

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, KOLKATA**

O.A. 350/464/2013



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. N. Chatterjee, Administrative Member**

Sri Susit Kumar Biswas,  
Aged about 70 ½ years;  
Son of Late Sukhamaya Biswas,  
Residing at Shripur,  
P.O. Madhyamgram Bazar,  
P.S. Barasat,  
Dist. North 24-Parganas,  
Retired from the Office of the E.S.T. Corporation,  
5/1, Grant Lane,  
Kolkata - 700 012.

..... Applicant.

Versus

1. Union of India represented by the Secretary,  
Ministry of Labour & Employment,  
Govt. of India,  
Shrama Sakti Bhawan,  
New Delhi - 1.
2. The Director General,  
E.S.I. Corpn., C.I.G. Road,  
New Delhi - 2.
3. The Regional Director & Addl. Commissioner,  
E.S.I. Corporation,  
5/1, Grant Lane,  
Kolkata - 700 012.

..... Respondents.

For the applicant : Mr. I. Biswas, Counsel

For the respondents : Mr. S. Banerjee, Counsel

Date of Order : 4.5.2010

**ORDER****Per : Bidisha Banerjee, Judicial Member**

This application has been preferred to seek the following reliefs:



"8.(a) An appropriate order thereby quashing and/ or set aside the impugned office order vide No. 41.C.18/19/CAT/11-E-I dated 01-04-2013 issued by Sri G.C. Jena, the Addl. Commissioner and Regional Director, E.S.I. Corpn., Kolkata - 700 012;

(b) An appropriate order thereby granting the stepping up of pay of the applicant to the pay of his junior, Sri Sisir Kr. Bhowmick since 10-03-1998 and onwards till 30-11-2002, the date of retirement of the applicant as per calculation shown at column No. 3 of the chart given by the applicant which is annexed as Annexure 'A'7;

(c) An appropriate order upon the respondent to re-calculate the pensionary benefits on the basis of Basic pay Rs. 6900/- as on 30-11-2002 in keeping parity to his junior Sri Bhowmick with issuing one copy of revised pension payment order to the applicant;

(d) An appropriate direction upon the respondents for all consequential reliefs with costs;

(e) Any other order or orders as this Hon'ble Tribunal deem fit and proper;"

2. This is the 3<sup>rd</sup> journey of the applicant to this forum. The applicant at first preferred O.A. 903 of 2005. The order rendered in the said O.A. is the following (extracted with supplied emphasis for clarity, to the extent found relevant).

" The applicant has retired as Manager Grade II from the ESIC, under the Ministry of Labour. He is aggrieved by order dated 10.6.05 issued by the authorities in respect of not stepping up of his pay and for his drawing less pay than his junior. He is also aggrieved by non-consideration of his application dated 31.1.2005.

2. The facts of the case are as follows:-

3. The applicant belongs to SC community and was appointed as LDC on 14.5.1968. He was promoted as UDC on 2.2.1985. Thereafter, he was promoted as Head Clerk on 15.5.1989 and subsequently Manager Gr.II on 16.8.96. He was regularized as Manager Gr. II w.e.f. 14.7.97. He retired from service on 30.11.2002 as Manager Gr. II.

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6. The applicant has stated that Shri Bhowmick who was also promoted as Manager Gr.II on 10.3.98 retired on 30.9.2003 and was drawing pension on the basis of his last pay drawn which was Rs. 7075/-. Shri Bhowmick's pay was fixed at Rs. 5200/- on 1.3.98 and would be able to get his next increment on 1.3.99 at Rs. 6,375/-. In the applicant's case, however, he got Rs. 6200/- on 1.3.99. Thus the applicant though senior to Shri Bhowmick from LDC onwards was given less pay. Directions should, therefore, be given to the respondents to re-fix his pay stepping it up with reference to his junior. The applicant has also referred to one Shri Pravat Kumar Sarkar also his junior who was drawing his pension at the level of Rs. 7,075/-.

