

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1365/97

New Delhi, this the 12th day of August, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Shri V.P.Satyadevan,
331, Air Headquarters (Vayu Bhawan),
New Delhi. **Applicant**
(By Advocate: Shri C.Hari Shankar)

Vs.

1. Union of India
Through The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi - 110 001.
2. Union of India
Through The Secretary,
Ministry of Finance,
North Block,
New Delhi - 110 001.
3. Director,
Police Telecommunications,
Directorate of Coord. Police Wireless,
Block No. IX,
CGO Complex,
Lodhi Road,
New Delhi - 110 003. **Respondents**
(By Advocate: Sh. M.K.Gupta)

O R D E R

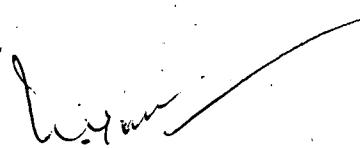
delivered by Hon'ble Shri T.N.Bhat, Member (J)

The applicant in this OA seeks the relief of stepping up of his pay at par with the pay of his junior, namely, Sh. M.K.Mandal in the grade of Technical Assistant and Sr. Technical Assistant in the office of Resp. No.3, namely, Director, Police Telecommunications, CGO Complex, Lodhi Road, New Delhi. The applicant who had initially been appointed as Radio Technician on 5.4.1976 and who was getting pay @ Rs.380/- p.m. in the grade of Rs.380-640, came to be promoted as Technical Assistant in the grade of Rs.425-700 on

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12.1.1984 and his pay came to be fixed at Rs.530/- p.m. On 18.12.1989, consequent to his promotion to the post of Senior Technical Assistant, the applicant's pay was fixed at Rs.1820/- in the pre-revised scale of Rs.1640-2900.

2. Sh. Mandal joined as Radio Technical on 20.8.1976 and was promoted as Technical Assistant but on his promotion he exercised the option under the O.M. issued by DOP&T dated 20.9.1991 and his pay came to be refixed only after his next increment accrued in the grade of Technical Assistant. This has resulted in fixation of the pay of Sh. Mandal at a rate higher than that at which the applicant's pay was fixed. Sh. Mandal's pay was fixed at Rs.545/- while the applicant's pay came to be fixed at Rs.530/-. This happened some time in the year 1984, and the applicant states that after 20.6.1984 he came to be posted in a number of States outside Delhi and, therefore, he could not come to know about the anomaly in his pay vis a vis Sh. Mandal. According to the applicant it was only some time in the year 1990 when the applicant came to know about this anomaly and he immediately proceeded to make a representation on 30.1.1990, as at Annexure A-6. In reply to the representation the Resp. No.3 sent the reply on 18.9.1995 which is the impugned order in this OA and by which the applicant's representation has been rejected on the ground that the junior was drawing more pay even in the lower grade, and, therefore, this was not a case of anomaly which would warrant stepping up of the applicant's pay.



3. The applicant has taken the plea that he had also made a request for exercise of his option in accordance with the OM dated 20.9.1991 but he did not receive any reply to his request and in the meantime Sh. Mandal got the benefit of fixation of his pay at a higher rate.

4. Applicant seeks the following reliefs:-

- "(i) to direct Respondent No.3 to step up the pay of the applicant on par with that drawn by Shri M.K.Mandal w.e.f. 1.8.94, when the anomaly came into being,
- (ii) consequent to the grant of the relief prayed for in (i) above, to direct Respondent No.3 to disburse the arrears of pay due to the applicant as a result of the rectification of the abovementioned anomaly immediately,
- (iii) to grant interest on the abovementioned amount due to the applicant at such rate as this Hon'ble Tribunal deems fit and proper,
- (iv) to grant costs of this O.A. to the applicant, and
- (v) to pass such other order or orders as may be deemed fit and proper in the interests of justice."

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5. The OA is resisted by the respondents on the ground that this is not a case of anomaly nor is it a direct result of pay fixation under FR 22-C. According to the respondents Sh. M.K.Mandal came to be fixed at a higher rate than the applicant only because he exercised his option while the applicant did not. It is emphatically denied by the respondents that the applicant had ever made a request for exercising the option in a manner similar to that exercised by Sh. Mandal.

