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IN THE HIGH COURT OF DELHI AT NEW DELHI

REVIEW PETITION NO. 366 OF 2009 & CM NO.11702/2009
IN
WP (C) No. 1403 OF 2004

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Date of Decision: 14th May, 2010.

UNION OF INDIA

. . . Petitioner

through : Mr. H.K. Gangwani with Ms.
Manpreet, Advocates

VERSUS

BHAGWAN DASS

. . . Respondent

through: Mr. V.S.R. Krishna, Advocate

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. **CM No. 11702 of 2009**

There is a delay of 16 days in filing the review petition, which is not opposed. Delay is condoned.

CM stands disposed of.

2. **REVIEW PETITION No. 366 of 2009**

By means of this review petition, the petitioner/Union of India seeks review of orders dated 08.05.2009 vide which the writ petition of the Union of India was dismissed confirming the order of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'). Since neither the petitioner nor the respondent appeared on the date fixed for hearing, the petition was decided after perusing the records and the impugned orders. The grievance of the petitioner was that the petitioner was not heard and therefore, some aspects which the petitioner wanted to highlight had not been taken into consideration. Though in the application, no reason is given as to why the petitioner did not appear on 08.05.2009, however, having regard to the fact that

none appeared on that day and we did not have the assistance of the lawyers, we decided to hear the matter on merits again.

3. The respondent herein was aggrieved by his pay fixation on his local officiating promotion to Junior Administrative Grade (JAG) to which grade, he was appointed on 01.10.2000. While fixing his pay, the petitioner herein had taken into consideration pay in the grade of Junior Time Scale (JTS). Claim of the respondent was that his pay being drawn by him in a higher grade in the Senior Time Scale should not have been taken into consideration. This contention of the respondent has been accepted by the Tribunal thereby allowing his AO.
4. For appreciating the controversy, we shall taken note of certain facts. The petitioner was appointed as Group-B Officer in the Department of Telecommunication, Ministry of Communication in the year 1983. Further promotions are to the post of JTS grade and STS grade, which are governed by Rule 17 of Indian Posts and Telegraphs Accounts and Finance Service (Group-A) Recruitment Rules, 1972. Rule 17 thereof is relevant for us, which deals with appointment by promotion and reads as under:

“17. Appointment by promotion to the various grades

After the initial constitution of the Service, appointment to various grades shall be made as follows:-

(i) Junior Time Scale:- Appointment by promotion to the Junior Time Scale in the Service shall be made by selection on merit from amongst officers of the Posts and Telegraphs Accounts and Finance Service, Postal Wing, Group 'B' and Posts and Telegraphs Accounts and Finance Service, Telecom Wing, Group 'B' with not less than three years of approved service in the grade on the recommendations of a duly constituted Departmental Promotion Committee, in consultation with the Commission. The vacancies for appointment to the Junior time Scale shall be shared between the officers of the Posts and Telegraphs Accounts and Finance Service, Postal Wing, Group 'B' and the Posts and Telegraphs Accounts and Finance Service, Telecom Wing, Group 'B' in the ratio arrived at on the basis of the sanctioned strength of the respective Group 'B' Services as on the 1st day of January of the year to which the vacancies relate.

(ii) Senior Time Scale: Appointment to the Senior Time Scale in the Service shall be made by promotion of officers in the Junior Time Scale, with not less than 4 years service in the grade, in the order of seniority subject to the rejection of the unfit.

Provided that officers of the Posts and Telegraphs Accounts and Finance Service, Postal Wing, Group B and Posts and

Telegraphs Accounts and Finance Service, Telecom. Wing, Group B who are on the approved list for promotion to the Junior Time Scale under Clause (i) may be allowed to officiate in the Senior Time Scale in an officiating capacity as a purely temporary measure if they have rendered 8 years total regular service in that grade and above till such time as officers of the Junior Time Scale are available for regular promotion to Senior Time Scale.”

