

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A./T-A- NO. 1659 /1997 Decided on : 5th -11-98.

C.S. ARORA

... Applicant(s)

(By Shri Dr.D.C. Vohra , Advocate)

versus

U.O.I. & ORS.

... Respondent(s)

(By Shri K.C.D. GANGWANI, Advocate)

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THE HON'BLE SHRI JUSTICE K.M.AGARWAL, CHAIRMAN

THE HON'BLE SHRI R.K.AHOOJA, MEMBER (A)

- ✓ 1. To be referred to the Reporter or not ? *yes*
2. Whether to be circulated to other Benches of the Tribunal ?

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(K.M.AGARWAL)
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1659/1997.

New Delhi, this the 5th day of November, 1998.

HON'BLE SHRI JUSTICE K.M. AGARWAL, CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER (A)

C.S. Arora
S/o Shri B.L.Arora
R/o 382 Asiad Village Complex,
New Delhi-110049

....APPLICANT

(BY ADVOCATE DR. D.C. VOHRA)

vs.

1. Union of India
Through
The Secretary,
Ministry of Home Affairs
North Block,
NEW DELHI-110011.
2. Registrar General of India,
Ministry of Home Affairs
Government of India
2A Mansingh Road,
New Delhi-110011.
3. Dr. M.Vijayanunni, IAS (KL 1969)
Resident of
D-1/64,
Bharati Nagar,
New Delhi-110003.

....RESPONDENTS

(BY ADVOCATE SHRI K.C.D. GANGWANI)

O R D E R

JUSTICE K.M. AGARWAL:

By this O.A., the applicant has made a prayer for quashing the two orders dated 25.3.1997, Annexures A-1 and A-2 of the respondents, whereby the post of Director (EDP) under them was down-graded and the pay of the applicant was refixed in the lower pay scale of Rs.4500-150-5700. Further relief claimed is for "the arrears of pay and allowances since 25.3.97 in the pay scale of Rs.5100-6300 with interest @ 18% per annum till the date of actual payment". Other reliefs claimed in the application are inconsequential and need not be mentioned.

2. Briefly stated, the applicant was directly recruited to the post of Director (Electronic Data Processing) through the Union Public Service Commission in

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the pay scale of Rs.4500-5700 with effect from 25.3.1988. By Office Order No.14/2/89-RG (Ad.II) dated 5.7.1994, Annexure R-1, the respondents upgraded the post "from the existing pay scale of Rs.4500-150-5700 to the pay scale of Rs.5100-6300 with immediate effect" and by the same order, the applicant was appointed with immediate effect "in the newly created upgraded post on an ad hoc basis for a period of 6 months pending filling up of the post on a regular basis according to Recruitment Rules to be framed for the new post." Since 5.7.1994 and till the date of impugned orders, the applicant was holding the upgraded post of Director (EDP) in the scale of Rs.5100-6300. It appears that by filing O.A. No.805/95, the applicant had sought a direction to the respondents to appoint him on regular basis on the newly created upgraded post of Director (EDP) and in the meanwhile, was successful in obtaining interim relief on 21.11.1995 from the Tribunal in the said O.A. to the following effect:

"....We are of the view that as the applicant is presently holding the post of Director (EDP) on ad hoc basis, it is only fair that he should be allowed to continue on that post subject to the following conditions:

- a) so long as the post exists
- b) until respondents frame rules to fill the post
- c) until the post is filled on regular basis, subject to the outcome of the OA in its turn...."

The impugned orders of down-grading the post and pay fixation in the lower pay scale were, thereafter, passed. Being unsuccessful in his representation for restoration of upgradation of the post and his higher pay scale, the applicant has filed the present O.A. for the said reliefs. The application is resisted by the respondents.

