

Union of India and Others

Vs

M. Suryanarayana Rao

Civil Appeal No. 3752 of 1998

(S. R. Babu, M. Srinivasan JJ)

07.08.1998

JUDGMENT

SRINIVASAN, J. -

1. Leave granted.

2. The respondent herein applied before the Central Administrative Tribunal, Hyderabad for quashing an order of the Government rejecting his representation for stepping up his pay to be on a par with the pay of his juniors N. S. Shah and P. Panjiara who were promoted to the cadre of Telegraph Traffic Service Group 'B'. The grievance of the respondent was that though he was promoted earlier and he was senior to the two persons mentioned above, his pay was fixed at a lesser scale, namely, Rs. 2000-3500 whereas the pay of the said persons was fixed on a higher scale.

3. The Tribunal accepted the contention of the respondent and held that he is entitled to get his pay stepped up to be on a par with that of P. Panjiara who was his junior. As regards Shah, the Tribunal held that the respondent had not made a representation to the Government and therefore, he could not seek stepping up of his pay on a par with Shah. However, the respondent is satisfied with the order of the Tribunal. The Tribunal has limited the relief of stepping up for a period of three years prior to the filing of his application before it as a contention was raised that his application was filed four years after his junior P. Panjiara was promoted.

4. The judgment of the Tribunal is assailed by the appellant on the ground that the principle of stepping up will not apply in the case where a junior had been promoted earlier to a higher post on ad hoc basis and on account of such ad hoc promotion, the junior got his pay fixed at a higher scale. In support of this contention, reliance is placed by the appellant on a judgment of this Court in Union of India v. R. Swaminathan ((1997) 7 SCC 690 : 1997 SCC (L&S) 1852). A Bench of three Judges considered FR 22(i) and also the government office memorandum dated 4-11-1993 which sets out various instances where stepping up of pay cannot be done. The Bench pointed out that in that case, the higher pay was fixed for the juniors not because of any promotion under FR 22 but because of earlier ad hoc promotion under certain periods. The following observation of the Bench will be relevant : (SCC pp. 697-98, paras 11 & 12)

"The Memorandum makes it clear that in such instances a junior drawing more pay than his senior will not constitute an anomaly and, therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is

seniority alone a criterion for stepping up of pay.

The aggrieved employees have 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 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 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. But 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. One thing, however, is clear. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the proviso to Fundamental Rule 22."

5. Learned counsel for the respondent contends that the aforesaid decision does not apply in the present case as the Bench had considered only a short-term ad hoc promotion of the junior and not a long-term ad hoc promotion. It is pointed out that in the facts of this case, P. Panjiara had been promoted on ad hoc basis for a long term. The said fact is admitted in the counter-statement filed by the Government before the Tribunal. It was contended that whenever a long-term ad hoc promotion had been given to a junior and by virtue thereof his pay was fixed on a higher level, his senior must get his pay stepped up and the principle laid down by the Bench in the aforesaid case would apply only to cases of promotion for a short term. From the passage extracted above from the aforesaid judgment, it is clear that the question of stepping up did not depend upon the fact that the promotion was short-term ad hoc promotion or long-term ad hoc promotion. The government memorandum which has been referred to in the judgment does not make a distinction between short-term ad hoc promotion and long-term ad hoc promotion. The relevant part of the government memorandum which is extracted in the judgment itself reads as follows :

"If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, the junior draws higher pay than the senior. The senior may be on deputation while the junior avails of the ad hoc promotion in the cadre. The increased pay drawn by a junior either due to ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in the strict sense of the term."

6. The second contention of the learned counsel is that the Central Administrative Tribunal has in several cases taken the view that if a junior had been promoted on ad hoc basis on a long term and his pay is fixed at a higher scale, the senior is entitled to get his pay stepped up on a par with the junior. He has placed reliance on the judgment of the Tribunal in T. Atchutaramaiah v. Regional Director, ESI Corpn. ((1992) 21 ATC 78 (Hyd)). It is stated by the Tribunal in para 4 as follows :

"We have examined the case and heard rival sides. In an exactly similar case like this,

this Bench had ordered stepping up of pay in allowing OA No. 607 of 1990 by order dated 3-9-1991 (this order had subsequently been upheld by the Hon'ble Supreme Court by orders dated 31-3-1991 in SLP No. 645 of 1992). We had held that where the pay of a junior is fixed on regular promotion at a higher stage than his seniors on account of his having earned increments by virtue of his earlier ad hoc promotions the pay of the senior should be stepped up while fixing his pay on regular promotion. Hence applying the same principles we have to order stepping up of pay in this case also from 1-1-1986."

7. When the matter was brought up by way of a special leave petition the petition was dismissed in limine by this Court with the following observations :

"Since in the present case the respondent was superseded at the time of the ad hoc appointment of his junior and it is not the case of the petitioner that the ad hoc appointment was offered to him and he had refused it, we are inclined to interfere with the impugned order."

8. Learned counsel has also drawn our attention to the orders of this Court dismissing in limine similar special leave petitions in other cases. It is contended by learned counsel that none of these decisions had been considered by the Bench in R. Swaminathan case ((1997) 7 SCC 690 : 1997 SCC (L&S) 1852) and, therefore, the decision in R. Swaminathan case ((1997) 7 SCC 690 : 1997 SCC (L&S) 1852) requires reconsideration. We are unable to agree. In none of the case cited by the learned counsel, there is any reference to the relevant fundamental rules or the government memorandum. On the other hand, the Bench has considered all the relevant rules and has laid down the principle clearly. We find no justification to have the matter reconsidered.

9. The learned counsel suggests that the Bench has failed to take note of an earlier judgment of a Bench of two Judges in Union of India v. P. Jagdish ((1997) 3 SCC 176 : 1997 SCC (L&S) 701). Subsequent to the promotion of the respondents in that case as Head Clerks from the posts of Senior Clerks, some of the posts of Senior Clerks were given a special pay of Rs. 35 per month. Though the respondents had not worked on such posts, they claimed refixation of their pay in the cadre of Head Clerks on a notional basis that they were drawing such special pay. That claim was negated by the Bench. But the Bench held that the respondents therein were entitled to have their pay stepped up to be on a par with that of their juniors who had worked in posts carrying such special pay and were promoted later than the respondents as Head Clerks. The Bench took care to say that such stepping up would be only prospective from the date of promotions of the juniors. The facts of the present case are entirely different and the said ruling will not apply.

10. 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 therefor 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 ((1997) 7 SCC 690 : 1997 SCC (L&S) 1852).

11. We respectfully agree with the ratio in Union of India v. R. Swaminathan ((1997) 7 SCC 690 : 1997 SCC (L&S) 1852) and allow this appeal. The order of the Tribunal in OA No. 913 of 1996

filed by the respondent is set aside and the said application is dismissed. No costs.