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CAT/7/12

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 1343/95
T.A. No.

199

DATE OF DECISION 6.8.1996

O.P. Gupta & Anr.	Petitioner(s)
Shri C.B. Pillai	Advocate for the Petitioner(s)
Versus	
Union of India & Ors.	Respondent
Shri V.K. Mehta	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.s. Lakshmi Swaminathan, Member(J).

The Hon'ble Mr.

1. To be referred to the Reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

19

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1343/95

New Delhi this the 6th day of September, 1996.

1. O.P. Gupta,
Deputy Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. Naresh Chandra,
Deputy Secretary,
Ministry of Home Affairs,
(Lok Nayak Bhawan),
New Delhi.

..Applicants.

By Advocate Shri C.B. Pillai.

Versus

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

2. Secretary,
Ministry of Food, Krishi Bhawan,
New Delhi.

3. Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances
and Pension, North Block,
New Delhi.

4. Secretary,
Ministry of Finance, Deptt. of
Expenditure, North Block,
New Delhi.

..Respondents.

By Advocate Shri V.K. Mehta

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

13-
The applicants, who belong to the Central
Secretariat Service ~~Service~~ (CSS), have filed this
application under Section 19 of the Administrative
Tribunals Act, 1985 to quash and set aside the
following orders:

18

- (i) O.M. No. A-26016/1/93-Ad.I(A) dated 28th June, 1995 (Annexure A-I);
- (ii) Orders No. 26016/1/93-Ad.I(A) dated 12th July, 1995 and 14th July, 1995 stepping down their pay (Annexures A-IIA and A-IIB);

as also to direct the respondents to cover the cases of the applicants under Note 7 of Rule 7 of the Central Civil Services (Revised Pay) Rules, 1986 (hereinafter referred to as 'the 1986 Rules') and paras 3 and 4 of the Ministry of Finance O.M. dated 16.6.1989.

2. The brief facts of the case are that the applicant No. 1 was promoted as Under Secretary on regular basis w.e.f. 21.10.1983 and the applicant No. 2 with effect from 15.6.1983. According to the applicants, they were drawing pay at Rs.1300/- and Rs.1400/- per month, on 1.1.1986 in the pre-revised pay scale of Rs.1200-1600. Their pay was fixed at Rs.3300/- and Rs.3400/- on 1.1.1986 with the next date of increment on 1.4.1986/1.5.1986 respectively in the revised scale of Rs.3000-4500. The applicant No. 2 had officiated as Under Secretary from 12.5.1981 to 14.6.1983 on ad hoc basis before he was given the regular promotion.

3. The applicants' grievance is that one Shri P.K. Malhotra, who was Section Officer on 1.1.1986 and was drawing pay at Rs.1200/- P.M. + Rs.40/- stagnation increment on that day in the pre-revised

16

-3-

pay scale has been fixed at Rs.3300/- on 1.1.1986 in the revised scale of Section Officer (Rs.2000-3500) and on promotion as Under Secretary on 13.1.1986 his pay was fixed at Rs.3500/- p.m. which the applicants claim is anomalous, as he was junior to them.

3. The applicant's case is that under Note 7 of Rule 7 of the 1986 Rules, since they fulfil all the conditions mentioned therein, they were entitled to have their pay stepped up with reference to the pay of their junior Shri Malhotra on their promotion as Under Secretaries. According to them, the anomaly has arisen directly as a result of application of FR 22-C and that Shri Malhotra was not ^{them} drawing more pay than/in the pre-revised scale of Section Officer by virtue of advance increments and, therefore, stepping up of their pay with reference to his pay was in accordance with the rules. They claim that any attempt to deprive them of the benefit of this rule by stepping down their pay is violative of Articles 14 and 16 of the Constitution.

4. The applicants claim that in accordance with Note 7 of Rule 7 of the 1986 Rules, the Ministry of Food, under whom the applicants were working at the relevant time, stepped up their pay from Rs.3300/- and Rs.3400/- w.e.f. 13.1.1986, that is the date on which Shri Malhotra was promoted, by office orders dated 21.12.1987 and 23.12.1987. Subsequently, Respondent No. 4 issued a clarification vide their O.M. No. 1(14)E III/89 dated 16.6.1989 in which the following condition was added in respect of stepping up of pay of the senior, namely;-

"the senior Government servant promoted before 1.1.1986, has been drawing equal or more pay in the lower post than his junior promoted after 1.1.1986".

