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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2369/1999

New Delhi, this the 7th day of January, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri A. Bhattacharya
Assistant Director
Department of Tourism
C-1, Hutments, Dalhousie Road
NEW Delhi. ...Applicant.
(None present)

V E R S U S

1. Union of india
Through Secretary
Ministry of Tourism
Transport Bhawan
Sansad Marg
New Delhi.
2. Director General (Tourism)
Transport Bhawan
Sansad Marg
New Delhi
3. Ministry of Personnel
Public Grievances and Pension
Through Secretary
Department of Personnel & Training
South Block
New Delhi
4. Ministry of Finance
Through Secretary
Department of Expenditure
North Block
New Delhi ...Respondents
(By Advocate Shri Gajender Giri)

O R D E R

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (ADMNV):

Orders dated 12-3-1999 and 4-10-1999 passed by the respondents 1 & 2, rejecting representation for re-fixation of pay of the applicant following the adoption of the Vth Central Pay Commission are under challenge in this original application.

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2. Applicant, who joined as a direct recruit Sr. Stenographer through UPSC in September 1971,

under D.G. Tourism became a Sr. P.A. on ad hoc basis w.e.f. 1-12-89 and on regular basis w.e.f. 1-1-90 in the pay scale of . 2000-3200/-. He was promoted as Assistant Director-cum-Drawing and Disbursing officer on the pay scale of Rs. 2000-3500/- w.e.f. 30-4-96 on ad hoc basis, in accordance with the recruitment rules, under which promotion is made from the feeder cadres of Sr.PAs/Sr.Stenographers as well as Assistants. On his promotion his pay was fixed at Rs.2900/- w.e.f. 1-5-96 and at Rs.2975/- w.e.f. 1-5-97. Nature of duties and responsibilities of Asstt. Director on the one hand and those of Sr. P.A. on the other is vastly different with that of the former being of a higher nature. Still as per the recommendations of the Vth Pay Commission, adopted and notified on 30.9.97 placed both the cadres on the revised scale of Rs.6500-10,500/-. Applicant's pay was refixed at Rs.8300/- w.e.f. 1-1-96, keeping in mind the pre-revised pay of Rs. 2750/-, overlooking the fact that w.e.f. 1-5-96 he was already promoted and had even become eligible to draw pay at Rs. 2975/- w.e.f. 1-5-97, in the pre-revised pay scale. This refixation had taken away the effect of his promotion to the higher post. Unlike in the case of a few others, similarly placed, he was denied the benefit of increments w.e.f. 1-5-96, his date of promotion. Thus he was made to draw pay at levels below what he was really entitled to draw. This is inspite of the fact that he was continuing to perform the higher post of Asstt. Director though being treated at par who have not been so promoted. His representation dated

19.11.97, against this anomaly was negated by the Ministry of Finance (Deptt. of Expenditure) who took the view that promotion cannot be ordered in the same scale, which was incorrect as he had been promoted w.e.f. 1.5.96 and had earned one increment w.e.f. 1.5.97 before the Pay Commission recommendations were notified on 30.9.97. His was correctly a special or hard case, which deserved to be dealt with on merits, in terms of Pay Commission recommendations para 169.5 and was also recommended by his Ministry UO Note No. A-20011/3/71-AT dated 14.5.98. Further reference to DOPT that he could be given the option of pay in the revised scale w.e.e.f 1.5.96, when he became Asstt. Director also did not find favour with DOPT, who felt that the two cadres having been merged, benefit of FR 22 C (now FR 22(I) (a)(1)) could not be given. His second representation dated 15.3.99 also met with rejection, communicated to him on 4.10.99. Hence this application.

3. Main Grounds alleged by the applicant are as below:

- i) refixation of pay at Rs.8300/- has taken him back to the stage of Sr. P.A., nullified the effect of his promotion as Asstt. Director w.e.f. 1.5.96 and the benefit of increment he drew on 1.5.97.
- ii) refixation ignores the fact that the duties and responsibilities performed by Asstt. Directors and Sr. P.As. are vastly different

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and that Sr. P.As are among the feeder cadre for Asstt. Director post before the revision.

