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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH  
AT HYDERABAD.

..  
O.A.No.196/97.

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Date of decision: 11-3-1998.  
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Between:

D.Rama Rao. .. Applicant.

and

1. The Union of India represented by its Director, National Sample Survey Organisation, Field Operation Division(FOD), New Delhi.
2. Deputy Director, National Sample Survey Organisation (FOD), A.P., North Region, 8th Floor, West Wing, Gagan Vihar, M.J.Road, Hyderabad -1.
3. Regional Assistant Director, National Sample Survey Organisation (FOD), A.P.North Region, 8th Floor, West Wing, Gagan Vihar, M.J.Road, Hyderabad -1.

Counsel for the applicant: Sri K.K.Chakkavarthy.

Counsel for the respondents: Sri K.Ramulu.

CORAM:

Hon'ble Sri R.Rangarajan,Member (A)

Hon'ble Sri B.S.Jai Parameshwar,Member (J)

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JUDGMENT.

(per Hon'ble Sri B.S.Jai Parameshwar, Member (J))

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Heard Sri K.K.Chakravarthy the learned counsel for the applicant and Ms. Rukmini for Sri K.Ramulu, the learned counsel for the respondents.

The applicant joined in the Dandakaranya Project as Cleaner from 3-10-1964 in the pay scale of Rs.196-232. As he was declared surplus, he was rehabilitated in the 1st Respondent's Organisation (National Survey Organisation (FOD) - Respondent No.1). He was taken as Group "D" Official in Respondent No.1 Organisation. He reached the maximum pay Scale of Rs.775-1025 (revised). Subsequently, he earned three stagnation increments.

It is submitted that as per O.M.No.10(1)/E/III/88 dated 13-9-1991 he was eligible for IN-SITU promotion. He submitted a representation to the respondents to give him in-situ promotion and fix his pay in the higher scale of pay of Rs.825-1200 with effect from 1-4-1991. The request of the applicant was considered and the Regional Assistant Director sanctioned the same with effect from 1-4-1995 and arrears were drawn and paid to him.

However, on 1-7-1996 the Regional Assistant Director cancelled the said promotion and ordered recovery of excess pay and allowances drawn by him.

JG

The applicant has filed this O.A., for a declaration that the action of the Regional Assistant Director cancelling the in-situ promotion of the applicant is illegal, arbitrary against the Government of India O.M. dated 13.9.1991 and the Order dated 26.11.1996 of the Deputy Director confirming the Order dated 1.7.1996 is contrary to law and consequently for a direction to the respondents not to effect the recovery of the amount paid to the applicant and allow him to draw the higher scale of pay.

The respondents have filed their counter admitting that three stagnation increments on 1.1.1990, 1.1.1992 and 1.1.1994 were sanctioned to the applicant. The respondents submit that as per the guide-lines in the O.M. No.10(1)/E.III/88 dated 25-5-92 his request for in-situ promotion was finally rejected by the respondents as his request was not tenable. It is further stated that persons who were initially appointed to a post in one Organisation but subsequently transferred to another Organisation in the same scale are eligible for in-situ promotion in terms of para 2 of the O.M. dated 13-9-1991 viz., from the date directly recruited person junior to him in the new Organisation whose pay was fixed at the minimum of scale becomes eligible for promotion.

R

As per the clarification letter dated 25.5.1992, the applicant's in-situ promotion was cancelled. The respondents further submit that the applicant was not a directly recruited employee in the respondents Organisation. He was earlier working in the Dandakaranya Project and was absorbed on his transfer in the Respondents Organisation as a surplus employee protecting his pay. In that view of the matter even though the Regional Assistant Director earlier considered his request and granted in-situ promotion, and subsequently cancelled the same in view of the Clarification letter dated 25.5.1992. An irregularity committed by the Department can be corrected and there can be no doubt about it. // It is not the case of the applicant that he was eligible for in-situ promotion as per the O.M. dated 13-9-1991. The applicant joined the Respondents' Organisation after having been made surplus from the initial organisation protecting his pay. Thus the applicant was not a directly recruited person in the transferred Organisation. <sup>How to treat</sup> ~~in~~ such transferred cases, the Government of India issued clarification letter dated 25.5.1992 to O.M. No.10(1)E.III/88 dated 13-9-1991. As per this clarification letter, it is stated that such transferred persons are eligible for in-situ promotion in terms of para 2 of the O.M.

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dated 13-9-1991 viz., from the date a directly recruited person junior to him and fixed at the minimum of the scale becomes eligible for promotion. It is incorrect to read O.M. dated 13.9.1991 in isolation but on reading the same together with the clarification letter dated 25.5.1992 the question arises "Whether the clarification dated 25.5.1992 is in order or not. But we do not want to give any opinion in this connection as the clarification letter dated 25.5.1992 is not challenged in this O.A. Therefore, we are left with no alternative except to give direction in accordance with the existing rules.

The applicant was asked to show any directly recruited person in the present organisation who was recruited much earlier to the applicant and was given in-situ promotion. The applicant could not mention any such person but simply submits that there was none who was given in-situ promotion. In view of this, we are not in a position to grant any relief to the applicant. However, it is to be noted that the applicant had worked for sometime after giving in-situ promotion and during that period discharged the duties of higher post. Hence it is not justifiable that any excess pay and allowances paid to him may be recovered from his pay.

(44)

This proposition is fortified by the decision in

OM PRAKASH VERMA Vs. UNION OF INDIA & OTHERS

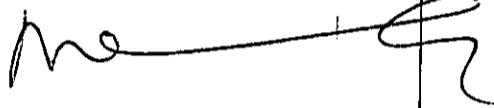
( 1997(1) A.T.J. 224) // Hence, even though the applicant is reverted from the in-situ promotion, no recovery should be effected from his pay for the period he worked due to in-situ promotion.

With the above observations, the O.A., is dismissed. No costs.

  
B.S. JAI PARAMESHWAR,

Member (A)

11.3.98

  
R. RANGARAJAN,

Member (A)

Date: 11-3-1998.

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Dictated in open Court.

  
SSS.

DA. 196/97

Copy to:-

1. The Director, National Sample Survey Organisation, Field Operation Division (FOD), New Delhi.
2. The Deputy Director, National Sample Survey Organisation (FOD), A.P., North Region, 8th Floor, West Wing, Gagan Vihar, M.J. Road, Hyderabad.
3. The Regional Assistant Director, National Sample Survey Organisation (FOD), A.P., North Region, 8th Floor, West Wing, Gagan Vihar, M.J. Road, Hyderabad.
4. One copy to Mr. K.K. Chakravarthy, Advocate, CAT., Hyd.
5. One copy to Mr. K. Ramulu, Addl. Secy., CAT., Hyd.
6. One copy to BSJP M(J), CAT., Hyd.
7. One copy to D.R.(A), CAT., Hyd.
8. One duplicate copy.

SRR

25/3/98  
TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. BURANGARAJAN : M(A)

AND

THE HON'BLE MR. B.S. JAI PARAMESHWAR :  
M(J)

DATED: 11/3/98

ORDER/JUDGMENT

M.A./R.A./C.A. NO. —

in  
O.A. NO. 196/97

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

YLKR

केन्द्रीय प्रशासनिक विधिवरण  
Central Administrative Tribunal

DESPATCH

20 MAR 1998

हैदराबाद न्यायालय  
HYDERABAD BENCH