5. The applicants submit that the O.M. of 16.6.1989 is not a clarification of Rule 7 Note 7 of the Rules, but is a modification. They rely on the judgement of this Tribunal in O.A. 1194/89, Alok Bhatnagar & Ors. Vs. Union of India, decided on 9.11.1989, and the order of the Supreme Court dated 2.4.1990 dismissing the SLP filed by the respondents. They further submit that this O.M. which is similar to the O.M. dated 4.11.1993, can at best have prospective, and not retrospective application. Their contention is that since their pay has been stepped up in December, 1987, the O.M. of 1989 cannot apply to them. They also submit that if they had been promoted as Under Secretaries on 1.8.1985/1.7.1985 instead of the earlier dates when they were actually promoted, then their pay on promotion would have been fixed higher. Similarly, the learned counsel argued that the notional pay in the pre-revised scale of Section Officer is to be compared as on 13.1.1986.

6. The respondents vide their O.M. No. A-26016/1/93-Ad.I(A) dated 18.8.1993, addressed to the applicants informed them that their pay has been wrongly stepped up w.e.f. 13.1.1986 and why it should not be stepped down and recovery of excess payments made, to which they were required to give a reply. They submit that no reasons have been given in this show cause notice for holding that the stepping up of pay was wrongly done and so they have not been given an opportunity to make a proper representation. However, they made several representations between 27.8.1993

and 20.2.1995 against the notice bringing out the above objections. Finally, ~~the Respondents~~ No. 1 rejected their representations by the impugned orders dated 28.6.1995, 12.7.1995 and 14.7.1995 and stepped down their pay which have been challenged here. They rely on a number of judgements of the Supreme Court and the Tribunal (List placed on record) and submit that since they are not at fault in stepping up of the pay, the respondents cannot order recovery of the overpayments, after a lapse of several years.

7. The respondents have filed a reply in which they have controverted the above averments and submit that since the stepping up of pay was not in accordance with the law/rules, this application may be dismissed. They submit that when Shri Malhotra, Section Officer, was promoted as Under Secretary, w.e.f. 13.1.1986, he was drawing pay of Rs.3300/- in the revised scale admissible to Section Officers with the date of next increment (DNI) on 1.10.1986. His pay on promotion as Under Secretary was fixed at Rs.3500/- w.e.f. 13.1.1986 with DNI on 1.1.1987. As Shri Malhotra was drawing maximum of Rs.1200/- p.m. in the pre-revised scale of Section Officer, w.e.f. 1.10.1983, he got one stagnation increment of Rs.40/- per month w.e.f. 1.10.1985. Accordingly, on revision of pay scale of Section Officers in 1986, his pay in that grade was fixed at Rs.3300/- after giving him the benefit of stagnation increment under Rule 8 of the 1986 Rules. According to them, Shri Malhotra got higher pay in the scale of Section Officer by virtue of the provisions of Rule 8 of the 1986 Rules and no anomaly has arisen which is directly the result of the application of FR 22-C or any other rule regulating pay fixation on

promotion under Note 7 Rule 7 which is not applicable.

8. The respondents have stated that the show cause notice was issued by O.M. dated 29.8.1993 and the applicants had made several representations which were examined in detail. The final decision along with reasons was communicated to the applicants on 28.6.1995. The Tribunal by its order dated 31.7.1995 had stayed the operation of the impugned orders dated 12.7.1995 and 14.7.1995.

