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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

C.A. 801/97.

Dt. of Decision : 10-12-98.

Abdul Kalam Azad.

..Applicant.

Vs

1. The Railway Board, rep. by
Its Secretary, Rail Bhavan,
New Delhi.
2. The Chief Personnel Officer,
SC Rly, Rail Nilayam, Sec'bad.
3. The Divl.Rly.Manager (BG),
SC Rly, Sanchalan Bhavan,
Sec'bad.
4. Sri. T.S.R.Murthy

.. Respondents.

COHNSEL FOR THE APPLICANT : Mr.P.KRISHNA REDDY

CCUNSEL FOR THE RESPONDENTS : Mr.D.F.Paul, SC for Rlys.

CORAM:-

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

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

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

None on either side. Notice served on R-4.

Called absent.

2. The applicant and 4th respondent were appointed as Junior Typist on SC division vide order No.S.O.O.No.148/Admn./82 dated 15-7-82 and order No.151/Admn.7/82 dated 21-7-82 respectively. The applicant was posted to work as Junior Typist under Sr.DME/Diesel, Kazipet and R-4 was posted as Junior Typist ^{Construction} under DEN/~~Diesel~~, Kazipet. It is stated that R-4 was promoted as Sr. Typist on adhoc basis w.e.f., 6-11-84 to work in the same office i.e., Divl. Engineer/~~Diesel~~, Kazipet. The services of the applicant and R-4 were regularised as Sr.Typist w.e.f., 21-10-92 vide S.O.O.No.196/12/92 dated 31-12-92.

3. The applicant submitted an application on 28-7-93 requesting for stepping up of pay on par with his junior Mr.T.S.R. Murthy i.e., R-4 herein. He was informed by the letter No.CP.508 Typist/A.K.A. dated 17-11-93 (Annexure-II to the OA) that it is not permissible as the fixation allowed to R-4 on his promotion as Sr.Typist is not in order, which requires revision. The salary of R-4 was revised and refixed as Rs.1200/- w.e.f., 21-10-92 i.e., the date of his regular promotion. Subsequently, on re-examination, the pay of R-4 was refixed at Rs.1530/- w.e.f., 1-11-96 taking into account his continuous officiating adhoc services as Sr.Typist in the construction organisation. The applicant submitted an application dated 29-10-96 for stepping up of his pay on par with his junior Mr.T.S.R.Murthy i.e., R-4 herein. His representation was replied vide letter No.CP/235/BILLS/V/Engg. dated 10-1-97 (Annexure-I) stating that the benefit of stepping up of pay of seniors with reference to that of Juniors should be allowed only in cases where the promotions are on regular basis as per the

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Railway Board's letter No.E.P&A.II/90.PP_g dated 7/11-6-90.

Since ^{the} R-4 had officiated as Sr. Typist from 6-11-84 purely on adhoc basis in Construction organisation, the stepping up of pay of the applicant on par with R-4 was not permissible.

4. This OA is filed to set aside the office order No.CP/235/BILLS/V/Engg, dated 10-1-97 (Annexure-I to the OA) and the Railway Board letter No.E(P&A)II/90/P.B-2 dt. 7/11-6-90 treating the same as illegal and for a consequential direction to the Respondents No.1 to 3 to give the benefits of stepping up of pay of the applicant with reference to the salary of his junior i.e., R-4 herein.

5. It is a fact that R-4 was posted to the Construction organisation whereas the applicant was posted ⁱⁿ Open line under Sr.DME/Diesel, Kazipet. ~~If~~ the applicant has not made any request for posting him on Construction organisation if he was of the opinion that adhoc promotion chances in the construction organisation is better. Hence posting of the applicant though he was senior in the open line organisation and R-4 in the construction organisation cannot be ~~followed~~ ^{faulted}. The two organisations viz., the Open line ^{and} construction organisation are two different wings. Hence, the adhoc promotion chances in both the wings cannot be equated. Due to the ~~extremes~~ exigencies of the service in the construction organisation R-4 was given adhoc promotion to the post of Sr. Typist and that resulted in his higher fixation of pay when he was regularly promoted as Sr.Typist. Under those circumstances the higher fixation of R-4 is not a direct result of application of FR 22 C. Hence, the request of the applicant to step up of ~~in~~ his pay cannot be agreed to.

