

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No.....206..... of 1998.

DATE OF DECISION.....15-3-2000.....

Shri Jyotirmoy Roy.

PETITIONER(S)

S/Sri B.K.Sharma, U.K.Nair, M.Goswami.

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri A.Deb Roy, Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

THE HON'BLE MRS LAKSHMI SWAMINATHAN, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the Reporter or not ? *yes*
 3. Whether their Lordships wish to see the fair copy of the judgment ?
 4. Whether the Judgment is to be circulated to the other Benches ?
- Judgment delivered by Hon'ble Judicial Member.

Lakshmi Swaminathan

9

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 206 of 1998.

Date of Order : This the 15th day of March, 2000.

The Hon'ble Mr G.L.Sanglyine, Administrative Member.

The Hon'ble Mrs Lakshmi Swaminathan, Judicial Member.

Shri Jyotirmoy Roy,
presently working as U.D.C at D.D.K
Silchar.

. . . Applicant

By Advocate S/Shri B.K.Sharma, U.K.Nair &
M.Goswami.

- Versus -

1. The Union of India,
represented by the Secretary to the
Govt. of India,
Ministry of Information & Broadcasting,
Sastry Bhawan, New Delhi-1.
2. The Station Director,
All India Radio, Chandmari,
Guwahati-3.
3. The Deputy Director General (NER)
All India Radio, Chandmari,
Guwahati-3.
4. The Station Director,
All India Radio,
Aizwal.
5. The Director,
Doordarshan Kendra,
Silchar.
6. Sri P.R.Dey,
U.D.C at present working
in the office of the Doordarshan Kendra,
Silchar.

. . . Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

SMT.LAKSHMI SWAMINATHAN (J.M)

The applicant is aggrieved by the letter dated 22.10.1997 issued by the respondents disposing of his representation sent through proper channel dated 1.9.1997 in which they have rejected his claim for regularisation of supersession in promotion and pay by Sri P.R.Dey.

2. The applicant is working as Upper Division Clerk (UDC) with respondent 5..He was recruited in service as

J.S.

contd..2

LDC (CG-II) with effect from 25.2.1982. He was promoted on regular basis as UDC with effect from 7.8.1989 and posted at Agartala in the Grade of CG-I and he was working there. His claim is that both in the Grades of CG-II (LDC) and CG-I (UDC), one Sri P.R.Dey was junior to him, as he was appointed as CG-II with effect from 1.8.1983 and promoted as CG-I on regular basis with effect from 11.8.1989. The respondents do not dispute this fact. However, the applicant's grievance is that even though he was senior to Sri Dey, the latter was promoted to CG-I (UDC) on adhoc basis with effect from 11.8.1987 in All India Radio, Aizawl. At that time admittedly, the applicant was posted in All India Radio, Agartala. Learned counsel for the applicant has submitted that though the applicant has always been senior in service to Sri Dey, he is drawing lesser pay than his junior because Sri Dey has been given two increments on his ad hoc promotion as UDC (CG-I). His contention is that the pay and promotion are related to seniority and hence the junior cannot draw higher pay than the applicant. According to the applicant he has made a representation to the respondents on 26.9.1995, bringing out the anomaly and praying for stepping up his pay to that of Sri P.R.Dey. He had submitted another representation to the respondents on 25.8.1997, to which a reply has been given which has been impugned in the O.A.

3. Learned counsel for the applicant, Sri U.K.Nair, has in terms of paragraph 4.9 of the O.A. submitted a copy of the O.M. issued by the respondents dated 12.8.1996, copy placed on record. He has submitted that the concerned officers were making enquiries as to how the applicant's junior, Sri Dey, was promoted on ad hoc basis with effect from 11.8.1997 leaving him out. Learned counsel ^{has} contended that in the representation submitted by the applicant, two main contentions

