

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

Original Application No.61/96

Dt. of Order: 9-5-96.

Between :-

R.Prabhakar

...Applicant

Vs.

1. The Union of India,
represented by the Secretary to Govt,
Ministry of Science & Technology,
New Delhi - 110 001.
2. The Surveyor General of India,
Dehra Dun - U.P. 248 001.
3. The Director,
Survey of India,
South Central Circle Office,
Hyderabad - 500 027.

...Respondents

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Counsel for the Applicant : Shri C.Suryanarayana

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

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CORAM:

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI : VICE-CHAIRMAN

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

(Judgement of the Division Bench per Hon'ble Justice
Shri M.G.Chaudhari, Vice-Chairman). *recd*

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(Judgement of the Division Bench per Hon'ble Justice
Shri M.G.Chaudhari, Vice-Chairman).

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Shri C.Suryanarayana, counsel for the applicant and
Shri U.Satyanarayana for Shri N.R.Devaraj, standing counsel for
Central Govt. for the Respondents are present and heard. Since the
applicant is due to retire on 31-5-96, the application is heard
as an urgent matter.

2. The applicant is holding Group-C post of Vehicle Superin-
tendent in the Office of Respondent No.3. He reached the maximum
of scale of pay of that post viz., Rs.1640-2900 by 1-1-88 and
stagnated at that point.

3. The Ministry of Finance, Department of Expenditure, Govt.
of India, introduced a scheme for career advancement of Group-C
and D employees vide OM No.F.No.10(1)/E.III/88 dt.13-9-91. That
order took effect from 1-4-91. The scheme was intended to ensure
atleast one promotion in service career to each Group-C and D
employee. The scheme also lays down the category of employees
to whom the benefit there under would be applicable. It has been
provided in the scheme that in case where no promotional grade
is available, promotional scale will be decided by the Ministry
of Finance.

4. After the implementation of the scheme, the Director,
South Central Circle of the Survey of India made a proposal on

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5-12-91 to the Surveyor General for consideration of the applicant's case under the scheme ~~for~~ promotion (on regular basis) INSITU in the scale of Rs.2000-~~60~~-2300-E8-75-3200. A reminder was sent for a decision in the matter on 22-9-92. By letter dt.5-10-92 (Annexure A-6), the Director (Planning) Survey of India informed the Director, South Central Circle that under point No.8 of Ministry of Finance, Department of Expenditure OA No.F.10(1)/E.III/88 dt.25-5-92 the Vehicle Superintendent is not entitled for INSITU promotional scale under the scheme. The applicant was not considered for the promotion under the scheme. He has submitted a representation requesting for consideration of his promotion on 19-10-93. The Dy. Director South Central Circle, once again recommended the case of the applicant to the Additional Surveyor General by letter dt.3-11-93 stating therein that considering the conditions of service in respect of Vehicle Superintendent the Department, the case for INSITU promotion to higher scale of pay under the scheme to the applicant is justifiable and needs sympathetic re-consideration. However once again the office of the Surveyor General replied by letter dt.15-2-94 that the career advancement scheme is not applicable to the post of Vehicle Superintendent.

5. The applicant filed a further representation to the Surveyor General of India on 6-7-94. That was forwarded by the Director, South Central Circle to the Surveyor General of India on 21-7-94 for favour of sympathetic

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consideration and favourable action. The Director also recommended the case stating that it was a fit case to deserve a fair deal. No reply however has been received by the applicant to this representation. He has therefore filed the instant OA on 18-1-96. The applicant prays that the respondents be directed to extend the pay scale of Rs.2,000-3200 and consequently to consider his case for INSITU promotion with effect from 1-4-91 and to extend him all consequential ~~same~~ monetary benefits.

6. The Respondents in their reply admit that the applicant fulfills all the conditions laid down under the scheme for INSITU promotion but contend that in view of clarification No.8 issued by the Ministry of Finance vide order dt.25-5-92 the applicant is not eligible for promotion ~~to~~ INSITU or benefit of the scheme.

7. The question therefore is as to whether the aforesaid clarification is tenable to deny the benefit of the scheme to the applicant.

8. The scheme applied to Group-C and D employees who fulfill the conditions stipulated under the scheme which conditions admittedly the applicant fulfills as stated by the respondents in the written statement. The scheme does not exclude Vehicle scope of the Superintendent from the scheme. Ordinarily therefore the applicant should be entitled to the promotion ~~to~~ to the scale of Rs.2000-3200 as was recommended by the Director, South Central Circle.

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9. Turning now to clarification at point No.8 in the office memorandum of the Ministry of Finance dt. 25.5.92 it is in the nature of clarification offered to a point of doubt raised by some Ministries/Departments in respect of extending the benefit of the scheme. The point of doubt noted was as follows:-

"Whether a Group-C employee stagnating at the maximum of the scale of pay for more than a year can be allowed INSITU promotion to the next higher scale which happens to be a Group-B scale."