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12. The respondents have also stated that both the applicant and his junior Shri Bhowmick were promoted to the rank of UDC on the same day viz. 2.2.85. Their pay was fixed at the same level in terms of FR 22(1)(a)(i). The applicant drew higher salary than his junior during the period 15.5.89 to 31.1.92. Thereafter they drew equal salary w.e.f. 1.2.92. The pay of the junior viz. Shri Bhowmick on becoming regular as Head Clerk was fixed on the date of his next increment as per para 2 in FR 22 (1)(a)(i). Therefore, the applicant and his junior got the same pay during the period 1992-96 and there was nothing illegal in this. The rule stipulated that a senior should not get less pay than his junior. There was no question of getting more than the junior.

13. While the junior was a Head Clerk pay revision orders were issued on 22.3.1997 as a result the pay of the junior was revised from Rs. 4500-7000/- to Rs. 5,000-8,000/-. Shri Bhowmick the applicant's junior was still Head Clerk at that time and got the benefit. However, the applicant has been promoted to the next grade i.e. Manager Gr. II before that date and, therefore, he did not get the benefit. In short the case of the respondents is that the applicant did not challenge the office order of 1.8.2002 in time and, therefore, his cases was time barred. The impugned order of 10.6.2005 challenged in the O.A. is not an order at all but simply the reply of 31.1.2005.

17. The grievance being of a continuous character regarding pay matters no limitation would apply. We, therefore, direct that the applicant should file a detailed representation to the respondents in the matter of his pay fixation and anomaly involved with respect to his junior Shri Bhowmick. The representation will contain the contents of the present O.A. and other such supporting documents as the applicant may think it fit to include. On receipt of the same, the respondents will give a detailed order making a chart point to point comparing the pay drawn by the applicant with reference to his junior Shri Bhowmick. In doing so, the respondents will factor in loss of increment caused due to punishment order suffered by the applicant in 2001. The exercise should be completed within a period of three months from the date of issue of this order and communicated to the applicant. As a result of this exercise if the pay of the applicant is re-fixed then the consequential benefits including pensionary benefit should be given to the applicant and necessary order issued including revision of pension payment order.


18. With the above directions the O.A. is disposed of. No costs."

Pursuant to the direction supra, a detailed representation was preferred by the applicant.

The respondents while disposing of the representation issued a speaking order on 18.8.2020. In their speaking order dated 18.8.2010 they disclosed the following "point to point" chart as directed, and clarified as under:

"The chart point to point comparing the pay drawn by the applicant Sri Biswas with reference to his junior Sri Bhowmick is as under –

Particular of pay drawn by Sri Susit Kumar Biswas				Particulars of pay drawn by Sri Sisir Kumar Bhaumick			
Date	Post held	Scale of pay	Pay drawn	Date	Post held	Scale of pay	Pay drawn
1.1.96	Asstt.	4500-125-7000	5375.00	1.1.96	Asstt.	4500-125-7000	5375.00
1.2.96	Asstt.	-do-	5500.00	1.2.96	-do-	-do-	5500.00



16.8.96	I.I. Promoted to the post of I.I. on ad hoc basis	5500-175-9000	5675.00	16.8.96	-do-	-do-	5500.00
1.2.97	I.I.	-do-	5850.00	1.2.97	-do-	-do-	5625.00
22.3.97	I.I. Regular with effect from 14.7.1997	-do-	5850.00	22.3.97	-do-	5000-150- 8000 Pay scale of Asstt. Upgraded w.e.f. 22.3.97	5750.00
1.2.98	I.I.	-do-	6025.00	1.2.98	-do-	-do-	5750.00
1.3.98	I.I.	-do-	6025.00	1.3.98	-do-	Date of next increment started from Feb. To March	5900.00
10.3.98	I.I.	-do-	6025.00	10.3.98	Promoted to the post of I.I. on ad hoc basis	5500-175- 9000	6200.00
1.2.99	I.I.	-do-	6200.00	1.3.99	I.I.	-do-	6375.00
1.2.200	I.I.	-do-	6375.00	1.3.2000	I.I.	-do-	6550.00
1.2.01	I.I.	-do-	6550.00	1.3.2001	I.I.	5500-175- 9000	6725.00
5.2.02	I.I.	Pay depressed to next lower stage for six months as per order dated 7.8.01	6375.00	5.2.2002	-do-	I.I. Regular 22.2.01	6725.00
5.8.02	I.I.	Pay restored after completion to six months period as per order dated, 7.8.01	6550.	5.8.2002	-do-	-do-	6900.00
30.11.02	I.I.	Retired from service on superannuation	6550.00	30.11.02	-do-	-do-	6900.00