9. Shri V.K. Mehta, learned counsel for the respondents, has submitted that the cadre controlling authority for the CSS is the Department of Personnel and hence, the impugned orders passed by the Ministry of Food stepping up the pay of the applicants are not in order. He has drawn attention to the fact that the order of 23.12.1987 stepping up the pay of Applicant 1 is itself passed by one Shri M.B. Madan, Under Secretary in the same Ministry, who himself along with Applicant 2, is included in the list, in the order passed two days earlier on 21.12.1987. The learned counsel has submitted that Shri Malhotra had all along drawn more pay than the applicants as Section Officer in the lower grade and the stepping^{up}/of pay of the applicants was not in accordance with the rules. He, therefore, submits that since the applicants have received undue benefit, the recoveries ordered are justifiable, in order and in public interest. The respondents have relied on the judgements in State of U.P. Vs. Srennivasa Rao, 1989(2) SCC 290, Unikrishnan Nair Vs. UOI & Ors., 1991(18) ATC 549, G.R. Mirdha Vs. UOI & Ors., 1995(1) (CAT) 489 and Vellumani & Ors. Vs.

19

The applicants have submitted that Mirdha's case and Vellumani's case are distinguishable and not applicable to their case.

10. I have carefully considered the pleadings and arguments of the learned counsel for the parties.

11. The relevant portions of the Rules relied upon by the parties are reproduced below:

"Note 7. In cases, where a senior Government servant promoted to a higher post before the 1st day of January, 1986 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st January, 1986, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to fulfilment of the following conditions, namely:-

(a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre;

(b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical, and

(c) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 C or any other Rule or Order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer".

(Emphasis added)

91

The relevant portions of the provisos 3 and 4 of Rule 8 of the 1986 Rules are reproduced as under:

"Rule 8.

The next increment of a Government servant whose pay has been fixed in the revised scale in accordance with sub-rule (1) of Rule 7 shall be granted on the date he would have drawn his increment, had he continued in the existing scale:

Provided also that in the case of persons who had been drawing maximum of the existing scale for a year or more as on the 1st day of January, 1986, next increment in the revised scale shall be allowed on the 1st day of January, 1986.

Provided also that in the case of Government servants who were in receipt of an ad hoc increment on their stagnating for two years or more at the maximum of the existing scale of pay as on the 1st day of January, 1986, one more increment in the revised scale shall be allowed to them on the 1st day of January, 1986, in addition to the increment already allowed under the preceding proviso".

12. In this case, there is no dispute that the conditions in clauses (a) and (b) of Note 7 Rule 7 are satisfied. The only dispute is regarding the applicability of Clause(c). On a plain reading of this clause, it can apply to the applicants only where an anomaly exists which arises directly as a result of the application of the provisions of FR 22C or any other Rule or Order regulating pay fixation on such promotion in the revised scale. Shri Malhotra, who was admittedly junior to the applicants as Section Officer, was drawing more pay in the pre-revised scale as Section Officer than his seniors by virtue of getting stagnation pay in terms of provisos 3 and 4 of Rule 8 of the 1986 Rules. Therefore, on revision of pay scale of Section Officers w.e.f. 1.1.1986 to Rs.2000-3500, his

18

pay was fixed in that grade at Rs.3300/-, and when he was promoted as Under Secretary it was fixed at Rs.3500/- in that revised scale w.e.f. 13.1.1986. The stepping up of pay cannot be claimed as a matter of right even when the junior was drawing more pay in the pre-revised lower scale. The submission made on behalf of the applicants that the O.M. dated 16.6.1989 was not a clarification of Note 7 Rule 7 but was a modification, is not relevant to this case and the judgement in Bhatnagar's case (Supra) also does not help the applicants. Shri Malhotra was already drawing a higher pay in the pre-revised scale in the lower post by virtue of the stagnation increment paid to him and the anomaly cannot, therefore, be said to be directly as a result of the application of the provisions of FR 22C or any other Rule or Order regulating pay fixation on such promotion in the revised scale. Therefore, the contrary arguments advanced by the applicants are rejected.

