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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO. 155/1998

New Delhi, this the 16th day of February, 2001

HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri D.K. Goel,
S/o Shri M.L. Goel,
R/o N-502, Sector 9, R.K. Puram,
New Delhi - 110 022
(S.M. Rattanpal)

APPLICANT

VERSUS

Union of India through

1. The Secretary to the Govt. of India,
Ministry of Defence,
South Block, New Delhi-110011
2. The Secretary,
Department of Personnel and Training,
Ministry of Personnel, Public Grievance and
Pension, North Block,
New Delhi : 110 011
New Delhi
3. The Financial Advisor,
Finance Division,
Ministry of Defence,
South Block,
New Delhi-110011
(By Advocate : Shri K.R. Sachdeva)

RESPONDENTS

O R D E R

By S.A.T. Rizvi, Member (A) :

The applicant in this OA joined the Central Secretariat Service (hereinafter CSS) as a directly recruited Section Officer (SO) on 27.7.1981 on the basis of the Civil Service Examination of 1979. Initially he was posted in the Ministry of Food. Thereafter, in 1986 he was transferred to the Ministry of Defence and has been working in that same Ministry ever since. On 15.11.1989 he proceeded on deputation to an ex-cadre post in the Ministry of Finance where he worked as Deputy Chief Assayer in the higher pay scale of Rs.3000-4500/- equivalent to the pay scale of

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Grade-I (Under Secretary) of the CSS. He remained on deputation for three years and thereafter reported back to his parent cadre/Ministry of Defence on 25.10.1991. Soon thereafter, he was promoted as Under Secretary and posted as Assistant Financial Advisor in the Ministry of Defence (Finance Division) from 28.11.1991 for a period of 90 days or till further orders. Later he was regularised as Under Secretary with effect from 4.12.1991.

2. While the applicant was on deputation as above, his junior (Shri A.P. Pandit) was promoted as Under Secretary on ad-hoc basis with effect from 31.1.1990. On that occasion, no option was given to the applicant to revert back to his parent cadre so as to be able to claim ad-hoc promotion in preference over his junior. According to the applicant, since the aforesaid ad-hoc promotion, even though fortuitous in nature, was likely to affect the applicant adversely in due course, the respondents should have given him an option as stated above or else they could issue a notice to him to show cause as to why his junior should not be promoted. It has not been disputed that the respondents neither gave him an option as above nor issued a show cause notice. Meanwhile, the aforesaid short term appointment of Shri Pandit turned out to be a long term appointment and Shri Pandit accordingly continued to work as Under Secretary all along on ad-hoc basis right upto 4.12.1991 on which date he was regularised as Under Secretary. The applicant has also been regularised as

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Under Secretary with effect from the same date, i.e. 4.12.1991. However, on his reversion to his parent cadre/Ministry, his pay was not correctly fixed with the result that the aforesaid junior (Shri Pandit) was getting a higher salary compared to the applicant by virtue of his ad-hoc promotion lasting nearly two years from 31.1.1990 to 3.12.1991. The said Shri Pandit had, in the meanwhile, earned two increments in the scale of Under Secretary.

3. Aggrieved as above, the applicant made a representation in the matter and succeeded in having his pay fixed properly with reference to Shri Pandit vide respondents' order dated 21.3.1994 (Annexure A-8). However, without any show cause notice, the respondents reviewed the aforesaid order and reduced the pay of the applicant on the ground that the benefit of Next Below Rule (NBR) was not admissible in the case of the applicant. The same order also directed recovery of excess payment made till that time. This order is dated 23.12.1997 (Annexure A-1). By a subsequent order dated 29.12.1997 (Annexure A-2), the pay of the applicant has been fixed at the reduced level in accordance with the earlier order (Annexure A-1). The applicant has impugned both these order in this OA.

4. After hearing the learned counsel on either side and on perusal of the material placed on record, we find that there is no force in the respondents' argument that the applicant's case is not covered by

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the NBR. We also find that since the applicant as well as his junior (Shri Pandit) have been appointed in the higher pay scale of Under Secretary with effect from the same date (4.12.1991), the application of NBR need not be invoked at all. Accordingly, all that remains to be done is to decide the question of fixation of pay of the applicant on par with the pay received by his junior (Shri Pandit). In other words, this happens to be a case of pay anomaly in which a senior officer, namely, the applicant is seeking stepping up of his pay to the level of the pay drawn by his junior, who has gained over the applicant entirely due to the fact that he was appointed in the higher grade of Under Secretary in the same Department on ad-hoc basis from 31.1.1990 and continued to remain so until regularly promoted to the same grade.

5. It has already been stated that when the applicant's junior (Shri Pandit) was put on ad-hoc promotion with effect from 31.1.1990, the applicant was not given any option to revert back to his parent department for availing the said chance for promotion. The respondents have tried to argue that it was not necessary to do so having regard to the fact that the aforesaid ad-hoc promotion was meant to last for 90 days or so and was not a long term promotion. The aforesaid plea, we find, is not well conceived inasmuch as the aforesaid junior has, one way or the other, continued to remain on ad-hoc promotion for close to two years and the period of his ad-hoc promotion actually ended with his regularisation in

the same grade. We are sure, in the circumstances prevailing in the respondents' department, it had become clear to the authorities concerned that Shri Pandit, who is junior to the applicant, was going to remain on promotion even if on ad-hoc basis for a long enough time. Viewed thus, it was obligatory on the part of the respondents to make a fair offer to the applicant, who should have been given an option to revert back. In the circumstances, we find ourselves in agreement with the plea advanced by the learned counsel for the applicant that the aforesaid claim of the applicant was ignored deliberately in full knowledge of the fact that he was likely to be a loser in terms of pay whenever he reverted back to the respondents' department, which is his parent department/cadre.