The anomaly arose as a result of application of FR-22C (i.e. FR 22(1)(a)(i)). However, the stepping of pay is not admissible due to non-fulfilment of basic criteria as laid down in Govt. of India O.M. dated, 4.11.1993 (Para b).

"The scale of the lower and higher post in which junior and senior officer are entitled to draw pay should be identical".

In the instant case the above condition doesn't fulfil as Sri Biswas was drawing the pay in the scale of pay Rs. 4500-125-7000/- whereas the junior was drawing pay in the pay scale of Rs. 5000-150-8000/- in the cadre of Assistant (i.e. the immediately preceding promotion to the I.I. cadre). The pay scale of Assistant cadre was upgraded w.e.f. 22.3.1997 from Rs. 4500-125-7000/- to Rs. 5000-150-8000/- and since the senior Sh. Biswas got the promotion in I.I. cadre prior to 22.3.1997, he couldn't get the benefit of upgraded pay scale of Asstt. Cadre which his junior got.

2. The pay of Biswas was lesser than Sri Bhowmick on 1.2.1999, 1.2.2001 by one increment due to fixation of pay in respect of Sri Bhowmick to the cadre of I.I. on promotion w.e.f. 10.3.1998 with the benefit of fixation of pay from the upgraded scale i.e. Rs. 5000-150-8000/- in the cadre of Assistant.

3. Sri Biswas was issued two charge sheets under major penalty procedure and was imposed the penalty as follows –

<u>Order Date</u>	<u>Brief particulars of order on imposition of penalty</u>
5.2.2001	With holding of next two increments without cumulative effect. However, the above penalty was reduced to withholding of one increment without cumulative effect by the Appellate Authority vide order dated, 3.7.2001.
7.8.2001	Imposed penalty of depression of pay to next lower stage for a period of 6 months without cumulative effect.

The increment due to Sri Biswas as on 1.2.2002 was not granted in compliance to the order of the Appellate Authority dated, 3.7.2001 i.e. with holding of one increment without cumulative effect.

4. Further, the pay of Sri Biswas was depressed by one lower stage to Rs. 6375/- w.e.f. 5.2.2002 for a period of 6 months in compliance to the order dated, 7.8.2001 and pay was restored to Rs. 6550/- w.e.f. 5.8.2002 and as such the pay fixed as on 5.2.2002 is in order. Further, the penalty of with holding of one increment communicated vide order dated, 3.7.2001 effecting from 1.2.2002 was in operation till the official retired on superannuation on 30.11.2002 and as such restoration of with held increment could not be effected in case of the applicant.

From the above it is observed that the contentions of the applicant is not maintainable and stepping up of pay can't be allowed as this case does not fulfil the basic criteria as laid down in GOI-OM dated, 4.11.1993 (Para – b).

The representation of Sri Susit Kumar Biswas, Ex. Insurance Inspector dated, 7.6.2010 accordingly stands disposed of.

