

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2387/2001

New Delhi, this the 1st day of May, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J)
Hon'ble Shri M.P. Singh, Member(A)

D.P. Rangan
C-2/115A, Keshavpuram
Delhi-110035 .. Applicant

(By Shri O.P.Gehlaut, Advocate)

versus

Union of India, through

1. Secretary
Department of Expenditure
Ministry of Finance
North Block, New Delhi
2. Secretary
Ministry of Industry (Bureau f
Industrial Cost & Prices), *Sub Naya Bawali*,
, New Delhi .. Respondents

(By Shri R.F.Agarwal, Advocate)

ORDER

Shri M.P. Singh, Member(A)

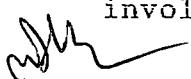
In this OA, the applicant is aggrieved by the non-grant of upgraded scale of Rs.22400-24500 to him with effect from 1.5.96. Heard the learned counsel for the parties at length.

2. Briefly stated, the applicant was appointed as Deputy Director in the Indian Cost Accounts Service w.e.f. 4.9.82, alongwith S/Shri M.L. Mehta and J.K. Puri. Till his retirement, the applicant was senior to Shri J.K. Puri but junior to Shri Mehta. Thereafter, the applicant was appointed to the Senior Administrative Grade (SAG) of Adviser (Cost) in the pay scale of Rs.5900-6700 w.e.f. 31.10.94 and posted in the office of Respondent No.2. He retired from service on 31.10.96 on attaining the age of superannuation. On the recommendations of the Fifth Central Commission,

[Signature]

respondents upgraded the post of Adviser (Cost) to that of Additional Chief Adviser (ACA) and revised its scale of pay from Rs.18400-22400 to Rs.22400-24500. According to the applicant, the posts of Adviser (Cost) as well as the upgraded post of ACA are cadre-posts of ICAS involving only replacement of nomenclature and scale of pay, as there was neither creation of any new post nor was there any change in functional duties and responsibilities. As a consequence, the pay of Shri M.L. Mehta, who retired on 30.4.96, i.e. 6 months before the applicant, and that of Shri J.K. Puri, was fixed at Rs.22400 w.e.f. 1.1.96 and 16.9.96 respectively, ignoring applicant's claim to the grant of this upgraded scale w.e.f. 1.5.96 after Shri Mehta's retirement. The grievance of the applicant is that since no rules or eligibility criteria have been incorporated in the ICAS Rules for appointment to the aforesaid upgraded post, he should not have been denied the benefit of that post. He has made several representation in this regard but without success. Hence he has filed this OA seeking directions to the respondents to grant him the upgraded pay scale of Rs.22400-24500 retrospectively w.e.f. 1.5.96 and to refix his pay as also revise his pension accordingly.

3. Respondents in their reply have contested the case. They have stated that the placement of the post and its incumbent in the higher replacement scale of pay was to be regulated in accordance with the instructions contained in para 4(b) of the OM dated 30.6.1999 issued by the Ministry of Finance, which stipulates that in cases where upgradation and placement of higher pay scale involves re-distribution of posts or re-structuring of



the cadre or junior being presently occupying the post necessitating the interchangeability of persons, placement of eligible officers in the upgraded higher pay scales would be effective only prospectively after observing the formalities prescribed by DoPT for appointment to the higher replacement scale and also on their fulfilling the prescribed residency requirements. The upgraded post of Adviser (Cost) in Cost Accounts Branch was only one out of the three sanctioned posts in ICAS cadre. As per para 4(b) of the OM dated 30.6.99 higher pay scale cannot be extended in situ to the present incumbents without duly observing the prescribed selection process in cases where redistribution of posts or restructuring of the cadre was involved. In fact the Department had erroneously extended the benefit of upgraded post to S/Shri M.L. Mehta and J.K. Puri w.e.f. 1.1.96 and 16.9.96 retrospectively without following the prescribed procedure, vide notifications dated 27.7.99 and 23.7.99 respectively. Subsequent to this, the applicant also requested for granting him the benefit of upgraded post retrospectively w.e.f. 1.5.96. Thereafter, the matter was considered by the department, when it was detected that the upgraded post in the pay scale of Rs.22400-24500 was at the level of Additional Secretary involving assumption of higher responsibilities. As such, the benefit in respect of S/Shri Mehta and Puri was withdrawn vide notification dated 9.8.2001 and the notifications dated 23.7.99 and 27.7.99 had to be rescinded.