- iii) refixation has denied him the benefit of option under FR 22C [FR 22 (I) (a)(1)], which he was correctly entitled to; as decided in the case of G.M. Pardeshi Vs UOI in OA 1435/1995.
- iv) benefit of review under para 160.5 the Pay Commission's recommendation has been denied to him.
- v) benefit of pay already accrued has been withdrawn with retrospective effect.

4. In view of the above, the applicant prays that the impugned orders of 12.3.1999 and 4.10.1999 be quashed and he be given the benefit of promotion w.e.f. 1-5-96 or he be permitted to opt for fixation of pay in the pre-revised scale of Rs.2000-3500/- and then in the revised scale of Rs.6500-10,500/- w.e.f. 1-1-96, applying FR 22 C [FR 22 (I) (a) (1) w.e.f. 1-5-97.

5. The respondents fiercely contest the application and the grounds raised therein. According to them though the applicant who was a Sr. Personal Assistant in the scale of Rs.2000-3000/- since 1990, had correctly become an Asstt. Director in the scale

of Rs.2000-3500 w.e.f. 1-5-96, as the pay scales of Sr. P.A. and the Asstt. Director were revised to the same level - Rs.6500-10,500/- from 1.1.96, he was given the replacement of replacement scale of Sr. Personal Assistant. His request for protection of pay in terms of FR 22 C (FR 22 (I) (a) (1) was not tenable, as with the merger of the scales, his promotion had become infructuous. Further as the promotion as Asstt. Director was purely ad hoc in nature and was liable to be terminated at any time, the same did not confer on him any right for seniority etc. In view of the same, refixation of pay ordered by the Deptt. was legal and correct. Further, as both the posts have been brought on the same scale of pay, there is no question of promotion from one post to other and, therefore, the option sought by the applicant cannot be granted as clearly brought out in the opinion of the DOPT, and the notings of the Ministry of Finance - Deptt. of Expenditure. Respondents further aver that on receipt of the applicant's representation dated 19-11-97 and in view of the para 165.9 of the Vth Pay Commission's recommendations, they had taken up the matter with the DOPT and the Ministry of Finance and on their advice, he was intimated that his request could not be accorded to. They add that the applicants representation dated 15-3-99 to the Principal Accounts Officer of the Ministry of Tourism was also dealt with in terms of DOPT's and Ministry of Finance advice. DOPT had also declined to consider the decision of C.A.T. in the case of G.M.Pardeshi Vs. Union of India in OA 1435/95, decided on 9-1-97 as the citation

was from Swamy's Case Law Digest, a private publication which did not carry the authority of DOPT/Ministry of Finance. Applicant's case did not warrant any re-examination. Respondents also point out that in view of the fact that the refixation of pay has been ordered by them strictly in accordance with the rules and as the two posts of Asstt. Directors and Sr. Stenographers stood merged with the adoption of the single replacement scale of Rs. 6000-10,500/-, all the grounds raised in the application stood rebutted automatically. Ministry of Tourism was also governed in the matters of service conditions including fixation of pay by the rules framed by the Deptt. of Personnel, which it has adopted.

6. In the rejoinder the applicant points out that what he has been asking was not any promotion, but that the benefits which had already accrued to him on promotion as Asstt. Director, should not have been taken away merely on account of adoption of the common scale for the two posts and that his case inspite of being clearly covered by para 165.9 of the Vth Pay Commission recommendations, has not been dealt with as required.

7. On 25-1-2001, when the case was taken up, the applicant was not present either in person or through any counsel even on the second call. Shri Gajender Giri was present for the respondents and was accordingly heard. We are proceeding with the

disposal of the case on the basis of all the facts and points of law already brought on record and the grounds raised in the written pleadings.