Sd/-

( G. C. Jena )

ADDL. COMMISSIONER &  
REGIONAL DIRECTOR

3. Dissatisfied, the applicant preferred O.A. 2327 of 2010 which was disposed of with the following order, extracted to the extent found relevant and germane to the present lis:

"This application has been filed by the applicant for fixation of pay. The applicant's case is that he was drawing equal pay as that of his junior in the cadre of HC/Assistant till promotion of the applicant to the post of Inspector/Mgr.II. Thereafter he has been drawing lesser pay than that of his junior till his retirement. He made several representations for stepping up of his pay at par with his junior but was denied. The applicant then filed O.A. No. 903 of 2005 and in the light of the directions of the Tribunal he filed a detailed representation before the respondent authorities. However, by order dated 18.08.2010 the respondents have rejected the claim of the applicant. Hence the present case.

2. Facts of the case are that the applicant's junior, Sri Sisir Kumar Bhowmik was promoted to the grade H.C./Assistant on regular basis from 31.10.1991. This was two years late than the date of promotion of the applicant to the same post (on 15.05.1989). The applicant should have, therefore, been at least 2 increment in advance than that of Sri Bhowmik but by office order dated 01.08.2002 pay of the applicant was fixed at Rs.

1640/- as on 01.02.1992 which is discriminatory because inspite of being senior by one year in the cadre of LDC and two years in the cadre of H.C./Assistant than Sri Bhowmick", he was allowed to draw the same pay scale as drawn by Sri Bhowmick for the post of H.C./Assistant. Subsequently Sri Bhowmik was promoted to the post of Insurance Inspector/Manager on ad hoc basis on 10.03.1998 and retired on superannuation on 30.09.2003. Sri Bhowmik has been drawing pension on the basis of last pay drawn on the basis of Rs. 7075/-. The applicant has stated that as per Office Order No. 122 of 2002 dated 01.08.2002, Sri Bhowmick's pay was fixed at Rs. 6200/- as on 10.03.1998 with Rs. 6,375/- on the next date of increment i.e. on 01.03.1999 in the cadre of I.I./Manager Gr.II whereas the applicant's pay in the same cadre was fixed at Rs. 6200/- as on 01.02.1999 and the same basic pay on 01.03.199. This was discriminatory and therefore, his pay should be stepped up in view of his seniority.

3. At the time of superannuation i.e. on 30.11.2002 the applicant's pay was fixed at Rs. 6725/- whereas in November, 2002 the basic pay of Sri Bhowmick, his junior was 6900/-. There was similar anomaly with respect of another junior of the applicant, Sri Pravat Kr. Sarkar. The applicant had represented to the respondents but to no avail. He then moved O.A. 903 of 2005 and the Tribunal directed on 14.05.2010 that since the grievance of the applicant was of a continuous character regarding matter of pay, no limitation applied and that a detailed representation should be filed by the applicant to the respondents with respect to anomaly of pay fixation in comparison to his junior Bhowmick. The applicant filed a detailed representation which was rejected by the impugned order of 18.08.2010 (Annexure A-5).

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8. It is clear at all as to whether FR 23(2) is applicable in the case of the applicant. The central point herein is that the pay scale in the scale of Assistant was upgraded as a result of which the applicant's junior got the benefit of upgraded pay when he joined the senior post. It is not quite clear as to why the applicant's pay was not fixed at par with his junior in such case. They were both in the scale of Assistant. Subsequently the applicant being senior was promoted to the grade of Inspector. Subsequently the pay scale in the lower post was upgraded. Consequently the junior of the applicant got the benefit of the higher scale as Assistant and also while his pay was fixed in the promotional pay of Inspector. This has resulted in a piquant situation where the applicant though senior drew less pay than that of his junior. It is settled law that all other things being equal a senior in a grade should draw more or equal pay than his junior. There is also no disciplinary proceeding which would affect the fixation of pay of the applicant at par with his junior, since the period of punishment was over and the same was with non-cumulative effect.

9. In consideration of all factors we are of the view that the respondents should refer the entire matter to the Ministry of Finance, Department of Expenditure for taking a view on the case as per rules and regulations. The impugned order dated 18.08.2010 is hereby set aside. The decision in the matter should be conveyed to the applicant by a speaking order clearly stating the rules and regulations under which the decision is taken. There will be a time horizon of 6 months for disposal of the case. O.A. is disposed of. No cost."