3. After hearing the learned-counsel for the parties and perusing the original records produced before us, we find

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that on 7.6.1994, the Financial Adviser (Home) proposed to abolish the isolated post of Director (EDP) in the pay scale of Rs.4500-5700 after obtaining approval of the Home Minister for creation of a post of Director (EDP) in the pay scale of Rs.5100-6300, besides proposing to frame Recruitment Rules and recommending ad hoc appointment of the applicant in the new pay scale for a period of six months pending filling up of the post according to the Recruitment Rules. The proposal was accepted by the Home Minister on 27.6.1994. The relevant notings at pages 72 and 73 of File No.14/2/89-RG (Ad-II) Part I are as follows:

"5. Following course of action now needs to be taken:

(a) HM's approval should be obtained for creation of a post of Director (EDP) in pay scale of Rs.5100-6300 and abolition of existing post in pay scale of Rs.4500-5700, as agreed to by Ministry of Finance.

(b) Recruitment Rules should be framed immediately for the new post.

(c) HM's approval should be obtained for ad hoc appointment of the incumbent, viz Shri C.S. Arora in the new pay scale of Rs.5100-6300 for a period of six months pending filling up of the post according to recruitment rules. (JS (Pers.) has been consulted and he has agreed to this course of action)."

In paragraph 2 of the said notings, it is mentioned that:

"2.....Another important aspect of the case is that there is only one post of Director (EDP) in the pay scale of Rs.4500-5700 and incumbent is a permanent Government employee. Evidently, this post should be manned by the same incumbent even after the revision of the pay scale. In case the post is upgraded and filled up according to new Recruitment Rules, the incumbent will have to compete with other applicants and there may be a chance of incumbent not getting upgraded post. In that case a problem would arise for adjusting the incumbent because there is no other post available in the said pay scale."

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It would, thus, appear that though Recruitment Rules were to be framed and the applicant was given ad hoc appointment for a period of six months, it was intended to give the new post to him on regular basis after finalisation of the Recruitment Rules. It appears that due to this reason, the ad hoc appointment of the applicant to the new post continued to be extended from time to time after expiry of the term of his first ad hoc appointment by order dated 5.7.1994 till the date of the impugned orders. Why upgradation of the post made in the year 1994 was reversed and how the impugned orders came to be passed may be gathered from the internal notings dated 24.5.1996 made by the third respondent as Registrar General, which are at pages 43 and 44 of the connected File No.14/2/89-RG (Ad.II) Part II. The entire notings are relevant and, therefore, these are reproduced hereinbelow:

"The decision taken in this file earlier, based on the advice of the Ministry of Finance, was that the existing post of Director (EDP) on Rs.4500-5700 will be abolished and a new post will be created on Rs.5100-6300 which will be filled up according to the new recruitment rules to be framed therefor. It was also decided in the MHA that the existing incumbent in the lower post Sri C.S. Arora will be appointed on an ad hoc basis to the higher post.

2. Subsequently, the incumbent of the post of Director (EDP) Sri C.S. Arora approached the CAT for being regularly appointed to the higher post without undergoing any further selection process. This O.A. is still pending. In accordance with an interim order in this O.A., Sri C.S. Arora is allowed to continue on the higher post so long as the post exists and until the post is filled up on a regular basis.

3. The draft recruitment rules for the higher post is still under the consideration of the UPSC. Finalisation of the rules and the

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procedure of recruitment etc. will be a time-consuming procedure and is not likely to materialise in the near future. Moreover, since there is no guarantee that the existing incumbent himself will get selected to the higher post, he is most likely to embroil the matter in further litigation or by keeping the above O.A. live and stall the selection process. Therefore, it would not be possible to expect this complicated issue to be solved merely by proceeding with the framing of recruitment rules and making regular selection to the higher post. In the interests of the department it would be better to resolve this stalemate early.

4. To put the whole matter in perspective the following background is given. Though the decision taken was that a new post in a higher pay scale will be created after abolishing the existing post in the lower pay scale and that the incumbent will be temporarily posted on an ad hoc basis to the higher post, it may be seen that the proposal originally made by this department was something entirely different, namely that the payscale of the existing incumbent be upgraded in response to his repeated representation (and not because of any need to have a higher post in the interests of work). It may be pointed out that this recommendation came to be made in 1993-1994 by the then RGI at a time when the EDP Director's gross failures in ensuring the quality of data processing of the 1991 census schedules and in meeting the time-bound commitments made to Parliament for bringing out the computer tables had not come to light. These serious defaults were exposed in end 1994 and 1995. In fact the above work had therefore to be got completed later without his involvement and by enlisting the active help of other officers of the Data Processing Division and other heads of Divisions. In such a situation it would be inappropriate to continue to reward him with a higher pay scale.

