

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2388/2001

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)

S.V. Nagarajan
BB/11-B, DDA Flats
Munirka, New Delhi

.. 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 of
Industrial Cost & Prices)
Udyog Bhawan, New Delhi .. Respondents

(By Shri R.P.Agarwal, Advocate)

ORDER

Shri M.P. Singh, Member(A)

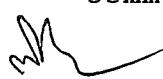
In this OA, the applicant has challenged the order dated 29.8.2001 whereby his claim to grant the upgraded scale of Rs.22400-24500 to him with effect from 1.1.96 has been rejected. This order has been passed by the respondents pursuant to the directions given by this Tribunal on 11.7.2001 in OA 1671/2001 filed by the applicant earlier seeking the aforesaid relief. Heard the learned counsel for the parties at length.

2. Briefly stated, the applicant was appointed as Joint Director in the Indian Cost Accounts Service (ICAS) w.e.f. 4.9.82, alongwith S/Shri M.L. Mehta and J.K. Puri, who were appointed as Deputy Directors (Cost) in the said service in the pay scale of Rs.1100-1600. Till

[Signature]

his retirement, the applicant was senior to both S/Shri Mehta and Puri. 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. 21.7.89 and thereafter as Member (Finance) w.e.f. 31.3.94 in the office of Respondent No.2. He retired from service on 31.1.98 on attaining the age of superannuation. On the recommendations of the Fifth Central Commission, respondents upgraded one of the posts of Adviser (Cost) to that of Additional Chief Adviser (ACA) and revised its scale of pay from Rs.18400-22400 Rs.22400-24500.

3. 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. one year and 9 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 with retrospective effect, ignoring applicant's claim to the grant of this upgraded scale inspite of his being senior to both these officers. When a large number of representations made by the applicant to the respondents to grant him the benefit of upgraded scale w.e.f. 1.1.96 did not yield any result, he filed OA No.1671/2001 which was disposed of by this Tribunal vide its order dated 11.7.2001 at the admission stage with a direction to the respondents to dispose of the representations of the applicant by passing a speaking and reasoned order and communicate the same to the applicant within one month.

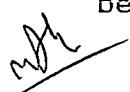


Pursuant to this, respondents have passed the impugned order dated 29.8.2001 which is under challenge in the present OA.

4. 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 have been given the benefit of that post w.e.f. 1.1.96 in terms of OM dated 30.6.99 of the Ministry of Finance. He has further stated that in the impugned order dated 29.8.2001 respondents have stated that they have now rescinded the orders of appointments and conferment of higher scale to S/Shri Mehta and Puri, as the said benefits were not granted by them by following the prescribed procedure. However, they have not sent copies of orders of rescission and of withdrawal of benefits issued to these two officers and thus he is not aware of withdrawal of pensionary benefits to these officers.

5. Applicant would further contend that having been appointed to SAG of Adviser (Cost) w.e.f. 21.7.89, he became eligible for promotion to the post of Chief Adviser (Cost) on 21.7.92 i.e. after rendering 3 years regular service in SAG as per Rule 7(2) read with Schedule III of IACS Rules. He was thus eligible for appointment to the upgraded post in preference to S/Shri Mehta and Puri by virtue of his seniority.

6. 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. Had all the three posts of Adviser (Cost) in ICAS being placed in the higher scale without involving assumption of any higher responsibilities, the incumbents of such posts could have been placed in the higher pay scale retrospectively, i.e. w.e.f. 1.1.1996. But the upgraded post is at the level of Additional Secretary involving assumption of higher responsibilities. Therefore, placement of the incumbents/actual holders of the post was not to be extended *in situ* and retrospectively, but only prospectively after observing the prescribed selection procedure.

7. Respondents have further stated that the applicant was on deputation to the post of Member(Finance) in BICP w.e.f. 31.3.1994 till the date of retirement i.e. 31.1.1998 and Shri M.L. Mehta, the senior most second person was holding the post of Adviser (Cost) in Cost Accounts Branch as on 1.1.1996 which has been upgraded by OM dated 30.6.99. The OM regarding upgradation of the post of Adviser (Cost) was issued on 30.6.99 while the

MS

a speaking and reasoned order dated 29.8.2001 in compliance with Tribunal's order dated 11.7.2001 in OA No.1671/2001. In view of this position, the present OA has no merit and deserves to be dismissed.

9. During the course of the arguments, the learned counsel for the applicant contended that when the benefit of upgraded scale has been granted to applicant's juniors namely Shri Furi and also Shri Mehta, who had retired earlier than the applicant, applicant has been denied that benefit which is against the principle of Next Below Rule in terms of FR 22. Even if the benefits of the upgraded scale were withdrawn to the other two officers, applicant's right to the upgraded scale remains intact. Moreover, the upgraded post does not involve higher responsibilities and duties and there were no changes in the eligibility criteria for placement of a cadre officer in the replaced scale. He would further contend that 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.