4. Miscellaneous Application 1 numbered M.A. 120 of 2012 was preferred by the respondents to seek -

"extension of time by six weeks for complying with the directions of this Tribunal in O.A.2327/2010 dated 20.09.2011."

The order in the M.A., rendered on 16.7.2012, records the following:

"2. Counsel for the respondents submitted a letter dated 17.05.2012 of the ESIC enclosing a copy of the letter dated 16.05.2012 of Under Secretary to the Ministry of Labour and Employment addressed to Director General, ESIC to the effect that Ministry of Finance, Department of Expenditure has agreed that that the applicant would be entitled to stepping up of his pay w.e.f. 22.02.2001.

3. Under the circumstances, nothing survives to be adjudicated in this matter. No further time is required. The respondents are directed to communicate the aforesaid order to the original applicant. The M.A. stands disposed of. No order as to cost."

5. The respondents once again preferred a Miscellaneous Application, numbered as M.A. 528 of 2012, that was disposed of on 5.3.2013 with the following order:

"...The instant application has been filed for correction of dates that is 22.02.2001 as submitted by the learned counsel for the applicant/respondents and according to him it would on 01.03.2001 and he has also prayed 2 weeks time to implement the order.

2. The learned counsel for the respondents/applicant has objected on such submission and submitted that as per the order dated 18.08.2010, (Annexure MP/3) he is entitled for such stepping up from 10.03.1998 and he has also submitted that no such communication for stepping up of his pay has received by him till date.

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...The learned counsel for the applicant/respondents has fairly submitted that they are going to communicate and implement the order dated 20.09.2011.

5. In view of the above in our opinion as the date of effect of stepping up is disputed and not yet being communicated, we are not inclined to modify the date that is 22.02.2001 as mentioned in order dated 16.07.2012. However, the respondents is directed to implement and communicate the order within a period of 2 weeks as a last chance."

Therefore, the respondents, in terms of the order dated 16.7.2012 should be deemed to have agreed to grant step up w.e.f. 22.2.2001.

6. The order dated 01.04.2013, impugned in the present O.A., was issued by the Additional Commissioner/ Regional Director. It is extracted hereinbelow for clarity:

REGIONAL OFFICE  
EMPLOYEES' STATE INSURANCE CORPORATION  
"PANCHDEEP BHAWAN"  
5/1, GRANT LANE: KOLKATA -12

No. 41.C.18/19/CAT/11-E.I

Date: 01/04/13

ORDER

SUBJECT: OA No. 2327 OF 2010, Shri Susit Kumar Biswas v/s Union of India & ors.

The Hon'ble CAT, Calcutta Bench vide order dated 20.09.11 in case of OA No. 2327 of 2010 was pleased to direct-

1. That the respondent should refer the entire matter to the Ministry of Finance, Department of Expenditure for taking a view on the case as per rules and regulations.
2. That, the impinged order dated 18.08.10 is hereby set aside.
3. That, the decision in the matter should be conveyed to the applicant by a speaking order clearly stating the rules and regulations under which the decision is taken.
4. That, there should be a time horizon of 6(six) months for disposal of the case.

The copy of judgment of the order dated 20.09.11 along with other relevant documents had been forwarded to Hqrs. Office, ESI Corporation for taking further action as per order on the matter. The Ministry of Labour & Employment vide letter No. S-38016/4012010-SSI(PT) dated the 17/18.04.12 informed that the proposal has been referred to DOPT on the advise of the Ministry of Finance Department of Expenditure on 10.04.12. Since the matter involves consultation of various Ministries, it may take some time to arrive at any decision and it was requested to seek extension of time from Hon'ble CAT, Calcutta Bench in OA No. 2327 of 2010 for implementation of the judgement in question.

