

(97)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A. No. 1229 of 1997

New Delhi, dated this the 15th July, 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri K.B.K.S. Sawhney,
S/o late Shri Tara Singh,
R/o 47/1/A, Sector 2, DIZ Area,
Gole Market,
New Delhi-110001. APPLICANT

(By Advocate: Shri S.M. Rattanpaul)

Versus

1. Union of India through
the Secretary,
Ministry of Defence,
South Block,
New Delhi-110011.
2. Under Secretary D(Estt-I/GroupII),
Ministry of Defence,
C-II, Hutmants, Dalhousie Road,
New Delhi-110011.
3. Under Secretary D(Estt.I/Group I),
Ministry of Defence,
C-II, Hutmants, Dalhousie Road,
New Delhi-110011. RESPONDENTS

(By Advocate: Shri S.M. Arif)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns the order dated 26.3.97 and seeks stepping up of his pay at par with his immediate junior Shri H.C. Malik with effect from 25.4.86. He further seeks a direction that he is entitled to get his pay fixed at Rs.1700/- p.m. in the scale of Rs.1640-2900 w.e.f. 1.1.86 on the basis of the Furth Central Pay Commission's recommendations with all consequential benefits.

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meanwhile he had completed his tenure of deputation as Storekeeper on 13.10.86, he sought reversion as UDC and promotion as Assistant, as

2. Admittedly while applicant was on deputation on the ex-cadre post of Storekeeper in DMR & F's Office w.e.f. 14.10.83 his junior Shri H.C. Malik was promoted as Assistant on ad hoc basis w.e.f. 17.12.83. On 5.5.84 (Ann. A-2) he was informed that in absence of select list of officers he was eligible for appointment as Assistant on long term basis, but as an adequate number of long term vacancies were not available within applicant's permanent organisation viz. Defence Ministry, he was asked whether he was willing to be nominated in any other cadre for temporary appointment as Assistant. Applicant in his reply dated 16.5.84 (Ann. A-3) stated he was not interested in nomination to any other cadre for temporary promotion as Assistant on long term basis, and may be considered for appointment as Assistant on long term basis in Defence Ministry alone, as and when a vacancy arose. A similar communication was again sent to him on 6.10.86 (Ann. A-4) to which he again replied (Ann. A-4 Colly.) that he was not interested in going out of the Defence Ministry and he opted for promotion as Assistant on long term basis in the Defence Ministry alone as and when a vacancy arose. As meanwhile he had completed his tenure of deputation as Storekeeper on 13.10.86, he sought reversion as UDC and promotion as Assistant, as

his junior was officiating as Assistant, and prayed for promotion as Assistant on regular basis as and a vacancy arose in Defence Ministry.

3. Meanwhile disciplinary proceedings were initiated against him for submitting false TA claim and a charge sheet was served upon him on 10.11.86. The disciplinary proceedings concluded on 4.5.88 with the imposition of penalty of stoppage of increments of pay for two years without cumulative effect, and recovery of the amount paid to applicant on account of his TA claims. Applicant was promoted as ad hoc Assistant w.e.f. 22.6.90 consequent upon expiring of the penalty. He was included in the select list of Assistants for the year 1989 and was appointed as Select List Assistant w.e.f. 13.12.91. Applicant thereupon filed OA No. 4209/91 praying for quashing of the order dated 4.5.88. The Tribunal in its judgment dated 28.8.92 in the aforesaid OA quashed the order dated 4.5.88 and ordered that normal annual increments should flow to applicant and any amounts on account of LTC should be released. However, this would not preclude the Disciplinary Authority from proceeding with the Disciplinary case after giving applicant an opportunity to explain his case after the Disciplinary Authority had given reasons for disagreeing with the opinion of the Inquiring Authority. Later, after obtaining the advice of UPSC, applicant was exonerated of the

charges framed against him by order dated 15.7.96.

4. Thereupon applicant on 19.7.94 (Annexure-A5) requested for promotion/fixation of seniority with effect from the date his juniors in select list of UDCs were officiating as Assistants in December, 1983/January, 1984 and also for his seniority as Sl.115 below the name of Shri Laxmi Narain and above the name of Shri H.C. Malik circulated by O.M. dated 13.5.94. He also requested that he be given promotion on adhoc basis (without any break) from the date his juniors in select list of UDC were promoted i.e. end December, 1983/ January, 1984 and then on long term basis from April, 1986 and his promotion in select list of Assistants also be revised accordingly to enable him to get his pay refixed from the back date as his juniors were getting more pay than himself. He admitted that this was held up due to the aforesaid disciplinary case which had now been cleared and in which he had been exonerated, which he contended now entitled him for promotion from back date with all consequential benefits.

