

Central Administrative Tribunal, Principal Bench

Original Application No. 1697/88

New Delhi, this the 20th day of December, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

(V)

Ved Prakash
S/o Shri Shiv Kumar Dubey
R/o 15/280 Lodhi Colony,
New Delhi-110 003.

- Applicant

(By Advocate - Shri M.K. Bhardwaj)

Versus

1. Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances
and Pensions, North Block,
New Delhi. - Respondents

(By Advocate - Sh.R.V. Sinha)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant has filed this OA seeking stepping up of pay vis-a-vis his junior Shri B.S. Mehra. The applicant has also filed representation before filing this OA but the same had been rejected vide impugned OM Annexure A-1 whereby the applicant had been denied his request for stepping up of his pay. The applicant had appeared in Stenographer Grade 'III' test in the year 1976 and had secured rank No. 425 and Shri Bahadur Singh Mehra, who, had also appeared in the same test had secured rank No. 432. Both of them were appointed as Stenographer Grade-III under the respondents. Mr. B.S. Mehra had been shown immediate junior to him. The basic pay of the applicant had been fixed at Rs.5850/- in the pay scale

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of Rs. (Rs. 5500-175-9000) (Pre-revised) of PA
 (Stenographer Grade-C) w.e.f. 1.1.1996 and with date
 of next increment as 1st November every year vide
 order of the respondents dated 13.10.1997. The pay of
 Shri S.S. Mehra, Stenographer Grade 'C' who was
 immediate junior to the applicant had been fixed at
 Rs. 6025/- in the same revised scale of PA (Stenographer
 Grade "C") with the date of next increment on 1st
 April every year vide order dated 10.10.1997 passed by
 the respondents, thus Shri Mehra was drawing higher
 pay than the applicant. Mr. Mehra was also drawing
 higher pay in the pre-revised scale also. The
 applicant had been making representation but to no
 effect. In the seniority list of Grade 'C'
 Stenographers which was issued on 6.10.1994, the
 applicant's name figures at S.No.15 whereas Shri
 Mehra's name figure at S.No.16. So both of them also
 had been included in the select list of Grade 'C'
 Stenographers of C.S.S. against seniority quota of
 the year 1993 where in the list also the applicant's
 name appear at S.No.189 and Mr. Mehra's name appear
 at S.No.191. Thus, the applicant alleges that Mr.
 Mehra is immediate junior to him and is drawing more
 salary, so he is entitled for stepping up of pay.

2. The basic cause of grievance of the
 applicant is that when applicant had gone on
 deputation to the post of Language P.A. to the
 Minister of External Affairs then Shri Mehra, junior
 to the applicant was appointed as Stenographer Grade
 'C' along with Shri P.P. Singh vide order dated
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24.4.1991 but the applicant was neither offered any ad hoc promotion/ad hoc proforma promotion nor he was given any option to revert on before 24.4.1991. Subsequently Mr. Mehra who was promoted as Stenographer Grade 'C' w.e.f. 24.4.1991 his pay was fixed at Rs.1640/- and he continued to draw the same till they were promoted as Stenographers Grade 'C' on regular basis with effect from 28.11.1995. The reason as to why the applicant is being denied stepping up of pay, as mentioned in impugned Annexure A-1 is that junior to the applicant was given benefit of ad hoc promotion since the senior, i.e., the applicant was away on deputation.

3. It was further stated by the department that the applicant was given ad hoc promotion in the grade of Stenographer Grade 'C' but he did not accept promotion so the applicant was debarred for promotion for a period of six months. Thus according to the department no anomaly has arisen to the applicant due to the application of FR 22 (C) (now FR 22.1(a)(1)) so the applicant is not entitled to stepping up of pay and also because the applicant had refused promotion leaving to his junior being promoted to the higher post earlier, so the applicant had been denied stepping up of pay.

4. The applicant further states that the reasons given by the department to deny him the stepping up of pay are not valid because the department had given stepping up of pay to one Shri A.K. Jain, and also to one Shri S.C. Jain but they

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have tried to justify that stepping up of pay of Shri A.K. Jain was considered on the ground that since he was not given any opportunity to revert to his parent cadre, so his pay was stepped up with reference to his junior. The applicant then relying upon the case of Shri Amrit Lal Bery in Writ Petition No. 463 of 1971 has stated that similar treatment should be given to him since he is also similarly situated person like the applicant in Amrit Lal Bery so the department cannot deny him the stepping up of pay.

5. As regards the benefit given to Shri S.C. Jain is concerned, the department have also tried to justify that the benefit to Shri S.C. Jain was given as a special case and not to be quoted as a precedent because the then Home Minister desired to retain him in public interest but Shri Jain at no stage had refused to accept the promotion as is the case of the applicant and, in fact, Shri S.C. Jain had given in writing that he is willing to accept ad hoc promotion in the cadre by reverting back from the deputation post.

6. The applicant has also stated that giving ad hoc promotion to junior in violation of seniority violates the instructions issued by the Government as well as issued by the Railway Department and it was so held in OA 25/94 in the case of Dilip Kumar Mukherjee and Others Vs. U.O.I. & Others. The applicant in his OA has also cited certain other judgments wherein Tribunal has allowed stepping up of pay in similar circumstances.

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7. The applicant also claims that next below rule has not been properly applied in his case as such he is entitled for proforma promotion on notional basis in the higher grade with retrospective effect from the date of promotion of his immediate junior and respondents should also be directed to step up the pay of the applicant notionally to bring at par with Shri Mehra w.e.f. 28.11.1995, who is at S.No.16 of the seniority list issued by the department.