Accordingly, this Office had filed a miscellaneous application (M.A No 120 of 2012) before the Hon'ble CAT, Calcutta Bench on 16.03.12 praying for grant of a further time of 6(six) weeks after expiry of 20.03.12 for complying with order dated 20.09.11.

The ESIC Hqrs. Office vide letter dated 17.05.12 thereafter forwarded decisions of Ministry of Finance as communicated by Ministry of Labour letter dated 16.05.12 stating that the matter was examined in consultation with the Ministry of Finance, govt. of India and recommended for stepping up of pay of Shri Susit Kumar Biswas w.e.f. 22.02.01 i.e the date on which his junior Shri Sisir Kumar Bhowmick started drawing higher pay as regular Insurance Inspector.

The Hon'ble Tribunal after perusal of submission was pleased to dispose of the M.A No. 120 of 2012 vide order dated 16.07.12 with the direction to the ESI Corporation to give effect to the decision of Ministry of Finance, Department of Expenditure communicated vide Ministry of Labour letter dated 16.05.12.

The matter of stepping up of pay was examined and it was observed that on 22.02.2001, both the officials i.e Shri Susit Kumar Biswas and Shri Sisir Kumar Bhowmick were drawing same basic pay i.e Rs. 6550/- and the anomaly in pay arose only on w.e.f 01.03.2001 due to grant of increment to his junior Shri Sisir Kumar Bhowmick w.e.f. 01.03.2001. As such, stepping up of pay can be effected w.e.f 01.03.2001 only.

In view of the above a Miscellaneous Application M.A No. 528 of 2012 dated 22.11.12 has been filed in Hon'ble CAT, Calcutta Bench for modification of the order dated 16.07.12 so that stepping up of pay could only be granted to Shri Susit Kumar Biswas w.e.f 01.03.2001.

The Hon'ble CAT, Calcutta Bench vide order dated 05.03.2013 disposed the case with the direction to implement and communicate the order within a period of two weeks as a last chance.



In view of the discussion above and also keeping in view of the spirit of direction issued by the Ministry of Finance communicated vide Ministry of Labour & Employment letter dated 16.05.12 the stepping up of pay of Shri Susit Kumar Biswas, Ex-Insurance Inspector to Rs. 6725/- now ordered w.e.f. 01.03.01.

However, details of pay in comparison to his junior Shri Bhowmick is shown as below-



Particulars of pay of Shri Susit Kumar Biswas				Particulars of pay drawn by Shri Sisir Kumar Bhowmick		
Date	Previous pay (in Rs.)	Pay now ordered after stepping up	Remarks	Date	Pay (in Rs.)	Remarks
22/02/01	6550			22/02/01	6550	
01/03/01	6550	6725	DNI March 2002	01/03/01	6725	Annual Increment
05/02/02	6735	6550	Pay depressed to next lower stage for 6 (six) months as per order dated 07/08/01	05/02/02	6725	
01/03/02	6735	6550	Next increment withheld as per order dated 03/07/01 b appellate authority in another case of Charge Sheet	01/03/02	6900	Annual increment
05/08/02	6550	6725	Pay restored after completion of 6 (six) months penalty as per order dated 07/08/01 but withholding of annual increment continues	05/08/02	6900	
30/11/02 Superannuation	6550	6725		30/11/02	6900	

It is also ordered that Shri Biswas is entitled for other pensionary benefits in view of the stepping up of pay ordered as above.

To  
Shri Susit Kumar Biswas  
s/o Late S. Biswas  
Vill. Sripur  
P.O Madhyamgram Bazar  
Dist. North 24 Parganas

(G.C JENA)  
ADDITIONAL COMMISSIONER  
& REGIONAL DIRECTOR"

7. The Ld. Counsels were heard and records perused.

As we discern, the claim of the applicant for stepping up was decided way back in August, 2010. The applicant has been litigating without any merit, since 2005 and the claim has to given a quietus.