5. Respondents rejected his prayer for appointment as Assistant on adhoc basis or stepping up of his pay w.e.f. 17.12.83, but promoted him as long term Assistant w.e.f. 25.4.86 to 12.12.91 i.e. the date from which his juniors were promoted and it is not denied that his seniority has been fixed by respondents as requested by him.

6. We have heard applicant's counsel Shri

Rattan Paul and Respondents' counsel Shri Arif. We have also perused the materials on record and given the matter our anxious consideration.

7. Shri Rattan Paul has argued that the applicant was not given an option to come to his cadre post when his immediate juniors were promoted on adhoc basis w.e.f. 17.12.83 and by not giving option to the applicant he has been denied opportunity to count his service in the promotional grade and has consequently lost his pay as compared to his juniors. It is contended that the offer made to the applicant on 5.5.84 whether he was interested in his being nominated in other cadre for appointment to the Assistant grade, did not amount to an option given to him to come over to his parent cadre, and it is also contended that while applicant's juniors were allowed to ^{continue} uninterrupted on the post of Assistant till 25.4.86 and their appointments were also on long term basis, stepping up of pay ^{has been} unfairly denied to the applicant on the ground that his juniors had been appointed only on short term vacancies. It is contended that the applicant is suffering heavy financial loss of recurring nature by denial of stepping up of pay with effect from the date his immediate juniors were promoted, and he fulfills all the required conditions as contained in the relevant Govt. instructions on the subject. Reliance has been placed on CAT's judgment in Mil Chandra Das Vs. UOI & Ors. 1988

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(7) ATC 224; K.K.Pillai Vs. UOI & Ors. 1994(26)

ATC 641 and B.D.Kubbe Vs. UOI, decided on 7.11.96
as appearing in Swamy's news of August, 1997.

8. On the other hand, Shri Arif has argued that a purely fortuitous officiating promotion given to an officer who is junior to an officer outside the regular line of promotion does not itself give a claim for stepping up of pay.

9. The CAT, Hyderabad (Full) Bench in B.L. Somayajulu & Ors. Vs. Telecom. Commission & Ors. and connected cases, 1997(1) ATJ page 1 had occasion to examine the circumstances under which stepping up of pay could be allowed and has laid down the following principles for stepping up of pay. This judgment which noticed a series of earlier judgments including the cases of Anil Chandra Das and K.K.Pillai (Supra) relied upon by Shri Rattan Paul has laid down that

- (A) stepping up of pay can be granted only where there is a provision in law in that behalf;
- (B) a claim for stepping up of pay can be made only on the basis of a legal right and not on pervasive notions of equity or equality, unrelated to the context of statutory law;
- (C) every claim must be based on an enforceable legal right. Such a right should be arisen by conferment and not by comparison;
- (D) a jurisdiction in equity does not inhere in the Tribunal;
- (E) If wrong fixation of pay in the case of a junior is to bring about a corresponding fixation in the case of a senior by applying the principle of equality. That would be an instance using Article 14 to perpetuate illegality;
- (F) If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a junior. Without challenging the wrong, he cannot

claim a remedy from a wrong. He cannot acquiesce in a wrong, and make a gain from that wrong by a comparison; and

(G) Where the Tribunal had allowed stepping up of pay on considerations of equity and SLP filed against the Tribunal's order had been rejected by the Hon'ble Supreme Court, such rejection does not mean affirmation of the legal principle decided in the order which was sought to be appealed against.

10. Applying the aforesaid yardsticks to the facts and circumstances of the present case, no other law has been cited by the applicant requiring the respondents to step up the applicant's pay equal to the pay drawn by his junior Shri H.C.Malik other than FR- 22(1)(a)(i).

11. In the present case, atleast two of the three ingredients of FR -22(1)(a)(i) are not attracted in as much as

- (a) this is not a case where the applicant as well as his immediate junior Shri H.C. Malik were appointed to identical posts and in the same cadre. In fact this is a case where the applicant is seeking stepping up of pay at par with his junior Shri H.C.Malik w.e.f. 25.4.86 on which date Shri H.C.Malik was promoted as Asstt. on adhoc basis while applicant was away on deputation.
- (b) It is not a case of an anomaly being directly as a result of the application of FR- 22(1)(a)(i).

12. Applicant's claim is based not on grounds of law, but on considerations of equity or equality unrelated to the context of statutory law, and the claim is therefore, squarely hit by the judgment in Somayajulu's case (Supra). Nothing has been shown to us to establish that the aforesaid judgment in Somayajulu's case(Supra) has been stayed, modified or set aside.

13. In the result we find ourselves unable to grant the applicant's prayer. The OA is therefore dismissed. No costs.

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(MRS. LAKSHMI SWAMINATHAN)

MEMBER(J)

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(S. R. ADIGE)
VICE CHAIRMAN (A).

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