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6. In this connection the observations of the Apex Court reported in JT 1998 (5) SC 448 (Union of India & Ors Vs. M. Suryanarayana Rao) is very ~~very~~ relevant. Para-3, 4 and 8 are relevant. These paragraphs are extracted below for perusal:-

"The judgement of the Tribunal is assailed by the appellant on the ground that principle of stepping up will not apply in the case where junior had been promoted earlier to a higher post on adhoc basis and on account of such adhoc promotion the junior got his pay fixed at a higher scale. In support of this contention reliance is placed by the appellant on a judgement of this Court in Union of India Vs. R. Swaminathan & Ors. JT 1997 (8) SC 61. A Bench of three Judges considered FR 22 (i) and also the Government office memorandum dated 4-11-93 which sets out various instances where stepping up of pay cannot be done. The Bench pointed out that in that case the higher pay was fixed for the juniors not because of any promotion under FR 22 but because of an earlier adhoc promotions given to the juniors for certain periods. The following observation of the Bench will be relevant:

"The memorandum makes it clear that in such instances a junior drawing more pay than his senior will not constitute an anomaly and, therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of adhoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone a criterion for stepping up of pay.

The aggrieved employees have contended with some justification that local officiating promotions within a Circle have resulted in their being deprived of a chance to officiate in the higher post, if such chance of officiation arises in a different circle. They have submitted that since there is all-India seniority for regular promotions, this all-India seniority must prevail even while making local officiating appointments within any Circle. The question is basically of administrative exigency and the difficulty that the administration may face if even short-term vacancies have to be filled on the basis of all-India seniority by calling a person who may be stationed in a different circle in a region remote from the region where the vacancy arises, and

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that too for a short duration. This is essentially a matter of administrative policy. But the only justification for local promotions is their short duration. If such vacancy is of a long duration there is no administrative reason for not following the all-India seniority. Most of the grievances of the employees will be met if proper norms are laid down for making local officiating promotions. One thing, however, is clear. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the proviso to Fundamentals Rule 22."

Learned counsel for the respondent contends that the aforesaid decision does not apply in the present case as the Bench had considered only a short term adhoc promotion of the junior and not a long term adhoc promotion. It is pointed out that in the facts of this case P. Panjara had been promoted on adhoc basis for long terms. The said fact is admitted in the counter statement filed by the Government before the Tribunal. It was contended that whenever a long term adhoc promotion had been given to junior and by virtue thereof his pay was fixed on a higher level, his senior must get his pay stepped up and the principle laid down by the Bench in the aforesaid case would apply only to cases of promotion for short term. From the passage extracted above from the aforesaid judgement it is clear that the question of stepping up did not depend upon the fact that the promotion was short from adhoc promotion or long term adhoc promotion. The government memorandum which has been referred to in the judgement does not make a distinction between short term adhoc promotion and long term adhoc promotion. The relevant part of the Government Memorandum which is extracted in the judgement itself reads as follows:

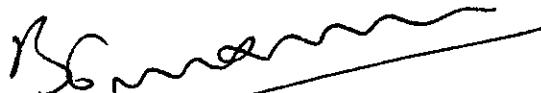
"If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, the junior draws higher pay than the senior. The senior may be on deputation while the junior avails of the adhoc promotion in the cadre. The increased pay drawn by a junior either due to adhoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term."

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One of the reasons given by the Tribunal in support of its order is that when adhoc promotions were made, the respondent was not considered therefore or offered the same and it was not as if he refused to take up higher responsibility. The reasoning is highly fallacious. As pointed out by learned counsel for the appellant adhoc promotions are made within the circles where vacancies arose and the respondent who was working in a different circle could not have been considered for such adhoc promotion or offered the same. The fact that adhoc promotions are made within the circles has been noticed by the Bench in R.Swaminathan's case."

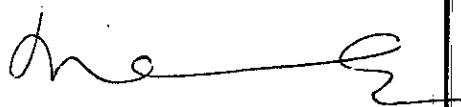
7. Hon'ble In view of the observations of the Supreme Court we feel that the rejection of the case of the applicant for stepping up of his pay on par with that of his junior i.e., R-4 herein cannot be treated as irregular.

8. In view of what is stated above, we find no merits in this OA. Hence, the OA is dismissed. No costs.



(B.S.JAI PARAMESHWAR)

10.12.98
MEMBER(JUDL.)



(R. RANGARAJAN)
MEMBER(ADMN.)

Dated : The 10th Dec 1998
(Dictated in the Open Court)

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22/12/98

II COURT

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1) D.R (A)

2) Spare

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE SHRI B.S.JAI PARAMESWAR :
M(J)

DATED: 10/12/98

ORDER/JUDGMENT

MR.A./C.P.No.

in
O.A.NO. 801/98

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

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केन्द्रीय प्रशासनिक अधिकार अधिकार
Central Administrative Tribunal
प्रेषण / DESPATCH

21 DEC 1998

हैदराबाद भाष्यपत्र
HYDERABAD BENCH