

OA-170/96

21-07-98

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Present: Sh. R.L. Dhamjan for applicant.  
Sh. R.V. Sinha for respondents.

Heard the Ld. Counsel for the parties  
for final disposal of the O.A. Judgement  
reserved.

B.O  
Kishore  
C.O.(C-II)

Bench

Hon. Sh. T.N. Bhat, M(J)

Hon. Sh. S.P. Biswas, M(H)

28/9/98

Order pronounced in the open Court  
today.

PD  
Kishore  
C.O.(C-II)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA-170/96

New Delhi this the 28th day of September, 1998.

Hon'ble Shri T.N. Bhat, Member(J)  
Hon'ble Shri S.P. Biswas, Member(A)

Shri Bansi Lal Popli,  
Supervisor,  
Office of the Principal  
Director of Audit,  
Northern Railway,  
Baroda House,  
New Delhi-1.

.... Applicant

(through Sh. R.L. Dhawan, advocate)

versus

1. The Comptroller & Auditor, **General**  
Government of India,  
10, Bahadurshah Zafar Marg,  
New Delhi-1.

2. The Principal Director of  
Audit, Northern Railway,  
Baroda House,  
New Delhi-1.

.... Respondents

(through Sh. R.V. Sinha, advocate)

ORDER  
Hon'ble Shri S.P. Biswas, Member(A)

Applicant, a supervisory official under the respondents Railways, is claiming the benefit of stepping up of his pay on the basis of Government of India's instructions dated 23.9.76 as at Annexure A-7. The issue is about the removal of anomalies in applicant's pay fixation arising as a result of passing Revenue Audit Examination by juniors after 1.1.73 and by seniors before 1.1.73 i.e. the date on which the recommendations of the Third Pay Commission came into effect.

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2. The applicant would submit that he had passed all the three examinations vis. Confirmatory, Revenue Audit and Incentive Scheme earlier to Sh. S.S. Kapoor, junior to him. He had passed Revenue Audit Examination on 15.9.72 whereas Shri Kapoor had passed the said examination on 27.8.75. The applicant has, therefore, submitted that his case for removal of anomaly in pay was fully covered by Government of India instructions on the subject and that is why Respondent No.2 had recommended his case favourably. The details in the table below, indicating the events which would go to the root of considerations of such matters for the applicant vis-a-vis Shri Kapoor are given below:-

	<u>Applicant</u>	<u>Sh. S.S. Kapoor</u>
1. Date of appointment/ promotion as Auditor	01.07.66	17.09.71
2. Date of passing confirmatory Exam.	23.05.68	25.05.72
3. Date of passing Revenue Audit Exam.	15.09.72	27.8.75
4. Date of option for IIIrd Pay Commission scales of pay	01.05.75	Initially from 1.1.73 allowed revised option from 27.8.75
5. Date of passing incentive Audit Exam.	01.05.89	01.04.93

3. Applicant seeks to establish his claim on the basis that he had passed the Revenue Audit Examination before 1.1.73 whereas his junior Sh. Kapoor crossed the prescribed hurdle only after 1.1.73 and this itself is good enough for his case being considered under A-7 instructions. This is because his junior cannot be allowed to draw more pay than the senior as it is against the principles of natural justice. While recommending his

case favourably, the Respondent No.2 had pointed out to Respondent No.1 that this is a unique and genuine case of removal of anomaly and there is no justification for a senior drawing less pay than his junior, more so when the senior had passed all the necessary conditions/examinations much earlier to his junior.

4. While opposing the claim, the respondents have submitted that the decision to reject the applicant's claim for stepping up of his pay at par with his junior is within the terms of FR 22, Government of India Orders 23. In order 23, there are three basic conditions which are to be fulfilled if one claims stepping up of pay at par with his junior. The applicant does not fulfill the first condition which lays down that both the junior and senior officers should belong to the same cadre and the posts to which they have been promoted or appointed should be identical. In the present case, the applicant was appointed as Auditor on 1.7.66 in the scale of Rs.130-300 whereas late Sh. S.S. Kappor was appointed as L.D.C. on 11.4.60 in the scale of Rs.110-180. As such, ab initio the applicant forfeits the right of parity in terms of Clause (a) of Government of India Order 23 under FR 22.