5. Another important aspect to be taken into account now is that this raising of the

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payscale of one Division Head alone in isolation has upset the internal parities and balances between Division heads within the department and has caused heartburn and affected the morale of other officers. This is particularly valid when even the responsibilities of the head of the Data Processing Division had to be got completed with the help of other Division heads who displayed much greater sincerity and dedication whereas they are actually languishing in lower pay scales. Director (EDP) was in the payscale of Rs.4500-5700 whereas other Division heads like DRG (Demography), DRG (Census & Tabulation), DRG (Vital Statistics), DRG (Map), DRG (Language) etc. are in the payscale of Rs.3700-5000. If the payscale of Director (EDP) alone is raised to Rs.5100-6300 that will further widen the gap whereas the real need is to raise the payscales of some other division heads to prevent stagnation and raise their status. The post of Director (EDP) used to be filled up exclusively by deputation from outside earlier and therefore it made no difference even if the payscale was kept at a slightly higher level. But now it is a regular post within the department and therefore the internal parities within the department should not be unduly upset. This has now assumed urgency since the fifth Pay Commission which is expected to finalise its recommendations shortly may continue the status quo as it exists and if the payscale of Director (EDP) alone is kept at the unduly high level of Rs.5100-6300 as against the scale of Rs.3700-5000 for the other Division heads as stated above, the imbalance will become permanent and it will be difficult to rectify the situation later. This will further demoralise the other Division heads.

6. Taking all these factors into account, it may be appropriate to abolish the higher payscale post on Rs.5100-6300 and restore the post of Director (EDP) to the original payscale of Rs.4500-5700. The incumbent cannot have any grievance on this

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because that was the post to which he was recruited and he has a legitimate claim only to that post. The CAT has also given the discretion to Government to abolish the higher pay scale post. This will give the quietus to this long-standing issue.

Sd/-

(Dr. M.Vijayanunni)
Registrar General, India
24.5.96."

This was entirely a wrong approach to the upgraded post of Director (EDP). If the applicant approached the C.A.T. for being regularly appointed to the higher post, it was not a sin and for that reason, there was no justification for reviving the abolished post or for abolishing the newly created post in the pay scale of Rs.5100-6300. The interim relief obtained by the applicant on 21.11.1995 in his O.A. No.805/95 could also form no basis for abolishing the upgraded post of Director (EDP). The draft recruitment rules were not disapproved by the UPSC. These were also not withdrawn by the respondents and, therefore, during pendency of consideration of the draft recruitment rules by the UPSC, it was not proper to downgrade the post by reviving the old pay scale of Rs.4500-5700. If proper steps were taken, the recruitment rules would have been finalised by now. Delay in finalisation of recruitment rules could, therefore, also form no basis for reviving the pay scale of Rs.4500-5700 after abolishing the existing higher pay scale of Rs.5100-6300. Possibility of the applicant being unsuccessful during the process of selection for the post was also not a relevant consideration for abolishing the upgraded post of Director (EDP). As earlier stated, in paragraph 2 of the earlier notings dated 27.6.94, it was taken into consideration that there was only one post of Director (EDP) in the pay scale of Rs.4500-5700, which was permanently held by the applicant. It was, therefore, specifically stated

that: "Evidently, this post should be manned by the same incumbent even after the revision of the pay scale." It was further stated that if the applicant was required to compete with others for the said post and he was unsuccessful, a problem would arise "for adjusting the incumbent because there is no other post available in the said pay scale." In short, the benefit of upgradation of the post was intended to be given to the applicant and, thereafter, the post was upgraded. Under these circumstances, the apprehension of the 3rd respondent that there was likelihood of litigation at the instance of the applicant, if not selected for the post, was misplaced. Other reasons given by the 3rd respondent in paragraphs 4 and 5 of his aforesaid notings for abolishing the higher pay scale post were misdirected, as he was not concerned with other Division heads like DRG (Demography), DRG (Census & Tabulation), DRG (Vital Statistics), DRG (Map), DRG (Language) etc., which were in the lower pay scale of Rs.3700-5000. To sum up, it appears that the 3rd respondent had some prejudices against the applicant, which motivated him to initiate the aforesaid proposal for downgrading the post of Director (EDP). In fact, the applicant has also alleged mala fides against the 3rd respondent, but we do not consider that the materials placed before us are sufficient to warrant a conclusion of mala fides against him.