6. The claim of the applicant is that it is not only Shri Pandit, who has gained over him, there are others too, who have similarly gained even though they were also juniors to the applicant. The two others named by the applicant are Ms. Kalpana Narain and Shri Inderjit Singh, who were, according to the applicant, promoted on ad-hoc basis with effect from 3.7.1989. Thus the applicant seeks stepping up of his pay actually from 3.7.1989 from which date the aforesaid juniors were put on ad-hoc promotion at the expense of the applicant.

7. The learned counsel appearing for the applicant has argued the case partly on the basis of the NBR and

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in part on the basis of anomaly in pay fixation leading to the applicant's claim for stepping up of his pay to the level of that of his junior. He has, in particular, referred to the Govt. of India's letter dated 2nd April, 1947 and U.O. dated 3rd October, 1962 reproduced under F.R.22 as Government of India's Order No. 29 at page 77 onward in Swamy's Compilation of FR & SR Part-I General Rules 13th Edition-1997. The Rule position with reference to NBR has been clarified therein thus -

"The intention underlying the 'rule' is that an officer out of his regular line should not suffer by forfeiting the officiating promotion which he would otherwise have received had he remained in the original line."

The learned counsel has insisted that the applicant clearly deserves to be considered for the grant of benefit under NBR just in accordance with the principle enunciated in the above extract.

8. He has next argued in the light of Government of India's OM dated 4th February, 1966, reproduced as Govt. of India's decision No. 20 at page 64 of the aforesaid Compilation. In accordance with the aforesaid decision, the pay of a senior is required to be stepped up with effect from the date of promotion of a junior subject to the fulfilment of the following conditions:-

"(a) Both the junior and senior officers 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;

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- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of F.R.22. 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, the above provisions will not be invoked to step up the pay of the senior officer."

On careful consideration, we find that even in accordance with the aforesaid decision of the Govt. of India, the applicant is fully entitled to the stepping up of his pay so as to bring it on par with the pay drawn by his junior.

9. The learned counsel for the applicant has next proceeded to place reliance on the decision of the Hyderabad Bench of this Tribunal dated 13.3.1995 in OA No.470/93. We have perused the Judgement of the Tribunal in that case and find that the principle upheld by the Tribunal in that OA finds application in the present OA without any manner of doubt. The Tribunal has, in the aforesaid case, observed as under:

"12. But can it be stated that stepping up cannot be allowed when the anomaly is not as a result of application of FR 22-C. Cases had arisen where the pay of the junior was found to be more on regular promotion than the pay of the senior on regular promotion, when the junior was given adhoc promotion while the senior was not given such adhoc promotion or here the date of adhoc promotion of the junior was earlier to the date of adhoc promotion of the senior even when the pay of the senior was more or equal than that of the junior by the date of the adhoc promotion of the junior. Such an anomaly is not due to the application of FR 22-C. But it is held by

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this Bench and various other Benches that stepping up has to be ordered in such cases even though there is no O.M/Circular issued to that effect, for it would be otherwise arbitrary and thus violative of Article 14 of the Constitution of India."

It would be seen that the failure to step up the pay of the senior in the circumstances of the present OA would attract the provision of Article 14 of the Constitution as well.

10. A similar case was also decided by a Division Bench of this Tribunal on 22.1.2001, to which one of us (Shri S.A.T. Rizvi, Administrative Member) was a party. The facts and circumstances in that OA (No.918-2000) are similar to the facts and circumstances of the present OA. That was also a case of stepping up of pay of a senior who had gone on deputation as in the present OA and while he was on deputation his junior got promoted on adhoc basis for a long enough time so as to derive the benefit of a few increments. The argument advanced in that OA was also based on F.R.22 and as in the present OA. The learned counsel for the respondents in that OA had also relied on Union of India Vs. R. Swaminathan reproduced as (1997) 2 SC (L&S) 387. We had in that OA examined the applicability of the decision of the Supreme Court and had found that the same could not find application in the facts and circumstances of that case. Accordingly, placing reliance on the same judgement of the Supreme Court in the present OA will not assist the respondents in any way.

11. In the background of the discussions and the

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conclusions recorded by us in the preceding paragraphs, we are inclined to allow the OA. Accordingly the OA is allowed. The impugned orders dated 23.12.1997 and 29.12.1997 are quashed and set aside and the respondents are directed to grant the following relief to the applicant as per Para 8 (B) of the OA:-

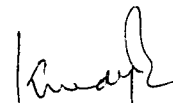
i) the applicant is entitled to stepping up of his pay so as to bring the same on par with that of his juniors Ms. Kalpana Narain and Shri Inderjit Singh w.e.f. 3.7.1989;

ii) the applicant is accordingly entitled to get his pay fixed at Rs.3000/- w.e.f. 3.7.1989 and Rs.3625/- w.e.f. 1.1.96 in the scale of Rs.3000-4500 with all consequential benefits.

The respondents are further directed to ensure compliance of the aforesaid directions in a maximum period of three months from the date of receipt of a copy of this order.

12. The OA is disposed of in the aforesaid terms.
No costs.


(S.A.T. RIZVI)
MEMBER(A)


(KULDIP SINGH)
MEMBER (J)

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