

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

DA No. 1315/1998

New Delhi: this the 9th day of MARCH, 2001

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. Vedavalli, MEMBER (J).

N. K. Sood,
S/o Shri G. P. Sood,
R/o A-1/355, Paschim Vihar,
New Delhi.

Working as Assistant in CCW
Directorate General of AIR,
PTI Building,
Parliament St.,
New Delhi-1

2. Shri V. K. Bhalla,
S/o Shri P. L. Bhalla,
R/o BG -6/325-B, Paschim Vihar,
New Delhi,
at present on dep. to
Dte. of Extension,
M/o Agriculture,
Deptt. of Agriculture & Co-operation,
substantive Assistant of M/O
I & B (Main Sectt).

3. Subhash Monga,
S/o Sh. B. R. Monga,
R/o 8/39,
South Patel Nagar,
New Delhi,
working as Assistant in Press
Information Bureau
(Ministry of Information &
Broadcasting),
Shastri Bhawan,
New Delhi -1

.....Applicants.

(By Advocate: Shri T. C. Agarwal)

Versus

Union of India
through

Secretary to
Govt. of India,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi-1.

2. Secretary to
Govt. of India,
Ministry of Finance,
(Deptt. of Revenue),
North Block,
New Delhi -1

.....Respondents.

(By Advocate: Shri S. M. Arif)

ORDER

S.R. Adige, VC(A):

Applicants impugn respondents' Memo dated 13.11.97 and seek pay protection vis-a-vis their junior in the grade of Assistants with consequential benefits.

2. Applicants while working as UDCs went on deputation while retaining their lien on their substantive posts in 1984/86. While they were on deputation their juniors were promoted on adhoc basis as Assistants and at that point of time, applicants were admittedly not considered for promotion as Assistants on adhoc basis. On their return from deputation, applicants were also promoted as Assistants on adhoc basis in 1987-90, but as their junior already stood promoted as Assistants on adhoc basis, they continued to enjoy the benefit of increments drawn earlier, as a result of which the juniors were drawing more pay than applicants. It is not denied that subsequently applicants were regularised as Assistants in 1991-93.

3. The question for adjudication is whether applicants can claim stepping up of pay to the level drawn by their immediate junior, with or without arrears.

4. The CAT Full (Hyderabad) Bench in B.L. Somayaajulu & Ors. Vs. Telecom Commission & Ors. in OA No.127/94 and connected cases (Kalras' AT FB Judgments 1994-96 page 189) has held:

A) Stepping up of pay can be granted only when there is a provision in law in that behalf, and only in accordance with that.

B) A claim for stepping up can be made only on the basis of a legal right and not on pervasive notions of equity or equality,

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unrelated in the context of statutory law.

C) Every claim must be based on an enforceable right. A right arises by conferment and not by comparison.

D) Jurisdiction in equity does not inhere in the Tribunal.

5. We as a Division Bench are bound by the aforesaid Full Bench order, and no statutory rule or law has been shown to us which compels respondents to step up applicants' pay to that drawn by their junior.

6. Respondents have also referred to the Hon'ble Supreme Court's order in R. Swamynathan Vs. UOI in which the provisions of DP & T's OM dated 4.11.93 have been upheld and it has been ruled that stepping up of pay can be allowed only in cases where an anomaly has arisen due to direct application of FR 22(1)(a)(1). The aforesaid Full Bench ruling is also in consonance with the Hon'ble Supreme Court's order in Swamynathan's case (supra) as averred by respondents in their reply in the para on preliminary objections, which has not been expressly denied by applicants in their rejoinder.

7. Applicants' counsel Shri Agarwal has referred to certain rulings copies of which are also on record, but in the light of the Full Bench order in Somayaajulu's case (supra) as well as the Hon'ble Supreme Court's ruling in Swamynathan's case (supra) by which we are bound absolutely, we find ourselves unable to grant the relief prayed for by applicants.

8. Indeed we notice that the aforesaid claim advanced by applicants is squarely hit by the provision of FR 22(26)(2) which reads as follows:

(2) Instances have come to the notice of this dept. for stepping up of pay for the following reasons:

a)

b)the senior may be on deputation while his junior avails of adhoc promotion in the cadre. The increased pay drawn by a junior wither due to adhoc officiating/regular service rendered in the higher post for periods earlier than the senior cannot, therefore, be an anomaly in strict sense of the term.

9. The OA is, therefore, dismissed. No costs.

A. Veda Valli
(DR.A. VEDAVALLI)
MEMBER (J)

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A).

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