5. We find that this case was earlier decided by a Single Bench of this Tribunal vide its order dated 1.1.97. After the dismissal of the O.A. by the said order, the applicant had preferred a Review Application No.45/97 which was decided by this Tribunal on 25.9.97. At the review stage, it was felt that the applicant had sought stepping up of his pay on the basis of instructions as at A-7 and the matter was dealt with on the basis of

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applicability of FR 22. Thus, a patent error has crept in on the face of the records and on the basis of the reasons recorded therein, the Review Application was allowed and the order dated 1.1.97 on the O.A. was recalled. Earlier to the decision on the R.A., Hon'ble Chairman vide his orders No.1/32/87-JA(Vol.11) dated 14.5.97, directed that such cases of stepping up of pay should be heard by a Division Bench.

6. We shall now revert back to the provisions under the Government of India instructions which would govern such a case. The relevant portions of the Scheme are as under:-

"The proposals for stepping up of pay of senior Section Officers on the date of passing Revenue Audit Examination by the juniors after 1.1.73, may also kindly be sent to this office for necessary sanction. A statement containing the pay drawn by Seniors and juniors from time to time in un-revised as well as revised scale may also kindly be sent invariably with the proposal for necessary verification in this office.

The Govt. of India in para 2 of their letter have agreed to the payment of arrears of pay on account of refixation of pay of concerned Auditors (including Selection Grade Auditors) and Section Officers in I.A. & A.D. with effect from the date from which the pay of senior officials is also stepped up. In view of this, the arrears in respect of all the cases in which sanctions have been issued by this office on this account, specifying that arrears may be allowed only with effect from 18.12.75, may be treated to have been modified and arrears be paid from the date from which the pay was allowed to be stepped up (and not from 18.12.75)."

7. We find that the applicant had joined the cadre as Auditor on 1.1.66 whereas late Sh. S.S. Kapoor was promoted as Auditor on 17.9.71. Therefore, with effect from 17.9.71 both of them were in the same cadre and posts and also in the same scale of Rs. 130-300. The

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fact that the applicant was senior to Shri Kapoor in the cadre of Auditors, is not in dispute and the fact that the applicant was drawing Rs.168 on 17.9.71 whereas Sh. Kapoor was drawing Rs.155 on the same day on his joining as Auditor is also not in dispute. However, anomaly arose in February 1994 due to fixation of pay of Sh. Kapoor with effect from 27.8.75 vide orders dated 25.2.94 which was as a consequence of Sh. Kapoor filing an OA-342/93. The applicant being senior in the cadre has obviously right for claiming stepping of his pay with reference to the pay of his junior in the same cadre and post with effect from 27.08.75.

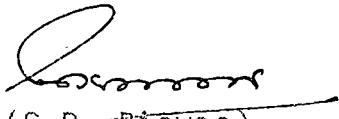
8. It is also not in dispute that Sh. Kapoor was initially appointed as L.D.C. in April 1960 and was subsequently promoted as Auditor with effect from 17.9.71 in the scale of Rs.130-300. Thus both the applicant and Sh. Kapoor held and continued identical posts in the same scale of Rs.130-300 from 17.9.71 till the death of Sh. Kapoor on 15.10.93 but both belonged to the same cadre of Auditors.

9. The applicant's case is, therefore, covered under the Government of India's instructions dated 23.9.73 and this is a case which can not be dealt with under FR 22. As a result, the application is allowed with the following directions:-

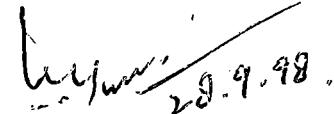
(a) The impugned order at A-1 dated 25.1.95  
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shall stand quashed.

(b) The respondents shall consider refixing the applicant's pay bringing the same at par with Sh. Kapoor w.e.f. 27.8.75 till date.

(c) No costs.

  
(S.P. Biswas)

Member (A)

  
28.9.98  
(T.N. Bhat)

Member (J)

/VV/