8. Facts are not in dispute : The applicant who was a Senior Personal Assistant in the scale of Rs. 2000-3200/- was promoted as Assistant Director in the scale of Rs. 2000-3500/- w.e.f. 1-5-96 and earned one increment on 1-5-97 i.e. before the recommendations of the Vth Pay Commission, directing the same replacement scale of Rs. 6000-10,500/- for both the posts were notified in August 1997. Following the same, his pay was refixed, keeping in mind the erstwhile pay scale of Sr. P.A. and ignoring the fact that he had been promoted in between and had already drawn one increment. While the applicant states that he should not have been denied the benefit of promotion earned by him and his emoluments reduced, the respondents point out that the two scales of pay having been replaced by a single scale and thus having merged, the promotion which the applicant had earned has become infructuous and that he was not entitled for any relief on that ground. Point of determination, therefore, boils down to the validity or otherwise of the refixation of the pay of the applicant denying him the benefit of promotion earned by him in the pre-revised set-up. At the first sight, the view adopted by the respondents that the pay scales of Sr. P.A. and that of Assistant Director in the Ministry of Tourism, having been replaced by the same scale by Vth Pay Commission, the promotion which has taken place even though earlier to

the notification of revision would not lead to refixation of pay for the applicant with any higher benefit, would appear to be correct as one has ceased be the promotional post for the other. Perceived thus, the stand taken by the respondents in consultation with the DOPT and Department of Expenditure would appear to have some merit, but a closer look would present a different picture. The fact is that the post of Sr. P.A. and of Assistant Directors were different with regard to the scales of pay, duties and responsibilities and the Sr. P.A. was one of the feeder cadres for promotion to the post of Assistant Director. This is supported by the relevant recruitment rules, and admitted by the respondents themselves. No evidence has been brought by the respondents to show that following the adoption of the same pay scale for both the posts, as recommended by Pay Commission, they had taken steps to merge the two posts into one and or make them interchangeable. There is also no indication that the respondents have taken any steps to amend the recruitment rules and bring two posts into one category though a suggestion to that extent appears to have been given by the Department of Personnel in October, 1998, as shown in Annexure R-2. Therefore, the fact remains that as far as the respondents are concerned, inspite of the adoption of the same pay [scales for both the PAs and Assistant Directors, they continue to be two posts with different duties and responsibilities. In fact the post of Assistant Director as shown in para 4.7 of the OA carries duties and responsibilities of a much higher order than that

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of the Senior P.A. While the post of the Personal Assistant involves only performance of secretarial duties attached to an officer, that of Assistant Director is a supervisory post with higher responsibilities. This is also not controverted by the respondents. Obviously, therefore, the applicant, who was promoted to the post of Asstt. Director i.e. one with higher responsibilities, though on adhoc basis, cannot be considered as having continued in the junior post of Sr. P.A. The fact of his having been promoted by a due process of selection, in terms of the recruitment rules, and to the higher post and his having earned one increment cannot be wished away, solely because on a subsequent date, the Pay Commission's recommendations came to be notified while putting both the posts on the same scale, though with retrospective effect from 1-1-96. It is, therefore, imperative that the benefits accruing from the promotions granted to him should not be tinkered with on the premise that the scales having been brought together, the promotion has become infructuous, all the more so as the respondents have till today not made the posts interchangeable and / or amended the recruitment rules. Besides the applicant has continued to function as Asstt. Director and retired in September 2000 as such. That being the case, the applicant's plea that the benefit of his promotion should not have been denied and pay fixation of his pay should have been done keeping in mind his promotion and the fact of his having drawn the higher

pay in the higher post merits acceptance. This would also not cause any additional burden in future as the individual has already retired.

9. It is also worth mentioning that the 5th Pay Commission themselves had anticipated the likelihood of certain anomalies in such revision had therefore indicated in para 169.5 of its report as below :-

"If there are any special or hard case which are not covered under the provision explained above, they may be dealt with on merits by the Government".

