

Union of India and Others

Vs

Ashoke Kumar Banerjee

Civil Appeal No. 2699 of 1997

(Sujata V. Manohar, M. Jagannadha Rao JJ)

13.05.1998

JUDGMENT

M. JAGANNADHA RAO, J. -

1. This appeal is preferred by the Union of India and the CPWD against the order of the Central Administrative Tribunal, Calcutta dated 3-12-1993 passed in OA No. 241 of 1993. By that order, the Tribunal directed that the "pay of the petitioner in the promotional post should be fixed in terms of FR 22(1)(a)(i) with effect from 1-8-1991 and all consequential benefits including arrears should be paid to him within a period of 3 months from the date of communication of this order".

2. The facts relevant to the case are as follows : The respondent was working in the CPWD as Junior Engineer in the senior scale Rs. 1640-2900 and as he had put in 15 years' service as Junior Engineer, he was granted the Assistant Engineer's scale of Rs. 2000-3500 [in terms of Government of India, Ministry of Urban Development (I Division) No. 12014/2/87 IW II dated 22-3-1991]. By giving him the necessary increment, his pay was fixed at Rs. 2600 as on 1-2-1991 by applying FR 22(1)(a)(i) as permitted in the said order. This was after the respondent opted for this scale. The date of his next increment which fell on 1-2-1991 was taken into account while granting him the increment mentioned in the FR. Later he was promoted, pursuant to certain orders of the CAT in an earlier OA, as Assistant Engineer. He, then filed the present OA claiming that FR 22(1)(a)(i) is to be applied to his case once again and his pay should be refixed in the scale of Rs. 2000-3500 by giving him fresh benefit of the increment permitted by the said FR. The CAT opined that as this was his actual promotion from the post of Junior Engineer to Assistant Engineer, and as he was necessarily discharging higher duties and responsibilities, he was entitled to a fresh application of the said FR 22(1)(a)(i).

3. The appellants contend that this would amount to giving the benefit of FR twice over and this is not permissible. The respondent has been served and notices have been sent to him that his case will be heard on a specific date but he has not chosen to be present and we are, therefore, proceeding to decide the case on merits, setting him ex parte.

4. The point for consideration is whether the respondent who was drawing Rs. 1640-2900 as Junior Engineer and who on completion of 15 years' service as Junior Engineer was given benefit of FR 22(1)(a)(i) in the Assistant Engineers' scale of Rs. 2000-3500 as per OM(A)-11014/91 dated 22-3-1991 with effect from 1-1-1991 is again entitled on regular promotion as Assistant Engineer on 1-8-1991 to the benefit of the same FR 22(1)(a)(i).

5. Under the OM(A)-11014/91 dated 22-3-1991 it is stated that in the CPWD, the Junior Engineers'

Association and Sectional Officers' (Horticulture) Association made certain demands and an agreement was signed on 20-3-1991 between the Government and the Associations. As per the first part of the said agreement there would be 2 scales or JE/SO (Hort.) in CPWD, one in the scale of Rs. 1400-2300 and another in the scale of Rs. 1640-2900. Those who completed 5 years' service in the entry grade Rs. 1400-2300 will be placed in the grade of Rs. 1640-2900, subject to rejection of those found unfit. This higher grade will not be treated as a promotional one but will be non-functional and the benefit of FR 22(1)(a)(i) will not be admissible, while fixing the pay in the higher grade, as there will be no change in duties and responsibilities. We are not concerned here with the above portion of the agreement. We are, however, concerned with the second part which reads as follows :

"(ii) Junior Engineers/Sectional Officers (Horticulture), who could not be promoted to the post of Assistant Engineers/Assistant Directors (Horticulture) in the scale of Rs. 2000-3500 due to non-availability of vacancies in the grade of Assistant Engineer/Assistant Director (Horticulture), will be allowed the scale of Assistant Engineer/Assistant Director (Horticulture) i.e. Rs. 2000-3500, on a personal basis, after completion of 15 years of total service as Junior Engineer/Sectional Officer (Horticulture), till their normal turn for the functional promotion comes as Assistant Engineer/Assistant Director (Horticulture). This personal promotion will be given on fitness basis."

It will be noticed that as per this part of the OM, those Junior Engineers who have completed 15 years of service would get the scale of Rs. 2000-3500 (which is the scale of the promotional post) i.e. Assistant Engineers/Assistant Directors (Horticulture). This benefit is given to avoid frustration of the Junior Engineers and Sectional Officers (Horticulture) who would otherwise be stagnating for want of vacancies in the next promotional post. In that light, they are allowed to draw the scale of Rs. 2000-3500 on a personal basis, provided they have completed 15 years, - till their normal turn for the functional promotion comes as Assistant Engineer/Assistant Director (H). This personal promotion will be given on fitness basis.

6. In the present case, while working as Junior Engineer the respondent completed 15 years in the scale of Rs. 1640-2900 and he became entitled to be fitted in the scale of Rs. 2000-3500 of Assistant Engineers and got his pay fixed accordingly at Rs. 2600 by giving him the benefit of the increment as stated in FR 22(1)(a)(i) and as permitted by the second part of the OM. This was because, even though the OM is dated 22-3-1991, it was agreed that benefit of FR 22(1)(a)(i) would be given from 1-1-1991.

7. Thereafter, the respondent was actually or functionally promoted as Assistant Engineer on 1-8-1991 and he then wanted benefit of FR 22(1)(a)(i) to be given to him once again as he had then assumed higher duties and responsibilities of a superior post functionally. Question is whether his claim is justified ? FR 22 reads as follows :

"22. (1) The initial pay of a government servant who is appointed to a post on a time scale of pay is regulated as follows :

(a)(1) Where a government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment

Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which pay has accrued or rupees twenty-five only, whichever is more.

Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis, the government servant shall have the option, to be exercised within one month from the date of promotion or appointment as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment :

Provided that where a government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time scale of the lower post, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time scale of the lower post or rupees twenty-five, whichever is more."

8. In our view, the respondent having received the same benefit in advance, while working as Junior Engineer and while not actually functioning as an Assistant Engineer, is not entitled to the same benefit of fresh fitment in the scale of Rs. 2000-3500 when he is promoted on 1-8-1991 as Assistant Engineer. This is because as on 1-8-1991, he is not being fitted into the "time scale of the higher post" as stated in the FR. That situation was already over when the OM was applied to him on his completion of 15 years. For the applicability of the FR 22(1)(a)(i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post. If, as in this case, the benefit of the higher scale has already been given to him by virtue of the OM there is no possibility of applying this part of the FR which says

"his initial pay in the time scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more".

9. Further, the respondent is a junior officer in the category of Junior Engineers and he has already got the benefit of the FR on completion of 15 years. If he is to be given a second benefit on the basis of the same FR, then he would be getting more than his seniors, who might have got promoted earlier and might have got benefit of the FR 22(1)(a)(i) only once. Such an anomaly was not obviously intended by the FR.

10. For the aforesaid reasons, the appeal is allowed and the order of the Tribunal is set aside and the OA is dismissed. In the circumstances, there will be no order as to costs.