The clarification given against this point is a simple "no". It is extremely difficult to gather as to for what reason the clarification has been given simply as "No". The respondents have also not explained in the reply as to for what reason the clarification in this manner has been given. The scheme stipulates INSITU promotion to the next higher scale and in cases where no promotional grade is available. Promotional scale has to be decided by the Ministry of Finance. The provision for promotion therefore is in positive terms. Assuming that the scale of Rs.2000-3200 were not to be available in the Survey of India, the fact that the scale of Rs.2000-3500 is available would not be a reason to deny promotion to the applicant because in such an event the Finance Ministry was required to prescribe the scale. The object of the scheme was clearly that promotional avenue should be made available and the difficulty of making a scale available was to be resolved by the Ministry of Finance. That cannot be construed as sufficient to deny the benefit of the scheme on the

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specious ground that there was no scale available and therefore promotion could not be allowed to the next higher scale which happens to be a Group-B scale. Even otherwise that difficulty did not exist in the instant case because the recommendation of the Director, South Central Circle was for promotion to the next higher scale of Rs.2000-3200. Obviously in view of the existence of that scale in the Survey of India, the denial of the benefit of the scheme to the applicant despite repeated recommendations made by South Central Circle cannot be justified. The clarification is not consistent with the provisions of the scheme and cannot ~~however~~ over-ride the provisions of the scheme. Moreover it is pertinent to note that the scheme was framed on a demand raised by the Staff side of the National Council (JCM) for revival of selection grades in cadres of Group-C and D and the provisions of the scheme were made in consultation with the JCM. A copy of the Scheme was also forwarded to the Members of the Staff side of the National Council of JCM as can be seen from the endorsement at the bottom of Annexure A-2. As the OM dt.25-5-92 giving clarifications does not show that Staff side was consulted, the said clarification at point No.8 was an unilateral view of the Ministry and cannot prevail over the provisions of the scheme which had been brought in consultation with the staff side of the national council of JCM.

10. A similar question arose for consideration of the Bangalore Bench of the CAT in OA 20/94 decided on 21-4-94 in the case of T.M.Varghese Vs. The Director, Southern Circle, Survey of India and others. A copy of the decision is at Annexure A-11. The applicant in that case was also Vehicle Superintendent like the

applicant. He was also denied the promotion on the very same ground viz., clarification at point No.8 in OM dt.25-5-92 (Supra). The learned Members of the Bench were pleased to hold as follows:-

"This pay scale (i.e.Rs.2000-3200), it is seen, is available to Group-C employees of the Central Government. Although similar scale may not exist for employees working in Survey of India, the organisation in which the applicant is working, in order to provide atleast one promotion to the applicant who has had no avenue of promotion for the last about 22 years of service, the scale of Rs.2000-3200, which is the next higher scale to the scale of Rs.1600-2900 could be extended to the applicant in terms of the OM dt.13-9-91....." Suffice to say that the applicant who has had no occassion for promotion during the last about 22 years should be considered for the benefit of in situ promotion in terms of OM dt.13-9-91 as he cannot be denied the benefit of promotion atleast one promotion during his service career"

The respondents were accordingly interviewed --

scale of Rs.2000-3200 as promotion scale to the post the applicant was holding and consider his case for INSITU promotion with effect from 1-4-91 in accordance with the instructions contained in OM dt.13-9-91 and to extend to him all consequential monetary benefits in the event of his promotion. The case of the applicant being similar in all respects, the respondents were required to follow the decision and give similar benefit to the applicant which is his prayer in this OA. The applicant drew attention of the respondents to the aforesaid decision by his representation dt.6-7-94. The submission made by the respondents for not following this decision in the case of the applicant as can been seen from their reply is that no orders of the Government exist to extend the benefit of a Judicial order to

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similarly situated individuals. We can only say that we are astounded by this stand of the respondents. By this time it is fairly well settled that a Government Department is expected to apply the benefit of the principle laid down by a Judicial order to all similarly situated individuals and not to drive such individuals to unnecessary litigation. It is still more surprising that the respondents having stated in the reply that the order of the Bangalore Bench (Supra) has been up-held by the Supreme Court by dismissing the SLP, yet they want to say that they are not bound to extend the benefit of that order to the applicant although he is similarly situated individual simply because there is no government order to that effect. The respondents attitude reveals their narrow approach in taking this contention in as much as they should be aware that though there may abide by ~~or~~ look for Government Orders yet they are required to respect and follow the decision given on the point by a Judicial forum.

11. Thus we find that the applicant has been denied the INSITU promotion to the scale of Rs.2000-3200 on an untenable ground and the applicant is entitled to be considered for promotion to the said scale and for INSITU promotion with effect from 1-4-91 as was directed in respect of a similarly placed vehicle superintendent

following order is passed:-

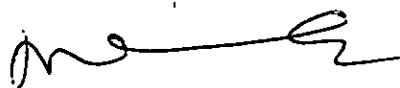
"The respondents are directed to extend the pay-scale of Rs.2000-3200 as promotion scale to the post the applicant is holding and consider his case

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in accordance with the instructions contained in the O.M. dt. 13-9-91 and to extend him all consequential monetary benefits in the event of his promotion. We direct that since the applicant is to retire shortly, the respondents shall implement the aforesaid direction within a period of two months from the date of receipt of a copy of this order."

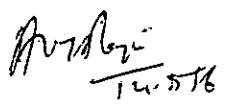
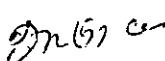
12. The O.A. is accordingly allowed. No order as to costs.



(R.RANGARAJAN)
Member (A)



(M.G.CHAUDHARI)
Vice-Chairman


A. M. S. Rao
14-5-96
Dr. G. C. Rao

Dated: 9th May, 1996.
Dictated in Open Court.

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To

1. The Secretary to Government,
Ministry of Science and Technology,
Union of India, New Delhi-1.
2. The Surveyor General of India,
Dehra Dun-U.P. 1.
3. The Director, Survey of India,
S.C.Circle Office, Hyderabad-27.
4. One copy to Mr.C.Suryanarayana Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr.SGSC. CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. Copy to All Reporters as per standard list of CAT.Hyd.
8. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

R. Langalasam
THE HON'BLE MR. ~~H. RAJENDRA PRASAD~~ (M.A.)

Dated: 9 - 5 - 1996

ORDER/JUDGMENT

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

in
O.A.No. 61/96

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

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default

Ordered/Rejected.

No order as to costs.

DVM

5 Spare (Copies)