10. On the other hand, the learned counsel for the respondents submitted that the orders regarding upgradation of the post of Adviser (Cost) as ACA (Cost) were issued on 30.6.99 whereas the applicant had retired from Govt. service on 31.1.98 without reverting to the cadre post from the deputation post. The benefit

SM

immediately after the appointment of S/Shri Mehta and Puri to the upgraded post in July, 1999 pointing out the fact that he was senior to both these persons and ought to have been given higher pay scale of Rs.22400-24500 w.e.f. 1.1.96. If the respondents had not decided to fill up the said post under para 4(a) of OM dated 30.6.99, they would have immediately reverted S/Shri Mehta and Puri to SAG and considered all the eligible officers including the applicant for promotion to the upgraded post under para 4(b) of the OM dated 30.6.99. It was only after the observations made by the Tribunal in its judgement dated 11.7.2001 that the respondents have reverted S/Shri Mehta and Puri to the post of SAG vide notification dated 9.8.2001. The newly created post of Additional Chief Advisor is in the rank of Additional Secretary to the Government of India and the approval for appointing S/Shri Mehta and Puri to this post must have been taken at the highest level in the government and that too after having due consideration and consultation with the concerned Departments of the Government. Therefore, the plea taken by the Government now that these appointments were made retrospectively without following the prescribed procedure does not stand to logic. It appears that the respondents in order to justify their wrong and arbitrary action have now decided to cancel the appointment of S/Shri Mehta and Puri from 1996 and fill up the upgraded post in terms of para 4(b) of the OM dated 30.6.1999 and have accordingly notified the Recruitment Rules for the post of ACA (Rs.22400-24500) on 19.10.2001. During the course of the argument, the learned counsel for the respondents failed

~N.H.

to satisfy as to whether any follow up action has been taken to reduce the retiral benefits of Shri Mehta in pursuance of the notification dated 9.8.2001.

12. Learned counsel for the respondents 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, applicant cannot claim the benefit that was erroneously given to other two persons particularly when that too was withdrawn by the department. We find no force in this contention of the learned counsel. In the instant case, the applicant is not praying for extending the wrong committed by the respondents. He only wants upgradation scale with retrospective effect from 1.1.96 to 31.1.98 (date of retirement) in terms of para 4(a) of OM dated 30.6.99 as the same was applicable during the relevant period. Para 4(a) of OM dated 30.6.99 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. They can therefore be appointed to the posts in the higher pay scales with effect from the date notified by the Government giving effect to the recommendations of the

ndhr

Pay Commission. Accordingly the applicable higher replacement scales of pay will be extended retrospectively w.e.f. January 1, 1996 only in respect of those posts not involving the assumption of higher responsibilities or changes in the eligibility criteria. It is an admitted position that no recruitment rules were framed by the respondents at the time of extending the aforesaid benefit to S/Shri Mehta and Puri, which were ultimately notified only on 19.10.2001. But even according to the R/Rules notified on 19.10.2001, the eligibility criteria for the post of ACA (Cost) is 3 years regular service in SAG-Advisor (Cost), which no doubt the applicant was having at the time when his juniors were promoted.

13. In view of what has been discussed above, the action of the respondents in denying grant of upgraded scale w.e.f. 1.1.96 to the applicant is not justified. It is true that the applicant was on deputation as on 1.1.96 but nothing prevented the respondents to give him the benefit under NBR of FR 22 and also in terms of para 4(a) of OM dated 30.6.99.

15. In the result, for the reasons recorded above, we allow the present OA. The impugned order dated 29.8.2001 is quashed and set aside. We hold that the applicant is entitled to the upgraded scale of Rs.22400-24500 w.e.f. 1.1.96 to 31.1.98 in terms of para 4(a) of OM dated 30.6.1999. Accordingly respondents are directed to consider the applicant for granting upgraded scale of Rs.22400-24500 w.e.f. 1.1.96 in terms of para 4(a) of the OM dated 30.6.99 with all consequential benefits

[Signature]

including retiral benefits, within a period of three months from the date of receipt of a copy of this order.

16. Before parting, we would like to observe that the respondents have realised their wrong action only after the applicant has filed OA No.1617/2001 and have chosen to rescind and withdraw their notifications dated 27.7.99 and 23.7.99 only on 9.8.2001. Therefore we are of the considered opinion that it is a fit case for fixing responsibility and impose cost against the respondents. Respondents are directed to fix responsibility against the officer(s) for the wrong done by him/them and take suitable action accordingly as per rules and instructions on the subject. Respondents are also directed to pay costs of Rs.6000/- (Rupees six thousand) to the applicant for unnecessarily driving the applicant twice to the court. Costs should be paid to the applicant within a period of two months from the date of receipt of a copy of this order.

M.P. Singh
(M.P. Singh)
Member(A)

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

/gtv/