10. It would be seen that the applicant's case is definitely a special or a hard case falling in the above category on account of his promotion and his earning a increment in the promoted post which had taken place before the adoption of the new recommendations of the Pay Commission combining the scales came to be officially notified. Therefore, this was a case which required to be examined. The Department of Tourism in their UO Note dated 14-5-98 had also specifically made a reference to the DOPT for the purpose, but the same has not been agreed by the DOPT / Ministry of Finance (Deptt. of Expenditure) The case raised again by the Financial Controller of the Ministry of Civil Aviation and Tourism with DOPT by UO Note dated 27-7-99, but the latter only reiterated their views. This is clearly not understandable especially as the Administrative Department has specifically indicated in its Note dated 15-7-99 that the applicant was promoted on

1-5-96 from the post of Sr. P.A. to Assistant Director which carried higher responsibilities than that of Sr. P.A. In this connection, it is also pertinent to refer to the fact that fixation of pay under FR 22 C [now FR 22 (1) (a) (1)] was permissible when promotion takes place from one post to another post though in the same scale, if the latter post carried higher duties and responsibilities. It is not disputed that the post of Assistant Director was higher in rank and had responsibilities higher than that of Sr. P.A. So inspite of pay scales having become the same, the pay fixation with reference to the promoted post is inevitable, as shown in the case of G.M.Pardeshi Vs. Union of India & Ors. decided by the Mumbai Bench of the Central Administrative Tribunal in OA No.1435/95 decided on 9-1-97 [242 Swamy's CL Digest 1997 (1)]. It is found that the learned Mumbai Bench had come to this decision relying upon a Full Bench decision of the Tribunal in Bajrang Sitaram Wanjale & Ors. Vs. Union of India & Ors. (OA No. 412/93, decided on 31-3-94 [(1994) (2) ATJ 13]). It has been held :-

- (A) " Fundamental Rules, Rule 22 (C)--Pay Fixation--Once it is established that the Government servant has been promoted or appointed to another post carrying duties and responsibilities of greater importance than those attached to the post actually held by him in a substantive, temporary or officiating capacity on the date of his promotion or appointment, his initial pay has to be fixed taking into account his pay in the post actually held by him and there is no scope for taking into account the presumptive pay of a post which he did not hold on the date of promotion or appointment.
- (B) Fundamental Rules, Rule 22 (C)--Pay Fixation--Promotion--Promotion to the post of Chageman II from the feeder post of Tradesman Grade 'A' -- On the recommendation of 3rd Pay

Commission a new grade called 'Master Craftsman' was sanctioned to highly skilled operators (Tradesman A) to give them incentive so that they remain in their own line and get reward for their special skills--promotion to the post of Chageman Grade II--Pay fixed taking into account the presumptive pay drawn as Tradesman Grade A--Applicants claim that their pay should be fixed taking into account the pay drawn as Master craftsman and not as a Tradesman A--Claim granted."

11. In view of the above, it is clear that the applicant's claims to have his pay refixed in the post which he was holding, having been duly promoted to it and in which he had even earned one increment despite both the posts being in the same scale merits acceptance. His case for the fixation of pay under FR 22 (I) (a) (1) keeping in mind the promotion he has earned to the higher post cannot be denied.

12. In the above view of the matter, the application succeeds and is accordingly allowed. *The impugned orders are quashed* The respondents are directed to have the pay of the applicant refixed in the new grade, keeping in mind the fact of his promotion w.e.f. 1-5-96 and his earning his increment from 1-5-97 onwards with full consequential benefits, including retiral benefits. This shall be done within three months from the date of receipt of a copy of this order.

13. Before parting with this case, we would also like to make one observation. It is seen that when reference about a decision of the Tribunal in G.M.Pardeshi's case was brought on the notice of the DOPT, the same has been dismissed as a view in a private publication which did not have DOPT's authority. This is surprising. What has been reported in Swamy's case Law Digest is the gist of the

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Tribunal's decision in G M Pradeshi's case, which itself was based on a earlier Full Bench decision. Therefore, the remarks that the said did not have the authority of DOPT or the Ministry of Finance, was clearly avoidable. Infact reporting a decision of the Tribunal does not call for any specific authority of DOPT or the Ministry of Finance. We would like the respondents to take note of the same and ensure so that such improper remarks are not repeated.

(GOVINDAN S. TAMPI)
MEMBER (A)

(SMT. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN (J)

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