have been raised, namely, that the respondents could not have superseded him in promotion even though on ad hoc basis while considering the case of Sri Dey for promotion with effect from 11.8.1987 and secondly, the question of stepping up of pay to remove the anomaly of a junior getting a higher pay, based on wrong action taken by them. Sri Nair learned counsel has also submitted that as the respondents themselves have replied to his representations raising these two issues only on 22.9.1997, there is no question of limitation as the O.A. has been filed on 25.8.1998. Learned counsel has very strenuously submitted that the respondents could not have given ad hoc promotion to applicant's junior which has resulted in the higher pay being drawn by him. He has also contented that at the time of making the ad hoc promotion in 1987, the applicant was not even informed by the respondents or asked whether he would accept the ad hoc promotion from Agartala to Aizwal. Learned counsel has, therefore, submitted that the promotion given to Sri Dey is contrary to the rules and has not taken into account the seniority of the applicant. He has also relied on the judgment of Supreme Court in Ajit Singh and others vs. State of Punjab and others ((1999) 7 SCC 209) and has stated that his right to be considered and promoted is a fundamental right. He has, therefore, submitted that the applicant should be considered for regular promotion as CG-I (UDC) from 11.8.1987 i.e. the date of ad hoc promotion of his junior and consequently his pay should also be stepped up to that of the junior to remove the anomalies. In the circumstances, he has submitted that the impugned order dated 22.10.1997 has only considered one part of the applicant's claim, namely, the issue of stepping up of pay but not the question of granting of promotion on regular basis with effect from 11.8.1987.

- 4 -

4. We have seen the reply filed by the respondents and heard Sri A. Deb Roy, learned Sr.C.G.S.C. According to the respondents the applicant's name was also considered for promotion as UDC alongwith other eligible candidates by the DPC held on 24.6.1989 and his junior Sri P.R.Dey was promoted in August 1989 to the post of CG-I (UDC) on regular basis. They have explained that due to the exigency of service, Sri Dey was earlier promoted on ad hoc basis. It has been done on office wise basis against short term vacancies. At that time Sri Dey had also completed only 4 years regular service in A.I.R., Aizwal, and was given the ad hoc promotion by order dated 12.8.1987. Learned Sr.C.G.S.C has submitted that as it is only a stop gap arrangement made on office wise basis in 1987, the applicant cannot claim the promotion on regular basis with effect from 11.8.1987 and pay parity with his junior as he does not fulfil the conditions laid down under FR-22-1(a)(I). The junior to the applicant had earned two increments during his ad hoc promotion from 1.9.1987 till regular promotion to the post of UDC with effect from 11.8.1989. He has therefore submitted that the applicant is not entitled to the stepping up of pay at par with that of Sri Dey as the latter had worked on ad hoc officiating basis for the earlier period and the applicant himself was promoted on regular basis to the post in 1989. Learned counsel has therefore prayed that the O.A. may be dismissed.

5. We have carefully considered the pleadings and considered the rival contentions submitted by the learned counsel for the parties.

6. In the present case the learned counsel for the applicant has very strenuously submitted that as the has a fundamental right for consideration to the higher post of UDC when his junior, Sri Dey, was promoted although on ad hoc

ys

basis, he is entitled to be granted parity of pay after he was promoted on regular basis to that grade in 1989. He has contended that there is no limitation in this case because the respondents themselves have replied to his representation for regularisation of the supersession in promotion and pay only by their letter dated 22.10.1997 which has been impugned in this application. The respondents have not disputed the fact that the applicant was senior to Sri Dey as LDC and also as UDC. We find force in the submission made by the learned counsel for the respondents that, at that time when Sri Dey was given ad hoc promotion in A.I.R. Aizwal, he was posted in that station and it was done on office wise basis against the short term vacancies which had, however, extended till both of them were promoted on regular basis in 1989. It is also relevant to note that both of them had been considered for promotion as UDC in the DPC held on 24.6.1989 and promoted in August 1989, wherein the applicant's seniority has been maintained. The anomaly in the pay between the applicant and Sri Dey has arisen as a result of the increments in pay earned by Sri Dey during the time of his officiation as UDC on ad hoc basis from 12.8.1987 to 11.8.1989.

7. The rejection of the applicant's claim for stepping up of pay with that of Sri P.R.Dey, UDC by the impugned letter dated 22.10.1987 cannot ^{be} faulted as the same is in accordance with the Government of India order 8 given under F.R.22-1(a)(i) ^{the} Full Bench Judgment of the Tribunal in B.L.Somayajulu and others vs. Telecom Commission and another (O.A.1412/93 with connected cases) decided on 20.11.1996 would be relevant to the facts in this case. The Tribunal has in that order clarified that "only those anomalies that are directly referable to the rule governing the subject, i.e. FR-22-1(a)(i) are amenable to the curative process, namely stepping up of pay, and no other." It was also clarified ^{that} equity does not offer

- 6 -

a cause of action in the present circumstances and there is also no question of discrimination.

