

(12)
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2263/95

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 11th day of October, 1996

Shri R.C.Gupta
Assistant Surveyor of Works
O/o Superintending Surveyor of Works(NZ)
C.P.W.D., East Block
R.K.Puram
NEW DELHI. ... Applicant

(By Shri D.R.Gupta, Advocate)

Vs.

Union of India through:

1. Superintending Surveyor of Works(NZ)
CPWD, East Block, R.K.Puram
NEW DELHI.
2. Secretary
Ministry of Urban Affairs &
Employment
Nirman Bhawan
NEW DELHI. ... Respondents

(By Shri M.M.Sudan, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant working as a Junior Engineer in the grade of Rs.1640-2900 was allowed the pay scale of Rs.2000-60-2300-75-3200-75-3500 on completion of 15 years of service on 11.1.1991. His pay was fixed in the new scale at Rs.2450/- w.e.f. 1.1.1991. His grievance is that the pay of one Shri K.K.Gulabani junior to him in service was fixed at Rs.2525/- in the scale of Rs.2000-3500 w.e.f. 1.5.1991. He therefore, submits that a direction be given to the respondents to step up his pay at par with that of Shri K.K.Gulabani w.e.f. 1.5.1991 and to pay him the arrears with 18% penal interest.

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2. The respondents deny the claim. They submit that Shri K.K.Gulabani got his pay fixed at a higher level since he gave an option to defer refixation till the date of his next increment in the lower pay scale which was on 1.5.1992. The applicant on the other hand had failed to give such an option within one month of the date of his refixation in the higher pay scale, and therefore, he was not entitled to the benefit of the higher pay on the basis of the pay of his junior. The respondents further submit that the case of the applicant is not covered by any of the provisions in the FRs and the revised pay rules which allow for stepping up of the pay of the senior in order to bring it on par with that of the junior.

3. I have heard the learned counsel on both sides. Shri D.R.Gupta, counsel for the applicant cited a number of cases including 1995(30) ATC, 479 and 1995(30) ATC, 640 to show that in similar cases this

Tribunal allowed the stepping up of the pay of the seniors. *or was not circulated in his office* I find that in Sampat Raj Sharma's case,

1995(30) ATC 479 - The stepping up of the pay was allowed when the senior could not exercise his option

as the office order inviting options within the *or was not circulated in his office* prescribed time. In P.Sankar Reddy's case, 1995(30)

ATC 640 - The failure of the Government to bring rules position to the notice of the employee, in the facts of the case was held to be sufficient cause to afford relief to the applicant. Thus, in the ratio of these

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judgments, the crucial question would be whether the employee was made aware of his right to exercise the option.

4. The learned counsel for the applicant has submitted in his rejoinder that the applicant was on deputation right from 1989 to 1992 with the National Security Guard and was thereafter transferred to Border Fencing Division where he remained from 5.8.1992 to 18.1.1994 and returned to his parent department only on 27.6.1994. He was there^{on} ~~fore~~ not in a position to know regarding the availability of an option to him.

5. I have carefully considered the matter. FR 22(I)(a)(1) provides that the Government servant shall have the option to be exercised within one month from the date of promotion to have the pay fixed, under this Rule, from the date of such promotion or to have the pay fixed initially at the stage of the time scale of the new post above the pay in the lower grade which may be refixed on the date of accrual of next increment in the scale of pay of the lower post. It could be argued that since a provision already existed in the FR, no further ~~information~~ information was required to be given to the promotees. It is seen however, that the respondents themselves circulated a letter No.A-11014/3/93-EC-VI dated 13.6.1993 Para 2 of that is reproduced below:

"Pay of the Junior Engineer in the above grade shall be fixed under FR-22(1)(a)(1).

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or

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6. Since at the relevant time, the applicant was not in his parent office, it could be accepted that he did not receive a copy of these instructions. In this view of the matter, the applicant would be entitled to the benefit of the stepping up of pay in line with the orders passed in Sampat Ram Sarna's case and P.Sankar Reddy's case (Supra).

7. I, therefore, find that the applicant is entitled to the stepping up of his pay to that of his junior w.e.f. 01.05.1991. However, the applicant would be entitled to arrears of pay only from one year before the filing of his Original Application i.e. 28.11.1995. In the circumstances of the case, he will also not be entitled to any interest on the arrears. Respondents will comply with directions within three months from the date of receipt of a certified copy of this order. No costs.

Alcahaya
(R.K.AHCCJA)
MEMBER(A)

/rao/