13. Regarding the other argument advanced on behalf of the applicants that they would have fulfilled the condition in para 3(c) read with para 4 of the Ministry of Finance O.M. dated 16.6.1989 if they had been promoted as Under Secretaries on 1.8.1985/1.7.1985, instead of the earlier dates when they were actually promoted, is based on conjectures and surmises and not on actual facts. Admittedly, the applicants have been promoted as Under Secretaries on 21.10.1983 and 14.6.1983 respectively, and after having got the benefits of the promotion in the higher pay scale, it is not open to them to stake their claims here on assumptions and presumptions which are legally untenable. Similarly, their arguments based on other

23

hypothetical facts, for example assuming Shri Malhotra had been promoted prior to 1.1.1996, or they had also reached notional pay in the pre-revised scale of Section Officer of Rs.1200/- on 1st July and 1st August, 1985 equal to that of the junior and so on are considered totally irrelevant and are, therefore, not being dealt with. The relevant rules have been framed to apply to actual situations and not to lend themselves to ingenious twists based on suppositions as submitted by the applicants in their written arguments.

14. The next contention of the applicants is that the show cause notice does not give reasons and is vague and so they could not make a proper representation. From a perusal of the show cause notice, the detailed representations made by the applicants and the facts in this case, it cannot be said that they have been deprived of the right of hearing or there has been any violation of the principles of natural justice. The applicants have correctly understood the show cause notice, besides being fully aware of the circumstances of the case and have given detailed replies which show that they have fully understood the notice. In the facts and circumstances of the case, no prejudice can be said to arise and the argument that the show cause notice is vague and the impugned order passed thereon is without application of mind, is baseless and rejected.

15. The other main argument advanced by Shri C.B. Pillai, learned counsel for the applicants, is regarding whether recoveries could be made as ordered by the respondents in the impugned order dated 28.6.1995. ~~and~~ It would be sufficient to refer to the decisions of the Supreme Court

18.

24

on this point in Shyam Babu Verma & Ors. Vs. Union of India & Ors. (ATC 1994(27) 121), Sahib Ram Vs. State of Haryana & Ors. (SLJ 1995(1) (SC) 8), R.B. Saxena Vs. Union of India & Ors. (ATJ 1996(1) 74). They have submitted that since they have received the higher pay scales due to no fault of theirs, no recovery should be made from the excess amount already paid to them, at this stage. In Shyam Babu Verma's case(supra), the Supreme Court held that although the petitioners were entitled only to a lower pay scale in terms of the recommendations of the 3rd Pay Commission w.e.f. 1.1.1973 but had received the higher pay scale from 1973 due to no fault of theirs and the respondents had sought to reduce the same only from 1984, "it shall only be just and proper not to recover any excess amount which has already been paid to them". Similarly in Sahib Ram's case (supra), the Supreme Court held that where the higher pay scale has not been granted to the appellant on account of any misrepresentation he has made but the same was given to him by wrong construction made by the Principal of the College for which the appellant cannot be held to be at fault, the amount may not be recovered from the appellant. In the case relied upon by the respondents also, namely, Sreenivasa Rao's case (supra), the Supreme Court held ~~while~~ that the High Court/Tribunal were not justified in coming to the conclusion in an omnibus manner that whenever and for whatever reasons a junior is given higher pay the doctrine of "equal pay for equal work" is violated and the seniors are entitled to the same pay. However, since the respondents had received the higher pay, it further held:

25

"The respondents are white-collared salaried persons and it may be too harsh for them to refund the salary already paid to them. Therefore, in the interest of justice, we direct that the additional salary paid to them as a result of High Court/Tribunal judgements upto March 31, 1989 shall not be recovered from them".

16 The respondents have nowhere submitted that the applicants due to their misrepresentations or fault have received the higher pay, but they have only submitted that the applicants' interpretation of Note-7 Rule-7 is wrong and cannot be upheld. In the other cases relied upon by the respondents which are decisions of the Tribunal, although it has been held that it would be in the public interest to make the recoveries of excess payments in such cases, however, in view of the clear judgements of the Hon'ble Supreme Court referred to above and taking into account the facts, the respondents, who have taken a number of years to take remedial steps, cannot order recovery of the excess amounts already paid, at this stage after a lapse of ^a number of years. In other words, the impugned orders dated 12th and 14th July, 1995 stepping down the pay of the applicants which is in accordance with the relevant rules are in order and are, therefore, upheld; however, the interim order restraining the respondents from making recoveries of excess amounts already paid as proposed by order dated 28.6.1995 is made absolute.

17. In the result, the O.A. is partly allowed, as above. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

2/9/96

'SRD'