Superintendent. These posts are inter-changeable, being in the same pay scale and being supervisory in nature.

They submit that the retention of the applicant at Hyderabad on promotion was in his own interest.

The DPC considered the case of Borkar and Anis again in December, 1987 and this time the promotions offered to them were accepted by these officials on 28-1-1988.

5. The respondents draw attention to DOPT's OM No. 4/7/92-Estt (Pay-I) dt. 4-11-93, which gives certain examples of what will not constitute an anomaly in terms of FR 22-C. Para 2(b) reads as under :

"If a senior foregoes/refuses promotion leading to his junior being promoted/ the junior draws higher pay than the senior. The increased pay drawn by the junior either due to ad-hoc promotion by a junior either due to adhoc officiating/ regular service rendered in the higher posts for periods earlier than the senior, in strict sense of the term."

6. Para (c) of the same reads as under :

"than the junior for whatsoever reasons, whereby he draws less pay than the juniors, in such cases senior cannot claim stepping up of pay at par with the junior."

"If a senior is appointed later than the junior in the lower post, itself, whereby he is in receipt of lesser pay

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than the junior, in such cases also the senior cannot claim pay parity in the higher post though he may have been promoted earlier to the higher post."

It is explained in this context that Borkar and Anis were not actually superseded by the applicant at any time but that they merely refused promotion after having been recommended for the same. They were, actually, much senior to the applicant as under :

Date of entry :

S. Anis	: 28-3-63
C.V. Gopal(applicant)	: 12-2-70
V. Murthy Rao	: 11-1-64

Borkar	: 11-1-72
S. Anis	: 4-1-72
C.V. Gopal(applicant)	: 19-11-79
V. Murthy Rao	: 28-4-80

(The applicant was promoted to the departmental competitive examination quota) It is also revealed that the applicant could not be given an adhoc promotion since no vacancy of Office Superintendent was available to grant him such promotion just because he happened to complete the necessary qualifying service of 5 years for the post.

7. The facts of the case have been examined.

The applicant was junior to M/s. Borkar, Murthy Rao and Anis at the point of entry into the service as LDC. More importantly, he was junior to Anis and Borkar

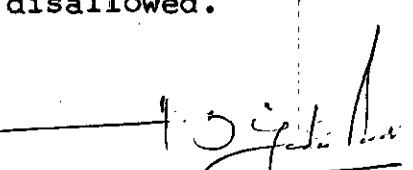
in the cadre of UDCs. He was promoted to UDC earlier than Murthy Rao by virtue of having passed a limited departmental competitive examination quota. The higher pay fixed in respect of these officials were therefore not fortutious but based on sound administrative reasons. Moreover, I am not persuaded that this anomaly has arisen as a direct result of the application of FR 22-C in the strict sense of the term. Article 14 of Constitution of India cannot be invoked in every routine administrative situation without regard to the attendant circumstances of each case which have to be taken note of. It cannot certainly be used in the circumstances of this case.

8. In view of what is stated above, I do not find it possible to accept the pleas of the applicant, his seniors on the only ground that he shouldered higher responsibilities for a while. I am not persuaded that he is entitled to any stepping up of pay overlooking the aspect of his relative position vis-a-vis the seniors. In coming to this conclusion I am also mindful of the observations of the Full Bench of this Tribunal in O.A.1412/93(decided on 20-11-1996) that stepping-up of pay cannot be mechanically ordered merely on the ground of equity,

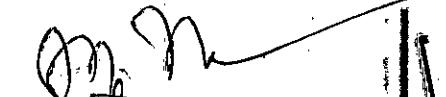
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discrimination or fairness. Every case has to be considered on the facts and merits of that case. The facts of the present case would not admit acceptance of the prayer contained in the OA. The same is, therefore, disallowed.

MD

  
(H. RAJENDRA PRASAD)  
Member (A)

07 OCT 97

  
Deputy Registrar

O.A. 1494/94.

1. The Controller General,  
Indian Bureau of Mines, Indira Bhavan,  
Civil Lines, Union of India, Nagpur-1.
2. The Assistant Admn. Officer (Non-Gazetted)  
O/o the Controller General,  
Indian Bureau of Mines, Indira Bhavan,  
Civil Lines, Nagpur-1.
3. The Regional Controller of Mines,  
Indian Bureau of Mines,  
Ist Floor, Kendriya Sadan, Sultan Bazar,  
Koti, Hyderabad-195.
4. One copy to Mr. K. S. R. Anjaneyulu, Advocate, CAT. Hyd.
5. One copy to Mr. V. Rajeswar Rao, Addl. CGSC. CAT. Hyd.
6. One copy to D.R. (A) CAT. Hyd.
7. One spare copy.  
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22/10/97

I. Court.

TYPED BY:

CHECKED BY:

COMPARED BY:

APPROVED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE.  
VICE-CHAIRMAN

THE HON'BLE MR.H.RAJENDRA PRASAD : M(A)

DATED:- 7/10/97

M.A.,/RA.,/C-A.No..

O.A.No.

1494/94

T.A.No.

(W.P.)

Allowed

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected

No. order as to costs.

केन्द्रीय प्रशासनिक विधिकरण  
Central Administrative Law Commission  
HYD/DESPATCH

12.10.1997

Hyderabad न्यायपीठ