
(2002) 09 SC CK 0115
In the Supreme Court Of India
Case No : Civil Appeal No.

Tejindra Dhawan	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2002) 95 FLR 1106 : (2002) 8 JT 615 : (2003) 1 LLJ 217

Hon'ble Judges : K. G. Balakrishnan, J;G. B. Pattanaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant was serving as a labour officer in the ministry of labour. While he was so, continuing as a labour officer in central pool, as there was no promotional avenue in that cadre, he was selected and promoted to go on deputation to the post of welfare commissioner, grade-I. When he was promoted to go on deputation to the post of welfare commissioner, grade-I, his option was sought for and he exercised the option to continue in the grade pay of his substantive rank of senior labour officer plus deputation allowance, as is admissible under the rules. This option was accepted by the government of India in the ministry of labour, as is apparent from the memorandum issued on 20th September, 1985. The notification of the President dated 30th January, 1986, which was published in the extraordinary Gazette also indicates that the continuance of the appellant as welfare commissioner there on deputation basis. Subsequently, the appellant wrote a letter to the ministry of labour on 11th (?) 1986, requesting that his continuance in the post of labour commissioner, grade-I be treated to be on transfer basis. This prayer, however, was not accepted by the union of India. In the meantime, the central labour service rule came into existence on 3rd February, 1987 and under the rules cadres were constituted. One of the grievances of the appellant before the tribunal was that his erstwhile junior in the central pool of labour officers Shri S.K. Das had been given higher

benefit, and as such there is no rhyme or reason not to grant the same benefit to the appellant with effect from the date his junior was given the benefit of higher salary and higher promotion. The stand of the union government before the tribunal was that Shri Das continued in the cadre, whereas the appellant had gone out of cadre on deputation, and therefore the question of conferring the benefits to the appellant, which had been given to Shri Das does not arise. According to the union government there is no question of any discriminatory treatment between the appellant and Shri Das, though it is not disputed that Shri Das was junior to the appellant, has received certain benefits, and his seniority has been counted in accordance with Rule 9 of the central labour service rules, the tribunal was persuaded to accept the stand of the central government, and as such the appellant's application has been dismissed.

2. Mr. Puri appearing for the appellant vehemently contended that the appellant being an employee under the ministry of labour, and having continued as a senior labour officer in the central pool was promoted to go on deputation to higher post with the option of receiving the grade plus deputation allowance, which was in accordance with the service rules. According to Mr. Puri, his lien in the parent office never came to an end and therefore as and when any promotion had been given to his junior including Shri Das, respondent no. 2 herein, he was entitled to be considered for the same and as such non-consideration infringed his rights under Article 16. Mr. Verma appearing for the union government, on the other hand, contended that the appellant having gone out of cadre on his own and having adjudicated to be guided by the rules to receive the grade plus deputation allowance with effect from the date when the statutory rules come into force, those rules should govern the rights and liabilities of the employee, and therefore in accordance with the Rule 9 Shri Das must be held to be senior to the appellant, and consequently question of giving any higher relief to the appellant does not arise.

3. Having considered the respective arguments advanced at the bar and having considered the materials on record, the conclusion is inescapable that the appellant was borne in the substantive cadre of senior labour officer in the central pool and at any point of time there has been a cessation of the appellant from that cadre. He was permitted under the circumstances provisionally, to go to higher post of the welfare commissioner, and he was also promoted to opt to have the grade pay plus deputation allowance, which was permissible under the rules. That being so, there is no rhyme or reason not to consider his case for any benefits accruing in the parent cadre, and that consideration could not have been denied. In our considered opinion, exclusion of the appellant from consideration of any higher benefits, which were given to his junior Shri Das in his erstwhile cadre would tantamount to an infringement of Article 16 of the Constitution. Be it be stated that the appellant has, in the meantime, retired from the service on attaining the age of superannuation. In the aforesaid circumstances, we set aside the impugned order of the tribunal, and direct the union government to consider the case of the appellant, as if he would be

entitled to any higher promotion when his junior Shri Das in the cadre had been promoted, and in the event he is found to be entitled to the same, the notional benefits may be given, including higher pensionary benefits. But no monetary benefits would accrue on that score for the past period. If ultimately the appellant is found to be promoted to a higher post from the post from which he was retired, then in that event, his retiral benefits will have to be re-calculated. The appeal stands disposed of accordingly.