4. It appears that the aforesaid recommendation for downgrading the pay scale of the post of Director (EDP) from Rs.5100-6300 to Rs.4500-5700 made by the 3rd respondent was also sent to the Fifth Pay Commission for the purpose of its consideration. In paragraphs 55.101 and 55.102 of its final report, the Fifth Pay Commission agreed with the aforesaid recommendation of 3rd respondent but in order to give protection to the applicant it was said that "the present incumbent may, however, retain his present scale as personal to him" and further advised to redesignate the post of

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Director (EDP) with pay scale of Rs.4500-5700 as the post of Deputy Director (EDP). It was reiterated that "The existing scale of pay of Rs.5100-6300 is personal to the present incumbent...". For all these reasons we are of the view that the 3rd respondent was ill-advised to recommend abolition of the pay scale of Rs.5100-6300 for the post of Director (EDP) and to revive the abandoned pay scale of Rs.4500-5700 of the said post. Accordingly, we are of further view that the 1st respondent committed an error in mechanically accepting the aforesaid recommendation of the 3rd respondent for restoring the abandoned pay scale of the post and for reverting the applicant to that old pay scale without application of mind. This O.A., therefore, deserves to be allowed.

5. While parting, it may be added that the pay scale once revised and given to an employee to his advantage cannot be reduced in an arbitrary manner. The decision taken and implemented in the year 1994 by the Government after acceptance and approval of the proposal dated 7.6.1994 of the Financial Adviser (Home), made after obtaining consent of the Ministry of Finance, by the Home Minister, was in effect not for creation of, or for upgradation of the post of Director (EDP). It was in fact a decision to upgrade the pay scale of an already existing isolated post of Director (EDP). Since the post was open to direct recruits and the pay scale was revised and upgraded, it was naturally considered necessary to amend or revise the Recruitment Rules suitably with reference to eligibility conditions for the post. Where was the question of ad hoc promotion, when there was no post available in the scale of Rs.4500-5700? This explains the direction for framing new Recruitment Rules for the post with an upgraded pay scale of Rs.5100-6300 and the observation of the Financial Adviser that: "Evidently, this post should be manned by the same incumbent even after the revision of the pay scale." And that is why it appears that the Fifth Pay

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Commission recommended creation of a new post of Deputy Director (EDP) with a pay scale of Rs.4500-5700 while allowing the applicant to retain the pay scale of Rs.5100-6300 as personal to him, if the post of Director was intended to be abolished. Under the circumstances, we cannot be said to be interfering with any policy matter of the Government involving any expenditure, or violating the ratio of the decision of the Supreme Court in the Union of India v. Shri Tejram Parashramji Bombhate, JT 1991 (2) S.C. 572; Commr., Corpn. of Madras v. Madras Corpn. Teachers' Mandram, (1997) 1 SCC 253; or Govt. of Orissa v. Shri Haraprasad Das, 1997 (7) SCALE 137.

6. For the foregoing reasons, this O.A. succeeds and it is hereby allowed. The two impugned orders dated 25.3.97, Annexures A-1 and A-2 of the respondents, are quashed to the extent they relate to and affect the salary drawn by the applicant immediately before their implementation. As a necessary consequence, the applicant shall be entitled to arrears of difference of his pay that may be worked out on the basis of restoration of his pay scale of Rs.5100-6300 from that of Rs.4500-5700. The respondents are directed to pay the arrears within a period of two months from the date of receipt of a copy of this order. If no such payment is made within the time specified, the applicant shall be entitled to interest @ 12% per annum from the date of this order and till the date of payment. The respondents shall also pay cost of this litigation to the applicant. Counsel fee is fixed at Rs.1000/- (Rupees one thousand only).

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(K.M. AGARWAL)
CHAIRMAN

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(R.K. AHOOJA)
MEMBER (A)