8. The department in their reply have stated that initially when the applicant was on deputation from there he was reverted back to his parent cadre w.e.f. 1.5.91. Immediately after his reversion his case for ad hoc promotion was processed and he was given ad hoc promotion on 16.5.1991 but he again proceeded on deputation from 21.6.1991 and he was working in the office of the Ministers during the period in question and keeping in view the fact that the applicant had refused to accept promotion when he was physically available and had proceeded on deputation within a short spell of time, no further option was given to him during the period he remained on deputation nor the applicant had ever made any representation that he was willing to accept promotion in the cadre.

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9. The department further pleaded that as per the OM of Ministry of Finance dated 4.2.1966 stepping up of pay of a senior with reference to pay of his junior was allowed, inter alia, on certain conditions which are as follows:-

(a) Both the junior and senior officers

should belong to the same cadre.

(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 FR 22-C (now FR 22(1))

(a)(1)).

10. It is further stated that in case of the applicant the condition 'C' of the OM has not been satisfied and since the anomaly had not arisen because of the application of FR 22-C, so stepping up of pay is not permissible.

11. It is further pleaded that the Department of Personnel and Training in consultation with the Ministry of Finance had issued a clarificatory OM dated 4.11.1993 wherein it has been specifically clarified that in case senior persons refuses promotion and junior gets ad hoc promotion then benefit of stepping up of pay is not permissible and the validity of the

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OM had been upheld in R. Swaminathan Vs. U.O.I. (1997(8) SC 61), so on this basis the department had denied the stepping up of pay to the applicant.

12. We have heard the learned counsel for the parties and have also gone through the record.

13. As far the facts are concerned, it is quite clear that the applicant had been on deputation during the period in question and when he was physically available in the cadre it is he who himself refused to accept ad hoc promotion with the result that his junior was given ad hoc promotion which ultimately resulted in junior drawing more salary than his senior (the applicant). Thus on the face of it the anomaly (the applicant) has not arisen as a direct application of FR 22-C (now FR 22(1)(a)(1)).

14. As regards the judgments cited by the counsel for the applicant in the OA are concerned, though the applicant has reproduced certain paragraphs of the various judgment in the OA which is not in accordance with the rules of pleadings but still considering the same we may mention that as per the judgment in Dalip Kumar Mukherjee and Others Vs. U.O.I. and Others it is stated that the applicant himself has mentioned that in the case of Dalip Kumar Mukherjee the respondents had been directed to officiate as Welfare Inspector, Grade-I on 17.6.1984 without similar opportunity being given to all of them so in that case the applicants were allowed stepping

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up of pay. But in this case the applicant was given an opportunity to work as ad hoc Stenographer Grade 'C' but it is he, who had refused to accept the promotion probably he wanted to proceed on deputation with various Ministers as he was looking for more green pastures elsewhere,, so this judgment in no way helps the applicant.

(5. The applicant has also referred to another judgment of the Guwahati Bench of the Tribunal in OA 64/95 decided on 21.11.1985 entitled as Haran Chandra Chakraborty and Others Vs. U.O.I. & Others. In this case the Guwahati Bench had observed that by virtue of FR 22-C of the Ministry of Finance dated 20.6.1965 the applicant was entitled to stepping up of pay. This judgment does not apply in the case of the applicant because in this case anomaly had not arisen because of application of FR 22-C rather the applicant is getting lesser pay on account of refusal on his own part to accept the ad hoc promotion. Besides that DOP&T and Min. of Finance in consultation with each other had issued another clarificatory instructions vide their OM dated 4.11.1993 which besides three conditions of stepping up of pay as quoted above, the DOP&T has added further clarificatory notes that "in case if a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior avails of the ad hoc promotion in the cadre. The increased pay drawn by a junior either due to ad hoc promotion in the cadre. The increased pay drawn by a junior either

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due to adhoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot therefore, be as anomaly in strict sense of the term". Now since the OM dated 4.11.1993 particularly says that as per the instances at Clause 'b' which has been reproduced above that in case of refusal of promotion by the senior then he cannot claim stepping up of pay and this OM dated 4.11.1993 was also a subject matter of discussion before the Hon'ble Supreme Court in the case of U.O.I. and Another Vs. R. Swaminathan and Others reported in JT 1997(8) SC 61. In that case also the Hon'ble Supreme court has observed as follows:-

".....The difference in the pay of a junior and a senior in the cases before us is not a result of the application of Fundamental Rule 22(1)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past. Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping up of the pay of the seniors." (emphasis supplied)

16. It was further held as follows:-

"But the only justification for local promotions is there short duration. If such vacancy is of long duration there is no administrative reason for not following the all India seniority."

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17. From a perusal of this judgment it appears that the facts of this case are similar to the facts of the case in hand because in this case also the junior to the applicant had been officiating in the higher post and he may have earned increments so his pay might have increased, so such type of drawing of more salary by the junior does not require stepping up of pay of the senior.

18. Though the applicant had tried to distinguish the facts of the case by quoting the next paragraph of the judgment where it is mentioned by the Hon'ble Supreme Court but the only justification for local promotion is the short duration. The meaning of short duration given by the applicant cannot be applied to the present facts of the case because in the preceding paragraph quoted above, the applicant had also earned increments. Here also the period of duration cannot be said to be that short period as the applicant wants to give the meaning thereof and particularly so when the applicant was offered promotion and he had refused to accept the same so we are of the considered opinion that the clarification issued vide OM dated 4.11.1993 fully applies to the case of the applicant and he is not entitled to stepping up of pay vis-a-vis his junior Shri B.S. Mehra since the applicant was offered an ad hoc promotion in preference to Shri Mehra and he had refused to accept the same. (u)

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19. In view of the above, we do not find any merit in the OA merit and same is dismissed. No costs.

(A. T. Rizvi)

Member (A)

(Kuldeep Singh)

Member (B)

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