

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2094/1996

New Delhi this the 13th day of March, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Roop Narain S/o Late Sh.Moti Lal R/O F-128
Sarojini Nagar,
New Delhi-23. Applicant

(Applicant in person)

-Versus-

1. Union of India through
the Secretary,
Ministry of Urban Affairs & Employment,
Nirman Bhawan, New Delhi.
2. The Director General (Works)
Central Public Works Department,
Nirman Bhawan, New Delhi-110011.
3. The Executive Engineer
Central Secretariate Division
C.P.W.D. Gate No.11,
South Block,
New Delhi-110011. Respondents

(None for the respondents)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

We have heard the applicant, who is present in person. The respondents and their Advocates are absent. We proceed to dispose of the OA in their absence as per Rule 16 of the Central Administrative Tribunal (Procedure) Rules, 1987.

2. Applicant is engaged as an Assistant Engineer in the office of the Executive

Engineer, Central Secretariat Division, Central Public Works Department, New Delhi, respondent No.3 herein. By the present OA, he seeks to impugn the Office Orders dated 11.9.1996 and 12.9.1996 whereby the alleged over-payment made to the applicant in a sum of Rs.11,931/- is sought to be recovered from his salary with effect from September 1996 in instalments of Rs.2000 per month, the first instalment for September 1996 being Rs.1931. and balance of the amount is made recoverable in monthly instalments of Rs.2000/- commencing October 1996. Facts giving rise to the filing of the present OA are as under:-

Applicant was engaged as a Junior Engineer with effect from 6.6.1977 in the pay scale of Rs.425-700 (pre revised), Rs.1400-2300 (revised). On completion of 15 years of service as a Junior Engineer, applicant was placed in a higher pay scale of Rs.2000- 3500 with effect from 12.7.1992. The aforesaid pay scale of Rs. 2000- 3500 is also the pay scale of the post of Assistant Engineer which is a promotional post from that of Junior Engineer. He was placed in the pay scale of Rs.2000- 3500 and his pay was refixed at Rs.2060 with effect 1.2.1993. Applicant on 26.10.1993 was promoted to the post of Assistant Engineer and his pay was refixed at Rs.2375 with effect from 26.10.1993. By the impugned orders issued on 11.9.1996 and 12.9.1996 alleged over-payment made to the applicant based on the aforesaid refixation with effect from 26.10. 1993 is sought to be recovered

from him on the ground that the second pay fixation in the same pay scale of Rs.2000 - 3500 was not justified. In order to justify the recovery, reliance is placed on an Office Memorandum issued by the Government of India, Directorate General of Works, Central Public Works Department dated 20.11.1991 which has inter alia provided:-

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"The Junior Engineers, who completed 15 years of service on or before 1.1.91 may be given the benefit of Rs.2000 - 3500. The pay in such cases may be fixed under F.R 22(1) (a) (i). When they are promoted as regular Asstt. Engineers, subsequently the question of pay fixation again does not arise."

4. Based on the aforesaid instructions contained in the Office Memorandum, it has inter alia been contended that re-fixation done at the second stage was a mistake. Over-payment made to the applicant based on the said re-fixation is, therefore, liable to be refunded by him. No exception can, therefore, be found in the aforesaid orders directing recovery.

5. Pay fixation has been provided in Rule 22 (I) (a) (1) of the Fundamental Rules which, inter alia, states as under:-

"F.R.22 (I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:-

(a) (1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or

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appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the posts held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more.

Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis, the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment 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 or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment:

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or rupees twenty-five, whichever is more."

Aforesaid rule as we read it, prescribes for refixation of pay at the stage of promotion. The post of Assistant Engineer is a promotional

post and that of Junior Engineer is the feeder post. The post of Assistant Engineer is, therefore, a post carrying duties and responsibilities of greater importance than those attaching to the post of a Junior Engineer which was held by the applicant. On his promotion to the post of Assistant Engineer, applicant's pay was liable to be refixed under the aforesaid Fundamental Rule. As far as the inconsistency between the aforesaid FR 22 (I) (a) (i) and the instructions contained in the aforesaid Office Memorandum is concerned, FR 22 is a statutory rule. The same cannot be overcome by instructions which are merely of administrative nature. Aforesaid statutory rule will prevail over the aforesaid instructions. In the circumstances, we find that the refixation of applicant's pay on his promotion to the post of Assistant Engineer is fully justified. Orders impugned directing recovery of the alleged over-payment are unjustified and the same are liable to be quashed and set aside.