8. The reason articulated by the respondents to deny him stepping up w.e.f. 10.3.1998 being that,

Shri Bhaumick was promoted to I.I on 10.03.1998 on adhoc basis, he earned regular promotion only w.e.f. 22.02.2001 hence step up is permissible only from 2001,

Whereas the applicant officed in the post of I.I w.e.f. 16.8.96 and he has been granted stepping up or parwith the the Junior only w.e.f 22.2.2001 the date of regular promotion of such junior whereas he claim from 10.3.98 the date of adhoc promotion of the junior.

The issue that is to be determined is whether the applicant would be entitled to step up of his pay w.e.f. 10.3.1998 or 22.2.2001.

9. There may be situations where on promotion a junior's pay is fixed at a higher stage than that of his senior on account of the fact that the junior had enjoyed benefits of special pay which did not come in the way of his senior, when he was promoted to the higher post at an earlier date. This anomaly in pay is removed by stepping up of pay of senior from the date of promotion of junior. 9.

10. The Govt. of India, M.F. O.M. No. F.2 (78)-E.III-(A)/66 dated 4.2.1966 provides for such stepping up of pay subject to the following three conditions, namely:

*"(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;*

*(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;*

*(c) The anomaly should be directly caused as a result of the application of FR 22-C [now FR 22(1)(a)(i)]. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer."*

In umpteen number of cases Hon'ble Apex Court has noted that unless all the three conditions are fulfilled, the principle of stepping-up cannot be applied.



However, nothing in this provision debars step up to a senior who suffers lesser pay than the junior due to adhoc promotion of the junior, whose pay is fixed under FR 21(1)(a)(i) [erstwhile FR 22e].

11. Further we discern that FR 22(1)(a)(i) equally applies to an adhoc promotee. Here, it would be profitable to extract FR 22 (1)(a)(i),

"1. Substituted by G.I., Dept. of Per. & Trg., Notification No. 1/10/89-Estt. (Pay-I), dated the 30<sup>th</sup> August, 1989, published in the Gazette of India as GSR 679, dated the 16<sup>th</sup> September, 1989, as amended by Notification of even number, dated the 28<sup>th</sup> November, 1990. **F.R. 22. (I) 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 such pay has accrued or 2. Substituted for "Rupees twenty-five" by G.I., Dept. of Per & Trg., Notification No. 1/6/97-Estt. (Pay), dated the 30<sup>th</sup> January, 2001 and takes effect from the 1<sup>st</sup> January, 1996. **[rupees one hundred only], whichever is more."**

12. We further note that Swamy's Handbook 2020 records the following:

**"Instances which do not constitute anomaly for stepping up of pay. – The following instances do not constitute an anomaly of junior drawing more pay than the senior and stepping up of pay will not be admissible in such cases:-**

- (i) Extraordinary Leave resulting in postponement of the date of next increment with consequent drawal of less pay than the junior in the lower grade itself; pay parity cannot be claimed even if promoted earlier to the higher grade.
- (ii) A senior forgoing/ refusing promotion leading to the promotion of junior earlier and drawal of hither pay than the senior; increased pay drawn by a junior due to ad hoc officiating/ regular service rendered in the higher posts for periods earlier than the senior.
- (iii) A senior joining higher post later than the junior and drawing less pay.

- (iv) A senior appointed later than the junior in the lower post itself and drawing less pay than the junior, when promoted to the higher post earlier than the junior.
- (v) A senior direct recruit drawing less pay than a junior promote whose pay has been fixed with reference to the pay drawn in the lower post.
- (vi) When a junior gets more pay due to additional increments earned on acquiring higher qualifications. – FR 22, GIO (23), Para. 2
- (vii) If a senior is on deputation while junior avails of the ad hoc promotion in the cadre, the increased pay drawn by the junior due to ad hoc / officiating and/or regular promotion following such ad hoc promotion in the higher posts vis-a-vis senior, is not an anomaly in strict sense of the term.
- (viii) Where an employee is promoted from lower post to a higher post, his pay is fixed with reference to the pay drawn by him in the lower post under FR 22 (I) (a) (I) read with Rule 13 of CCS (RP) Rules, 2016 and due to his longer length of service in the lower grade, his pay may get fixed at a higher stage than that of a senior direct recruit appointed to the same higher grade and whose pay is fixed under different set of rules. For example, a Senior Secretariat Assistant (SSA) on promotion to the post of Assistant Section Officer (ASO) gets his pay fixed under FR 22 (I) (a) (I) with reference to the pay drawn in the post of SSA, whereas the pay of ASO (DR) is fixed under Rule 8 of CCS (RP) Rules, 2016 at the minimum pay or the first Cell in the Level, applicable to ASO to which he is appointed. In such a case, the senior ASO (DR) cannot claim pay parity with that of the promotee junior ASO. - OM. Dated 26-10-2018."

