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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDRABAD

ORIGINAL APPLICATION NO.1481 of 1997

DATE OF ORDER: 15th APRIL, 1999

BETWEEN:

NSVRK SARMA

AND



APPLICANT

1. Union of India rep. by the
Secretary, Ministry of Communicatios,
Dept. of Posts,
New Delhi,

2. The Chief Post Master General,
A.P.Circle, Hyderabad-1.

... 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.)

JUDGEMENT

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

Heard Mr.B.S.A.Satyanarayana, learned counsel for
the applicant. None for the respondents.

2. The applicant while working in Group-B post in
A.P.Circle of Postal Department was promoted as Group-A
Junior Time Scale on temporary and adhoc basis from 1.8.93

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and he continued as such till his retirement on 31.12.94. The applicant in this OA is claiming notional adhoc promotion under Next Below Rule with reference to one Smt. R.K.Prasad of Bihar Circle, who is stated to be junior to the applicant on All India seniority basis in Group-B cadre with effect from 22.10.91, the date on which his junior Mrs.R.K.Prasad was promoted on adhoc basis.

3. The applicant submitted his representation on 27.6.96 regarding his officiating/temporary promotion to JTS Group-A. That representation was rejected by the impugned letter NO.4-44/95-SPG(Pt), dated 2.9.96 (Annexure A-1 at page 15 to the OA) on the ground that "the junior to the applicant on all-India seniority basis might have got adhoc promotion in another circle on the basis of his seniority among the officers of that circle, but such adhoc promotion does not give benefit to a senior elsewhere."

4. Aggrieved by the above, the applicant has filed this OA to set-aside the impugned order dated 2.9.96 by holding the same as arbitrary and illegal and for consequential direction to promote him under the 'Next Below Rule' from 22.10.91 to 1.8.93 with all consequential benefits.

5. The applicant in this OA has detailed his arguments for considering his case under 'Next Below Rule'. He also submits that he has been promoted on adhoc basis to JTS Group-A from 1.8.93 and he continued till his retirement on 31.12.94. Hence his suitability has been assessed and because of that he should be given the adhoc

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promotion from an earlier date i.e, from 22.10.91 when his junior Smt.R.K.Prasad was given adhoc temporary Group-A post in Bihar Circle.

6. The respondents have filed reply. The respondents accept the fact that Smt.R.K.Prasad was promoted on adhoc basis in Bihar Circle with effect from 22.10.91 and she is junior to the applicant. But promotion of Smt.R.K.Prasad is adhoc in an another circle i.e, in Bihar Circle on the basis of the seniority among the officers in Group-B cadre in Bihar Circle and that adhoc promotion doesnot give the benefit to a senior elsewhere^{in other circle}. The appointment to Group-A is to be issued with the approval of the President even for the period for which Circle Heads have been empowered and hence the order bearing NO.4-9/94-/SPG, dated 12.5.94 (Annexure A-12 at Page 37 to the OA) was issued by the President and adhoc arrangements were made by the various circles on the basis of local seniority. They also rely on the Full Bench decision in OA 1412/93 and batch ~~and~~ OA 517/97 on the file of Madras Bench wherein it was held that "if a senior is denied, what he is entitled to get, he must challenge that denial or that preferment extended to a junior. He cannot acquiesce in a wrong and make a gain from that wrong by a comparison". They also rely on the Apex Court judgement in the case of "Union of India v. R.Swaminathan", reported in 1997 SCC (L&S) 1852.

7. We have considered the above views. The question of grant of ad hoc promotion and fixation of pay on that basis has been considered by the Apex Court in Union of

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India v. R. Swaminathan reported in 1997 SCC (L&S) 1852 and it is observed that "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 that too for a short duration. This is essentially a matter of administrative policy. The only justification for local promotions is their short duration." In that view the adhoc promotions given even to juniors in a circle was upheld. The relevant portion is reproduced below:-

"The aggrieved employees 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 an 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

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be stationed in a different Circle in a region remote for the region where the vacancy arises, and that too for a short duration. This is essentially a matter of administrative policy. 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. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements."

8. Once again, the same point came up for consideration in the reported case in 1998 SCC (L&S) 1509 (Union of India v. M.Suryanarayana Rao). It was held that stepping of pay to a senior is not permissible if adhoc promotions are given in different circles. Further the Supreme Court has upheld the law laid down in R.Swaminathan's case stating that stepping up of pay is not admissible to a senior under such circumstances. It is also observed that there is no distinction between adhoc officiation for a long or short period. On that basis it was held that the benefit of stepping up of pay is not admissible to a junior even if the junior's adhoc officiation is for long period. 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

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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.

9. In view of what is stated above, we find no merit in this OA. Hence the OA is dismissed. No order as to costs.

प्रमाणित प्रति
CERTIFIED TRUE COPY

क्रि. संख्या
CASE NUMBER OA 1481/97
दि. प्रसि. ति.
DATE OF PRESENTATION 15-4-97
ऑफिसियल कोपी
OFFICIAL COPY ON 6-5-97

[Signature]

Court Officer

Central Administrative Tribunal
HYDERABAD BENCH.