6. We have heard the learned counsel for the parties and have perused the material on record.

7. According to FR 22-C where there is an anomaly, as a result of pay fixation, the same should be removed by stepping up the pay of the senior officer to a figure equal to the pay as fixed for the junior officer in the higher post, provided the following conditions are fulfilled:-

- (a) Both the junior and senior officers should belong to the same cadre and the post to which they are promoted or appointed should also be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts should be identical, and more importantly,
- (c) The anomaly should be directly as a result of application of FR 22 C. To quote an example if even in the lower post the junior officer draws from time to time a higher rate of pay than the

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senior by virtue of grant of advance increments or such other reasons the provision relating to stepping up of pay of the senior officer cannot be invoked.

8. In the instant case it is not disputed that on his promotion as Technical Assistant Sh. Mandal exercised his option to get his pay refixed only after his next increment accrued in the grade of Technical Assistant. There is no evidence to indicate that the applicant had also similarly exercised his option. Even assuming that he had made such a request the applicant ought to have assailed the inaction on the part of the respondents in not acceding to his request when the respondents fixed Sh. Mandal at Rs.545/- p.m. while the applicant was fixed only at Rs.530/- p.m. on 1.8.84. The applicant does not appear to have moved even his little finger for nearly 13 years before he eventually decided to file this OA in the year 1997. Therefore, this is a clear case where a junior officer had been receiving higher pay even in the lower grade and as a consequence he came to be fixed at a higher pay in the higher grade. In our considered view this cannot be considered to be an anomaly that would justify stepping up of the applicant's pay with reference to the pay of the junior.

9. The learned counsel for the applicant, however, placed reliance on a Single Bench judgment of the Jodhpur Bench of the Tribunal in Sampat Rai Sharma vs. Union of India and Others dated 3.10.94, reported as (1995) 30 ATC 479. In that case the junior was drawing more pay due to exercise of an option for getting his pay fixed in the revised scale from the date of his next increment. However,

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it was established on facts of that case that the senior could not exercise such option because the circular inviting option within the prescribed time was not circulated in the office in which he was working. It was in these circumstances that the aforesaid Bench of the Tribunal held that the senior was entitled to stepping up of his pay because he had not been informed about his right to exercise option to get the pay fixed in the revised scale from the date of his next increment. Thus, quite clearly, the facts of the case before the Jodhpur Bench (supra) were clearly distinguishable from those of the instant case. In the case before us the applicant has not taken the plea that he had no knowledge about his right to exercise option. On the contrary, he states that he did exercise his option but that he did not receive any reply from the respondents, which fact has not been established by him by producing any evidence to support the plea. Therefore, the aforesaid judgment of the Jodhpur Bench has no application to the facts of the instant case.

10. We have also gone through the judgment of the Apex court in Union of India and Others vs. P. Jagdish and Others reported in (1997) 3 Supreme Court cases 176, cited at the bar. That case related to the inter-se dispute between Head Clerks promoted from the cadre of senior clerks who had been in receipt of a special pay of Rs.35/- p.m. and those senior clerks who were not getting that special pay but were also promoted to the post of Head Clerk. The question that arose was, firstly, whether the senior clerks who had not been receiving the special pay could claim refixation of their pay in the cadre of Head Clerks on the notional basis that they were drawing Rs.35/- p.m. as special pay and,

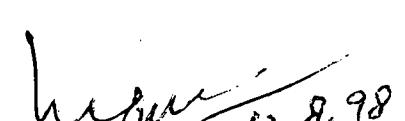
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secondly, whether they could also claim stepping up of their pay to the level of the pay received by their juniors who had earlier been getting the special pay. The Apex Court negatived the first point, though on the peculiar facts of that case the second point was answered in the affirmative. It was held, inter alia, that the special pay of Rs.35/- p.m. being attached to certain identified posts in the category of senior clerks only those who were posted against those identified posts could claim special pay and those who had already been promoted to the higher category of Head Clerks could not claim that special pay even on notional basis merely because their juniors in the cadre of senior clerks were given that special pay on being posted against those identified posts carrying the special pay.

11. On the facts of the instant case it cannot be said that the anomaly has arisen as a consequence of the application of Fundamental Rule 22-C. The pay of Sh. Mandal, as already indicated, came to be fixed at a higher rate of pay than the applicant only because he exercised the option to get the higher pay scale from the date of his next increment. The principle of stepping up of pay would, therefore, not be attracted in this case.

12. In view of what has been held and discussed above this OA, being without force, is hereby dismissed. There shall, however, be no order as to cost.


(S. P. BISWAS)
Member (A)


(T. N. BHAT)
Member (J)

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