Although stepping up is not permissible where junior has held the post earlier than the senior there is apparently no reason why the applicant would not be entitled to step up w.e.f 10.3.98 when his junior got ad hoc promotion as I.I when the applicant himself was officiating as I.I. w.e.f. 16.8.96, way ahead of the junior.

13. It would be also be profitable to refer to a decision of the Hon'ble Apex Court in **Union of India and others vs. M. Kuryanarayana Rao** reported in (1998) 6 Supreme Court Cases 400. The decision is extracted as under:

"4. The judgment of the Tribunal is assailed by the appellant on the ground that principle of stepping up will not apply in the case where junior had been promoted earlier to a higher post on adhoc basis and on account of such adhoc 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 vs. R.Swaminathan & Ors.** [1997 (7) SCC 690.]. A bench of three Judges considered F.R. 22(1) and also the Government office memorandum dated 4.11.93 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

an earlier ad-hoc promotions given to the juniors for 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."*

XXX

XXX

XXX

...The government memorandum which has been referred to in the judgement does not make a distinction between short term adhoc promotion and long term adhoc promotion. The relevant part of the Government Memorandum which is extracted in the judgment itself reads as follows:

*"It 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 strict sense of the term."*

6. The second contention of the learned counsel is that the Central Administrative Tribunal has in several case taken the view that if a junior had been promoted on adhoc basis on long terms and his pay is fixed at a higher scale, the senior is entitled to get his pay stepped up on par with the junior. He has placed reliance on the judgment of the Tribunal in *T.Atchutaramaiah vs. Regional Director, Employees' State Insurance Corporation, Hyderabad* [1992 (21) Administrative Tribunal Cases 78]. 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 O.A. No.607 of 1990 by order dated 3.9.1991 (This order has subsequently been upheld by the Hon'ble Supreme Court by orders dated 31.1.1992 in SLP No.645 of 1992). We had held that where the pay of a junior is fixed on regular promotion at 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 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 observation:

*"Since in the present case the Respondent was superseded at the time of the adhoc appointment petitioner that the adhoc appointment was offered to him and he had refused it we are not 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's* case and, therefore, the decision in *R.Swaminathan's* case requires re-consideration. We are unable to agree."



In the present case it is discernable that the applicant, who was senior to Shri Bhaumick, was officiating in the post of I.I w.e.f. 16.8.96 where his junior Bhaumick was officiating as I.I. (on an adhoc basis), w.e.f. 10.3.98, i.e. from a later date than the senior. As on 10.3.98 both were holding the post of I.I., the applicant on regular basis and his junior an ad hoc basis yet the applicant, a senior who held the post on regular basis was on a lesser pay (Rs. 6025/-) while the junior (ad hoc promotee) was on a higher pay (Rs. 6200/-), which disparity in pay can definitely be construed as an anomaly, <sup>for</sup> to be corrected/removed by stepping up.

Therefore, in all fairness the applicant should be allowed a step up w.e.f. 10.3.98 as per with Bhaumick.

14. We therefore quash the impugned orders and allow the O.A. Let appropriate order be issued within 2 months. No costs.

(Dr. N. Chatterjee)  
Administrative Member

(Bidisha Banerjee)  
Judicial Member

drh