4. Besides, the higher pay scale was to be extended only prospectively. The applicant had retired from service on 31.10.96, while orders regarding upgradation of the post

ANM

were issued on 30.6.99. Moreover, applicant had not fulfilled the prescribed residency requirement as laid down in para 4(b) of OM dated 30.6.99 (supra) and therefore the applicant was not entitled to the benefit of higher pay scale. That apart, when the erroneous benefit of upgradation granted to S/Shri Mehta and Puri retrospectively was withdrawn, there was no occasion to consider the case of applicant for appointment to the upgraded post w.e.f. 1.5.96. In view of this position, the present OA has no merit and deserves to be dismissed.

5. During the course of the arguments, the learned counsel for the applicant contended that when the benefit of upgraded scale has been granted to Shri Mehta who had retired earlier than the applicant and his junior namely Shri Puri, applicant has been discriminated against. The upgraded post is covered by para 4(a) of OM dated 30.6.99 (supra), which stipulates that where the upgradation of posts involves only the placement of existing incumbents in higher replacement scales without the assumption of any higher responsibilities or changes in eligibility criteria, the suitability of the incumbents to occupy such posts in the higher pay scales is not required to be assessed afresh. On the question of discrimination, the learned counsel for the applicant has placed reliance on the judgement of the Hon'ble Supreme Court in Vishundas Hundumal Vs. State of Madhya Pradesh AIR 1981 SC 1636.

6. On the other hand, the learned counsel for the respondents submitted that since the benefit extended to two other officers erroneously with retrospective effect had been withdrawn and they were reverted to the post of Adviser (Cost), the ground for grant of the said benefit

[Signature]

to the applicant no more exists and hence there is no discrimination or violation of any law. Learned counsel also reiterates that procedure laid down in para 4(b) of OM dated 30.6.99 (supra) was to be followed while granting the benefit of upgraded post which involves assumption of higher responsibilities and that the placement of eligible officers in the upgraded higher pay scale was not be extended in-situ and retrospectively but only prospectively after observing the prescribed selection procedure.

7. We find that the reliance placed by applicant's counsel in Vishundas Hundumal's case (supra) will not render any assistance to the applicant as the same is not even remotely related with the case on hand. This case dealt with the discrimination in the scheme of nationalisation of routes.

8. Learned counsel for the respondents also drew our attention the judgement of the Hon'ble Supreme Court in ICAR & Anr. Vs. T.K. Suryanarayan & Ors. 1997(5) SLR where it has been held that incorrect promotion either given erroneously by the department by misreading the said service rules or such promotion given pursuant to judicial orders contrary to service rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory rules. He contended that in view of this position also, applicant cannot claim the benefit that was erroneously given to other two persons particularly when that too was withdrawn by the department.



9. We have separately decided OA No.2388/2001 filed by Shri S.V. Nagarajan. He was the senior most person in the grade of Advisor (Cost) in the pay scale of Rs.18400-22400, having been appointed to Senior Administrarative Grade w.e.f. 21.7.89. He was also ignored and discriminated for appointment to the post of Additional Chief Advisor w.e.f. 1.1.96. In that OA (2388/2001), for the detailed reasons recorded therein, directions have been given to the respondents to consider Shri Nagarajan's claim for appointment to the only upgraded post of ACA. The applicant in the present OA is at Sl.No.3 in the seniority of Advisor (Cost), having been appointed to SAG w.e.f. 31.10.94, and is thus junior to both Shri Nagarajan and Shri Mehta. Moreover, residency period of three years is required to become eligible to be considered for the upgraded post of Additional Chief Advisor which the applicant did not fulfil as on 1.1.96. Also the applicant retired from service w.e.f. 31.10.96 before Shri Nagarajan (applicant in OA 2388/2001) who retired on 31.1.98. On this ground also the applicant was not eligible for being considered to the upgraded post of ACA.

10. For the reasons recorded above, the present OA has no merit is accordingly dismissed. No costs.

m/s
(M.P. Singh)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman(J)

/gtv/