

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2358 OF 1999

New Delhi, this the 3rd day of January, 2001.

Hon'ble Mr.V.K.Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

S.D.Sharma,
S/o Shri Madan Gopal Sharma,
House No. 799, Laxmi Nagar,
New Delhi-110023.Applicant
(By Advocate: Shri M.M.Sudan)

VERSUS

UNION OF INDIA, through

1. Secretary,
through,
Ministry of Finance,
Dept. of Revenue,
North Block, New Delhi.Respondent.
(By Advocate: Shri V.P.Uppal)

O R D E R

By Hon'ble Mr. V.K.Majotra, Member(A)

The applicant has challenged rejection of his representation for granting him benefits of pay fixation on the principle of Next Below Rule (NBR) vide order dated 22.8.99(Annexure -I). According to him applicant and Smt.Gian Rajpal both where appointed as Stenographer Grade III through examinations of Central Secretariat Stenographer Services conducted by Subordinate Services Commission held in 1976 Smt. Gian Rajpal had obtained a lower rank than the applicant. In June 1991 both of them where working on the post of Stenographer Grade 'C' on ad hoc basis and drawing basic pay of Rs.1760 in the pay-scale of Rs. 1640-2900. The services of the applicant were placed at the disposal of Ministry of Home Affairs w.e.f.24.6.1991 where he was appointed as Asstt. Private Secretary to the Union of Minister of Home

Affairs in the Scale of Rs. 2000-3200 w.e.f. 24.6.1991 (Annexure A-5). Smt. Gian Rajpal continued to work as ad hoc Stenographer Grade III in the parent department. On 5.8.94 the applicant along with Smt. Gian Rajpal was approved for promotion in the parent department (Annexure A-7). However, he was not relieved by the Ministry of Home Affairs which recommended applicant's proforma promotion under the Next Below Rule (Annexure A-8). Accordingly his pay was fixed at Rupees 1700 in the pay-scale 1640-2900 w.e.f. 5.8.94. The applicant joined back his parent department on 31.5.1996. He made a representation on 28.6.1996 to the respondents for stepping-up his pay with reference to his junior Smt. Gian Rajpal (Annexure A-10) which was turned down vide Memo. dated 27.11.97 (Annexure A-11). Then the applicant made another representation on 18.2.1998 (Annexure A-12), this time requesting the respondents to give him benefit on the principle of Next Below Rule. According to applicant if he had not proceeded on deputation to Ministry of Home Affairs, he would have continued to officiate as Stenographer Grade 'C' on ad hoc basis till his regular promotion in Grade 'C'. Applicant's request was finally rejected by the respondents vide memorandum dated 22.8.99 (Annexure A-1). The applicant has sought quashing of Annexure A-1 dated 22.8.99 and modification in order 7.12.94 regarding his promotion and fixation of pay under the Next Below Rule with reference to the his junior Mrs. Gian Rajpal.

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2. In their counter the respondents have stated that the applicant was a Stenographer Grade 'D'. He was holding the post of Stenographer Grade 'C' on ad hoc basis at the time he proceeded on deputation as Asstt. Private Secretary to Minister in June 1991. The post of Asstt. Private Secretary is Group B gazetted post. Shri Sharma got regular promotion to grade 'C' of Stenographer w.e.f. 5th August, 1994 by way of proforma promotion under the Next Below Rule w.e.f. the date of regular promotion of his immediate junior. His pay was fixed correctly on proforma promotion on the basis of pay drawn by him as Stenographer Group 'D'. The benefit of proforma promotion under the Next Below Rule is allowed only when the person next junior to the senior away of on deputation is promoted on regular basis only. This benefit is not admissible when during the absence of the senior away on deputation his immediate junior is promoted on ad hoc basis. When Shri Sharma was away on deputation his immediate junior continued to officiate in higher grade and kept on earning increments under FR 26. Her pay was fixed at higher stage on getting regular promotion. In such cases the pay of senior is not stepped up as it is not an anomaly subject to rectification. DOP&T vide their Memo. dated 4.11.93 (Annexure R-1) have described conditions when stepping up of pay can be allowed. The present case is not covered under Memo. dated 4.11.93. Applicant's case was examined by the DOP&T and vide Annexure R-2, Minister of State (P) informed

the Finance Minister that vide OM dated 4.11.93 read with Supreme Court Judgement dated 12.9.97 in the case of Union of India V/s R Swaminathan (JT-1997 (8) SC 61), that Applicant's case does not constitute an anomaly and benefits of stepping up of pay is not admissible to him. The applicant has filed a rejoinder as well.

3. We have heard the learned counsel of both sides and considered material available on record.

4. The learned counsel of the applicant contended that the applicant is entitled to fixation of pay under Next Below Rule with reference to pay drawn by his junior taking into consideration the fact that applicant would have continued to work on ad hoc basis, but for his proceeding on deputation in public interest. According to the learned counsel of the respondents upon applicants promotion under Next Below Rule his pay was fixed at Rupees 1700 in the pay scale of 1640-2900 w.e.f. 5.8.94 vide order 7.12.94 (Annexure R-1).

5. The applicant was officiating as Stenographer Grade 'C' on ad hoc basis when he proceeded on deputation to Ministry of Home Affairs as Asstt. Private Secretary. He was given benefit of superior scale of Rs. 2000-3200 on deputation (Annexure A-5). His junior Smt. Gian Rajpal continued to officiate as Stenographer Grade 'C' on ad hoc basis till her regular promotion. She also kept on earning her increments. The applicant's case is that had he not

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proceeded on deputation he would have continued to officiate as Stenographer Grade 'C' on ad hoc basis like his junior thus he should be given the benefit of Next Below Rule with reference to his junior Smt. Gian Rajpal on his return from deputation in 1994. According to the respondents, applicant's claim does not fall under the Next Below Rule actually. It is a claim of stepping up of his pay when his junior is drawing more pay in a pay scale. As per memorandum dated 4.11.93(Annexure R-1) the following conditions have to be satisfied for stepping up of the pay of senior in a pay scale with reference to his junior:-

- (a) both the junior and senior officer 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 the junior and senior officer are entitled to draw pay should be identical
- (c) the anomaly should be directly as a result of the application of FR 22-C. 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 or on any other account the above provisions will not be invoked to step up the pay of senior officer.

6. While, the applicant was away on deputation his immediate junior Smt. Gian Rajpal continued to officiate in higher grade kept on earning increments under FR 26 in the higher scale. When the applicant returned from deputation his pay was fixed on proforma promotion on the basis of pay drawn by him as Stenographer Grade 'D' and the benefit of Next Below Rule is not available when during the absence of senior on deputation his immediate junior is promoted

on ad hoc basis. Applicant's case is not an anomaly as per conditions prescribed in Annexure R-1. The respondent's view in this regard is fortified by the ratio in the case of R. Swaminathan (Supra). (9)

7. Having regard to the above reasons, facts and circumstances of the case when the applicant remained on deputation while his junior officiated on ad hoc basis till regular promotion and kept on earning increments, the applicant cannot be held to be entitled to the benefits of Next Below Rule with reference to his junior. Accordingly OA is dismissed being devoid of merits. No costs.

S. Raju

(Shankar Raju)
MEMBER (J)

V.K. Majotra

(V.K. Majotra)
MEMBER (A)

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