

24

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

REVIEW APPLICATION NO.35 of 1999
in
ORIGINAL APPLICATION NO.1481 of 1997

DATE OF JUDGEMENT: 4th AUGUST, 1999

BETWEEN:

NSVRK SARMA

.. APPLICANT

AND

1. Union of India rep. by Secretary,
Ministry of Communicatios,
Department of Posts,
New Delhi 110 001,

2. The Chief Post Master General,
A.P.Circle,
Hyderabad 500001.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.BSA SATYANARAYANA

COUNSEL FOR THE RESPONDENTS: Mr.V.BHIMANNA, Addl.CGSC


CORAM:

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

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



Contd....2



ORDER

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

Heard Mr.BSA Satyanarayana, learned counsel for the applicant and Mr.V.Bhimanna, learned standing counsel for the respondents.

2. This Review Application is filed by the applicant in the OA praying to review the judgement in OA No.1481/97 which was delivered on 15.4.99.

3. The OA was disposed of in view of the following reasons:-

"In view of the categorical direction of the Supreme Court in the above mentioned cases that adhoc promotion of a junior in a different circle in Telecom Dept. will not entitle a senior in the other circle to get adhoc promotion from the date his junior in the other circle was promoted on adhoc basis and also stepping up of pay on that basis."

4. The applicant in this R.A. contends that the OA was dismissed in view of the ratio of the Judgement in Swaminathan's case reported in 1997 SCC (L&S) 1852 (Union of India v. R.Swaminathan). The ratio in that judgement is applicable prospectively and not retrospectively. As the request of the applicant is to promote him on adhoc basis on par with his junior namely Smt. R.K.Prasad who was

✓

✓

promoted way back in 1991 earlier to the pronouncement of the judgement in Swaminathan's case, the judgement in Swaminathan's case cannot be applied to this case retrospectively.

5. For the above contentions the applicant relied on certain observations of the Five Judge Bench ^{decision} of the Apex Court reported in 1993 SCC (L&S) 1184 (Managing Director, ECIL, Hyderabad v. B.Karunakar). The reported case is in regard to ^a disciplinary ^{proceedings} case. But in para 66 of that judgement it has been observed as follows:-

"When judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions or prospectively to the transactions in future only."

Relying on this, it is further observed in the subsequent paragraphs that "ruling on this will apply only prospectively without disturbing with past transactions".

6. Thus, the applicant states that the ruling in Swaminathan's case is to be applied after the date of pronouncement of the judgement and not as in his case as it occurred much earlier i.e, in the year 1991. Hence relying on Swaminathan's case to dismiss the OA is erroneous.

7. In the same judgment in para 68, it has been held by the Apex Court as follows:-

~

A

"Prospective overruling, therefore, limits to future situations and excludes application to situations which have arisen before the decision was evolved.

xxxx xxxx xxxx xxxx xxxx

It is therefore, for the court to decide, on a balance of all relevant considerations, whether a decision overruling a previous principle should be applied retrospectively or not."

8. From the above observations of the Apex Court, it is evident that normally when a ruling applies prospectively on a balance of all relevant considerations, it has to be seen whether the ruling in previous principle should be applied retrospectively or not. It is not a blank rule that any ruling has to be applied^{only} prospectively. Considering the facts and circumstances of a case, rulings can be applied retrospectively also. Hence each case has to be considered on merits.

9. It is very relevant to point out that Swaminathan's case had also occurred earlier to the issue of the judgment by the Supreme Court in Swaminathan's case. However, the Supreme Court had held that the decision taken earlier ~~to the situation~~ is erroneous. In the present case also, though his junior was promoted on adhoc basis in 1991 whether the applicant can be given adhoc promotion retrospectively from the date when his junior was

2

considered in the light of the facts of that case, repercussions involved if the ruling in Swaminathan's case is not applied in that case and the failure of the applicant in opposing that adhoc promotion of his junior till 1996 ie., after the date of his retirement. Hence it is not erroneous if Swaminathan's case is applied in the case of the applicant herein. Thus the judgment clearly states as to why Swaminathan's case has to be applied in this case even retrospectively. Hence the submission that the judgement was erroneous in view of the observations made in the reported case quoted above, is not a proper submission. Hence this contention has to be rejected.