5. It is clear from the reading of the aforesaid Rule that an officer in Grade 'B' Service with not less than 3 years of approved service as Grade B Officer is eligible for promotion to the post of Junior Time Scale (JTS). Likewise, for promotion to the post of Senior Time Scale (STS), officer should have rendered four years service in the JTS. However, proviso to sub-rule (ii) of Rule 17 opens another channel of promotion for Grade 'B' officers is without even first becoming JTS. It stipulates that if Group 'B' officer has rendered 8 years approved service and is in the list for promotion to the JTS under Clause (i) of Rule 17, he can be allowed to officiate in the STS in an officiating capacity as a purely temporary measure.
6. The respondent herein was promoted as STS under the aforesaid proviso to Clause (ii) of Rule 17 on 22.09.1994. By that time he had rendered 11 years of service in Grade 'B' and admittedly, he was on the approved list for promotion to JTS. His turn for substantive promotion to JTS came in the year 1998 and he was appointed to JTS on 02.01.1998. However, fact remains that he continued to officiate as STS, that is in the higher post to which he was appointed in the year 1994 under the aforesaid proviso. Thus, even when he was given promotion to the post of JTS with effect from 02.01.1998, he continued to work as STS right from 1994. Keeping in view the aforesaid fact that he was working as STS, the respondent was give further promotion to the post of Junior Administrative Grade (JAG) on local officiating basis with effect from 03.04.1998 for a period of 90 days. This period was, however, extended from time to time with artificial breaks till 01.10.2000 when the respondent was transferred to BSNL on deemed deputation basis.

7. While fixing the pay of the respondent in JAG, the petitioner took into consideration the salary of the pay scale attached to the post of JTS. This action of the petitioner was challenged by the respondent by filing OA before the Tribunal claiming that pay which was actually drawn by him as STS should have been taken into consideration, more so when the respondent was working as STS right from 1994 till his promotion on local officiating basis in the grade of JAG. The Division Bench of the Tribunal before which the matter came up for hearing referred the same to the Full Bench. The Full Bench passed the orders dated 21.07.2003 while interpreting proviso to Clause (ii) of Rule 17, it opined that since promotion of the respondent to the post of STS was in accordance with the aforesaid Recruitment Rules, statutory in nature, it was 'regular appointment' as the same was in terms of those Rules. The Full Bench in Para 11 defined the nature of appointment, when it is regular, and observed as under:

"11. The word (sic. word) "regular/regularly" is pregnant with meaning. It would be other than which is irregular. Holding of a regular post is not necessarily one which is substantive holding of the post. If the post has been held in accordance with the rules on the subject as in the present case in that event, it will not be irregular or de hors the rules. The meaning necessarily has to be given as used in FR 22 (I) (a) (i), if the framers of the Rules would have any other intendment, they would have used the word "Substantive" which occurs in the earlier part of FR 22 (I) (a) (i). the word "regular" obviously has been used not in the same sense as substantive and as already referred to above, if the promotion was in accordance with the Rules, then it would be a regular promotion and the post would be held by the applicant regularly for the purpose of fixation of the pay. We hasten to add that this will not be a correct interpretation if the matter was concerning seniority or for any other purpose. Substantive appointment can always be deferred till availability of permanent posts or at times posts which are not permanent or substantive in nature. This will not be true in the case of a post held by a person regularly. Therefore, the view expressed by the Ernakulam Bench of this Tribunal in the case of P.R. Unnikrishnan Nair (supra) cannot be taken to be correct."

8. Having held that appointment of the respondent to the post of STS was regular, it applied FR 22 (I) (a) (i), which relates to the fixation of pay of a Government servant on his promotion and came to the conclusion that in such circumstances when the respondent was promoted to the grade of STS on regular basis, on his further promotion to the post of JAG, it is the salary being drawn by him in STS grade which should have

been taken into consideration and not the pay scale of JTS. On the basis of this order of the Full Bench of the Tribunal, the Division Bench allowed the OA of the respondent.

9. We find ourselves in agreement with the aforesaid approach and reasoning adopted by the Tribunal, which according to us, has rightly interpreted Rule 17 and Fundamental Rule 22. We, thus, find no merit in this Review Petition, which is accordingly dismissed.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

MAY 14, 2010.
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