



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.813/2003

This the 17th day of October, 2003

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri A. Subramaniam,
B-51 Manas Apartments,
Mayur Vihar Phase-I Ext...
Delhi-110091.

... Applicant

(By Shri V.S.R.Krishna, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Water Resources,
Government of India,
Shram Shakti Bhawan,
New Delhi-110001.

2. Chairman,
Central Ground Water Board,
Ministry of Water Resources,
NH-IV, Faridabad, Haryana.

3. Deputy Director,
Central Ground Water Board,
Ministry of Water Resources,
NH-IV, Faridabad,
Haryana.

... Respondents

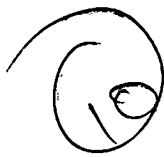
(By Shri Rajeev Bansal, Advocate)

O R D E R

Refusal of fixation of pension on higher post of Scientist 'D' in the pay scale of Rs.3700-5000 vide order dated 12.11.2002 has been assailed by the applicant.

2. Applicant who was holding the post of Senior Hydrogeologist in the scale of Rs.3000-4500 with respondents 2 and 3 proceeded on deputation to the Water and Power Consultancy Services (WAPCOS).

3. Applicant and another Junior Hydrogeologist assailed their seniority and sought promotion in OA.



- 2 -

No.267/1988 and OA No.305/1988 which were disposed of on 11.5.1993 directing the respondents to fix the seniority of applicants as Senior Hydrogeologists on the basis of their order dated 28.6.1988 and further to assess them under the Flexible Complementing Scheme (FCS) for promotion as Scientist "D".

4. Accordingly, in compliance of the directions supra, vide office order dated 13.1.1994 applicant, on accord of seniority, was promoted notionally to the grade of Scientist "D" w.e.f. 30.6.1988 but actual promotion was given prospective effect from 13.1.1994.

5. Applicant had tendered technical resignation from the Central Ground Water Board w.e.f. 31.3.1993 and was absorbed permanently in WAPCOS w.e.f. 1.4.1993. Two increments had been accorded to the applicant in the grade of Senior Hydrogeologist and accordingly his pension was fixed without taking into consideration the notional promotion, though the applicant had never assumed the charge of the promotional post as per FR-17.

6. This has been represented to by the applicant but was rejected on the ground that average emoluments had been worked out for pensionary benefits adding two increments in the grade of Senior Hydrogeologist as on 1.3.1992 and 1.3.1993 and pension was rightly fixed.

7. The learned counsel of applicant Shri V.S.R.Krishna, contended by referring to an order passed by the Ministry of Water Resources on 6.12.1996



- 3 -

pertaining to permanent absorption of the applicant as Scientist "D"/Senior Hydrogeologist, contending that he had been permanently absorbed on an equivalent post of Scientist "D" and for pro rata pension etc., the notional promotion has to be considered and the average emoluments are to be worked out as on the pay scale of Scientist "D" which was allowed to the applicant from 1988. As the applicant was actually in service on 30.6.1988 his pay could not be treated as notional.

8. It is further stated that in similar cases those who have retired have been granted pensionary benefits on the notional pay.

9. On the other hand, respondents' counsel Shri. Rajeev Bansal vehemently opposed the contentions and took a preliminary objection as to limitation by contending that though the pay fixation was done in 1995, the OA has been filed only in 2003. On merits, it is stated that as per FR 17 applicant is not entitled to retiral benefits on his notional pay fixation on the post of Scientist "D" as he had never assumed the duties and charge of the post. Accordingly, the pay of applicant was fixed on notional basis under FR-22 w.e.f. 30.6.1988 in the pay scale of Rs.3700-5000 and actually from 1994.

10. I have carefully considered the rival contentions of the parties and perused the material on record. As per the order passed permanently absorbing the applicant, his pro rata benefits and gratuity etc. had to be determined on the basis of average emoluments



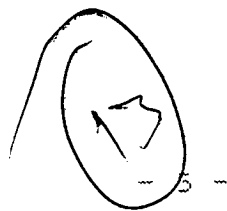
as per the provisions of Rules 33 and 34 of CCS (Pension) Rules. 1972.

11. As per Rule 33 ibid 'emoluments' means basic pay as defined in FR 9(21)(a(i)). As per the aforesaid FR. 'pay' means the pay which has been sanctioned for a post held by a Government servant substantively or in an officiating capacity.

12. FR 17 provides that an officer shall begin to draw pay and allowances attached to the tenure of the post with effect from the date when he assumes the duties of that post.

13. In the instant case though as per the directions of the Tribunal supra, applicant's seniority was re-fixed and by an order dated 13.1.1994 he has been accorded promotion as Scientist 'D' notionally w.e.f. 30.6.1988. but actually from 13.1.1994 at the time of his permanent absorption in WAPCOS. Though he was permanently absorbed as Scientist 'D' he had not actually assumed the charge of the post and had never worked in the promotional post of Scientist "D". Accordingly, the average emoluments referred to in FR 21(9) as well as Rule 33 of the Pension Rules are to mean the average emoluments on substantive or officiating capacity and are to be calculated on the basis of a person assuming the charge of a post.

14. As the notional promotion accorded to the applicant vide order issued in 1994 has not been assailed



further by the applicant and has attained finality. the applicant has acquiesced to it. Now he is estopped from claiming to it.

15. As the applicant was notionally promoted and had not assumed the charge of the post rightly before his absorption in WAPCOS and retirement from Central Ground Water Board, his pay and emoluments have been rightly worked out on the basis of substantive post held for the purposes of average emoluments taking into consideration the two increments which he got up to 1993. FR 17 clearly bars reckoning of pay without assumption of charge.

16. In the result, for the foregoing reasons as the applicant is not entitled for fixation of pension on promotional post of Scientist "D", the OA being bereft of merit, is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

/as/