10. The applicant further contends that an adhoc promotion can be given only for short periods but adhoc promotion was given to his junior for a long time and hence Swaminathan's case is not applicable. Similar submission was also considered by the Apex Court in the reported case in 1998 SCC (L&S) 1509 (Union of India v. M.Suryanarayana Rao) and it was held that stepping up of pay is not admissible to a senior even if the junior's adhoc promotion is for a long period. That would mean that if a junior is promoted on adhoc basis for a long period, even then, his senior is not entitled for adhoc promotion from the date when his junior was given adhoc promotion and on that basis stepping up of pay of the senior. Though the applicant contends that it is a proforma promotion ^{under} Next Below Rule and hence comparison in Swaminathan's case may not be appropriate. The applicant filed his first representation on 27.6.96 after his retirement. Even if it is considered that he should be given proforma promotion, he cannot be

22

1

shown as continued in that post after his retirement from 1991 onwards. The only relief that the applicant will get is that his pay will be refixed treating him as having been promoted under Next Below Rule from the date his junior was promoted and that would lead to stepping up of pay when he was actually shouldered the responsibility from 1.8.93. That fixation of pay will also give him some more retiral benefits. Thus the whole case boils down to stepping up of pay of the applicant in view of the application of Next Below Rule. If that be the case, there is no reason to come to the conclusion that Swaminathan's case is not applicable ^{to} ~~in~~ the present case.

11. The applicant relies on the reported case in (1991) 16 ATC 296 (K.L.Rawal v. Union of India) to contend that even if the adhoc promotion is given to his junior his case ^{who is} ~~and seniors~~ to Smt.R.K.Prasad cannot be ignored and he should have been given an opportunity to get repatriated to Bihar Circle before considering his junior for promotion. When an adhoc promotion is given to a senior in the same station, the question of giving opportunity to a senior to get repatriated to his parent cadre may be appropriate. But in the present case, adhoc promotion was given to a senior in Bihar Circle when the applicant was working in A.P.Circle. If his case is to be considered for adhoc promotion then it may mean that the applicant has to go to Bihar Circle and get promoted. The applicant is a promotee officer and he had retired in 1994. ~~If~~ ^{the} ~~his~~ transfer to Bihar Circle three years before his retirement would mean that he has ^d to be shifted from A.P.Circle to Bihar Circle and ^{the} ~~above~~ shifting ^{would have been} ~~will be~~ very ^{inconvenient} ~~inconvenience~~ to the

2

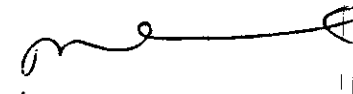
2

applicant. Further, in the exigencies of service, Departmental authorities cannot wait to shift an officer from a far off circle after getting his consent. Such a shifting will not only cause innumerable hardship to the employee concerned but will also disrupt ^{the} working of the Department. Hence under such circumstances, granting of adhoc promotion to a junior who is available readily in that circle cannot be treated as ^a irregular action on the part of the respondents. The respondents, in our opinion, acted not only in the interest of the Department but also in the interest of the applicant. Hence the judgment cited above may not come to the rescue of the applicant.

12. The applicant also relies on the reported judgement in (1991) 18 ATC 428 (Mrs.T.George v. Union of India) to state that claims of senior cannot be ignored even when the promotion is ad hoc. It is very pertinent to point out that in that reported case, the senior was also in the same place as that of the junior. In that context the Principal Bench of the Central Administrative Tribunal had observed that claims of a senior cannot be ignored even when promotion is adhoc. It had not considered the claim of a senior who was posted in a far off place when an adhoc promotion ^{was} ~~is~~ to be considered. For the reasons stated above, this judgment also may not be of use to the applicant herein.

13. In view of what is stated above, we find that there is no error apparent ^{or} ~~in~~ the face of record in the judgment in the OA delivered on 15.4.99. In that view, the R.A. is liable only to be dismissed and accordingly it is dismissed. No order as to costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUD.)


(R.RANGARAJAN)
MEMBER (ADMN.)

DATED: 4th AUGUST, 1999