6. A controversy similar to the one arising in the present case has also arisen in Ashok Kr. Banerjee vs. Union of India & ors., OA No. 241/93 decided by the Calcutta Bench of the Tribunal on 3.12.1993. It has inter alia been observed in the aforesaid decision as under:-

"Normally in all cases of promotion pay of the Government servant is fixed in terms of FR 22(I) (a) (i) mentioned above. In this case the respondents have objected to such fixation on the

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ground that petitioner was enjoying the pay scale of the Asstt. Engineer at the time of promotion and while the benefit of the circular dated 22.3.91 was granted to him, his pay was fixed in terms of FR 22 (I) (a) (i) and he cannot be given the same benefit in the same scale of pay. Admittedly petitioner was promoted from Group 'C' post to Group 'B' post which carries higher responsibilities. Though, petitioner was given the benefit of higher pay scale by the circular dated 22.3.91 his designation remained unchanged, so the question of sharing higher responsibilities ~~remained unchanged, so the question of sharing higher responsibilities~~ at the time did not arise at all but a promotion from Group 'C' to Group 'B' post certainly carries higher responsibilities. In such circumstances I am of the opinion that the benefit of FR 22 (I) (a) (i) cannot be denied to him. In this context the decision of the Tribunal reported in 1993 (24) ATC 660 (Dhyaneswar Nandanwar vs Union of India and ors.) and 1993 (2) ASLJ CAT 95 (Ramesh Chand vs. Union of India) assumed to be very relevant. In both the cases a similar question arose and in both the cases the Hon'ble Tribunal came to the decision that since the promotional post carries higher responsibilities the benefit of FR 22C which is numbered as FR 22(I)(a)(i) should be made applicable in the matter of fixation of pay in the promotional post. I respectfully agree with the decision in the ~~aforesaid~~ two cases and hold that petitioner's pay in the promotional post should be refixed in accordance with the provisions of FR 22(I)(a)(i) and he should get all arrears due to such refixation."

7. Similar view has been taken in several other decisions. In the case of Ramesh Chand vs. Union of India and another, (1993) 24 ATC 193, it has inter alia been observed as under:-

" In the above facts and circumstances of the case, I am of the opinion that the post of Inspector of Post Offices carries responsibilities and duties of greater importance than the post in the feeder category and, therefore, the petitioner on promotion to the post of Inspector of Post Offices would be entitled to fixation of pay with the benefit of FR 22-C. Ordered

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accordingly. It is also to be noted that FR 30 which had earlier placed a restriction on conferring the benefit of FR 22-C on the ground that the post in identical scale of pay broadly carry comparable duties and responsibilities has been deleted from the Fundamental Rules, vide Department of Personnel Notification No.1/10/89-Estt. (Pay-I), dated 30.8.1989 which was gazetted as GSR No. 679, dated 16.9.1989. In view of the above, the respondents are directed to grant the benefit of fixation of pay to the petitioner in accordance with FR 22-C now renumbered as FR 22 (1)(a)(i). The respondents are further directed to implement the above orders as expeditiously as possible but preferably within 3 months from the date of communication."

Similarly in the case of Dhyaneshwar Nandanwar vs. Union of India & ors., (1993) 24 ATC 660, it has been observed as under:-

"...The scale of pay is one of the important criteria to determine the higher or lower post. All the same the identical scale of pay of both the posts cannot be made the sole ground for rejection of the claim of the applicant. The Fourth Pay Commission recommended identical pay scale for both the posts on the analogy that both the posts carried comparable supervisory duties. It may be true. Still it is possible that the supervisory duties attached to the post of Inspector, RMS may be higher in nature than the post of Sorting Assistant, LSG. The very fact that the post of Inspector, RMS is a promotion post and the post of Sorting Assistant is a feeder cadre gives an indication that the post of Inspector, RMS is a post carrying higher responsibility. In the opinion of the Tribunal the fact that the post of Inspector, RMS is a selection post should put an end to the controversy. The object of the rule-making authority appears to be sort out grain from chaff. Thus, persons are appointed to the post of Inspector, RMS by process of elimination on the basis of competitive examination. Consequently, the Tribunal is of the opinion that the post of Inspector, RMS is a post carrying higher responsibility and secondly, the pay fixation under FR 22-C has been rightly done by the

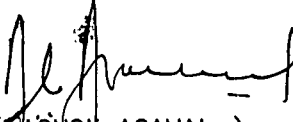
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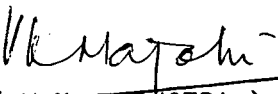
department. The report of the audit otherwise cannot be given any weightage."

8. In view of aforesaid reasons as also in view of the aforesaid decisions, we are of the view that the applicant has made good his claim raised in the OA. Present OA in the circumstances is allowed in terms of the reliefs claimed in paragraph 8 of the OA, namely:

- "(a). to direct the respondent No.3 not to start the recovery of alleged/over payment from the salary of the applicant from the month of September and onwards.
- (b). to direct the respondent No.3 to withdraw his two office orders dated 11.9.1996 and 12.9.1996.
- (c). to direct the respondent to continue to allow the applicant to draw the pay already fixed in terms of FR 22(I)(a)(i) and future increments as when he was promoted to the post of Assistant Engineer he was assigned higher responsibilities."

In the circumstances, there will be no order as to costs.


(ASHOK AGAWAL)
CHAIRMAN


(V.K. MAJOTRA)
MEMBER (A)

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