8. In addition to the above, Sri Nair, learned counsel for the applicant has very strenuously submitted that as the respondents have committed a mistake in promoting Sri Dey on ad hoc basis at A.I.R. Aizwal with effect from 11.8.1987, the applicant cannot be deprived of his right for stepping up of pay. He has also submitted that both of them belong to the same cadre, although admittedly one was working at Aizwal and the other ~~is~~ at Agartala. He has relied ^{on} the O.M. dated 12.8.1996 issued by respondent 1 to respondent 6 making certain enquiries as to how Sri Dey was promoted in 1987 on ad hoc basis, copy placed on record. According to the learned counsel this inter departmental letter will show that the respondents themselves are not fully satisfied with the way Sri Dey was promoted at his station on 11.8.1987 on ad hoc basis. However, nothing has been placed on record to show what further action has been taken. In any case it is relevant to note that the applicant himself had made a representation in this matter only in 1995 followed by another representation in 1997. The contention of the learned counsel that the applicant was not aware of the promotion of Sri Dey, though he has vehemently submitted that both belong to the same cadre but they were working in two different offices, does not appear to be very convincing. The applicant had remained silent about the promotion of Sri Dey for nearly 8 years and ^{has} submitted that it was only then he ~~has~~ come to know that his pay was less than that given to his junior that he made the representations. / Coupled with this fact, the respondents in the reply have stated that the ad hoc promotion was given earlier on office wise basis against short term vacancies and the

contd.. 7

-7-

applicant has not challenged the promotion of Sri Dey till 1995. In Union of India and others vs. M.Suryanarayana Rao (1998) 6 SCC 400) the Supreme Court, ~~has~~ following the decision of an earlier judgment (Union of India vs. R. Swaminathan, 1997 (7) SCC 690), has held that "stepping up of pay is not admissible to the senior even if juniors ad hoc officiation is for a long period and stepping up is not admissible to the senior under such circumstances. Paragraph 10 of the judgment in Suryanarayana Rao's case (supra) is quoted below :


"One of the reasons given by the Tribunal in support of its order is that when ad hoc 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, ad hoc 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 ad hoc promotion or offered the same. The fact that ad hoc promotions are made within the circles has been noticed by the Bench in R.Swaminathan case."

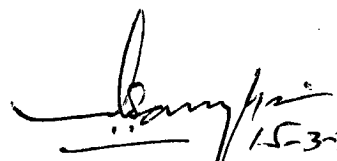
9. In the present case, learned counsel for the applicant has submitted that the applicant and Sri Dey belong to the same cadre although working in separate offices. Taking into account the facts and circumstances of the case, particularly, the fact that the ad hoc promotion of Sri Dey was given in the office he was working i.e. A.I.R.Aizwal when the applicant was admittedly working in another place, i.e. A.I.R.Agartala, and following the aforesaid ^{observations/}decisions of the Hon'ble Supreme Court, we do not find any justification to interfere in the matter. The applicant's contention that as he had not been even asked whether he would go on ad hoc promotion to Aizwal and hence there is justification to step up his pay to that of his junior appears to be an after thought. He has also not controverted the averments made by the respondents

that earlier, the practice followed was to give ad hoc promotion on office wise basis against short terms vacancies. In Suryanarayana Rao's case (supra) the Supreme Court has noted that the stepping up will not depend upon the fact that the promotion was short term ad hoc promotion or long term ad hoc promotion.

10. In the facts and circumstances of the case, the anomaly which has arisen in the pay of the applicant and Sri Dey does not arise as a result of the application of FR-22-1(a)(i) which is one of the conditions which has to be fulfilled before the stepping up of pay can be allowed under the rules. Therefore, taking into account the facts and circumstances of the case, we are unable to agree with the contentions of the learned counsel for the applicant that he should be given the higher pay and treated as if he had been promoted on regular basis with effect from 11.8.1997 i.e. the date when Sri Dey was promoted on ad hoc basis.

11. In the result, for the reasons given above we find no merit in the application, the O.A. is accordingly dismissed. No order as to costs.


(SMT.LAKSHMI SWAMINATHAN)
JUDICIAL MEMBER


(G.L. SANGLYINE)
ADMINISTRATIVE MEMBER