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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 884/97

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)

In the matter:

Ashutosh Jha s/o late Sh. Murli Jha
r/o 12/1025, R.K.Puram,
New Delhi.

...Applicant

(Applicant present in person)

Versus

Union of India through:

1. Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Director,
Intelligence Bureau (MHA),
North Block
New Delhi.
3. Sh. S.K. Sinha,
Asstt. Central Intelligence Office Gr.1(G)
C/o Deputy Director (E), IB (MHA),
North Block,
New Delhi.

(By Advocate: Shri K.C.D. Gangwani for respondents
No.1&2)
Shri B.B.Raval, for respondent no. 3)

ORDER

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

Applicant, an officer under Intelligence Bureau/ Ministry of Home Affairs, is aggrieved by A-1 order dated 22.5.1996 by which his request for stepping up of his pay with reference to his junior, Shri S.K. Sinha, ACIO-1(G) has been rejected. Consequently, he has sought relief in terms of issuance of directions to respondents to step up his pay to Rs. 3050/- w.e.f.

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29.11.1990 so as to remove the anomaly which has been created by fortuitous raising of Shri Sinha's (respondent no.3) pay to Rs. 2900/- w.e.f. 17.11.1988.

2. The applicant, appearing in person, sought to justify his aforesaid claim on the basis that the same is covered by provisions under note 7 below Rule 7, CCS (RP) Rules 1986. To add strength to his contentions, the applicant cited the decision of a Bench of this Tribunal in the case of K.Appa Rao and Others vs. Accountant General and Others [AIR 1992(1) CAT 581]. In that case the Tribunal had observed that non-stepping of pay of the senior with reference to the pay drawn by his junior violates articles 14 & 16 of the Constitution. It was also held that if a junior is getting more pay on promotion even due to fortuitous circumstances, the senior is entitled to stepping up of his pay. The applicant would further urge that he happened to be a supervisory officer of respondent no. 3 who is drawing more pay than the applicant and this has put him to a permanent embarrassing situation. The enhancement of higher pay of respondent no. 3 is only due to fortuitous circumstances which would not have happened had he not been reduced to a lower grade because of disciplinary actions against him.

3. The applicant further contended that he was promoted as ACIO-I(G) and resumed the charge of the said post on 22.4.1981 whereas Shri Sinha has been promoted as ACIO-I(G) on 29.11.1990. Before their respective promotions both of them were ACIO-II(G) and in that position he was having his seniority at serial No.

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78 while respondent no. 3 was at serial No. 264 in the seniority list meant for ACIO-II(G). The position of respondent no. 3 would have further gone down after his re-instatement as ACIO-II(G) in 1988. On promotion of respondent no.3 as ACIO-I(G) on 29.11.1990, both of them again belong to the same post of ACIO-I(G) drawing the same scale of pay in the grade of Rs. 2000-3200. The applicant, therefore, argued that the first two conditions under FR 22C are completely fulfilled in his case. As regards the third condition, anomaly arose not as a result of application of some rule or order but because of fortuitous circumstances since the enhancement of the pay of respondent no. 3 from Rs. 1880 to Rs. 2900/- was not as result of grant of advance increments as laid down in FR 27.

4. While opposing the claims of the applicant, the respondents have argued that the general conditions laid down under note 7 below Rule 7 CCS(RP) Rules, 1986 for being eligible for stepping up of pay of seniors with reference to juniors are not applicable in the case of the applicant since the anomaly has arisen not as a result of pay fixation consequent on promotion/appointment or revision of pay scales etc. On his joining as ACIO-II(G) on re-instatement, Shri Sinha's pay was fixed at Rs. 1880 which was equivalent to the maximum of old scale of ACIO-II (G) in the grade of Rs.425-600/-. However, the applicant agitated his claim for re-fixation of his pay through OA 842/89. The said O.A. was dismissed by the Tribunal and the applicant had taken up the matter through a SLP in the Hon'ble Supreme Court. The Hon'ble Supreme Court upheld the

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applicant's plea and on the direction of the Supreme Court only the pay of respondent no. 3 was fixed at Rs. 2900/- with three stagnation increments in the pay scale of ACIO-II (G) of Rs. 1640-2900/- but with effect from 17.11.1988 i.e. the date of his re-instatement. The respondents have further argued that FR 22C, now read as FR.22 (1)(a)(i) attracts provision for stepping up of pay of a senior government servant with reference to his junior if some anomaly has arisen while fixing the pay of the junior by option under FR-22(1)(a)(i) at the time of promotion and revision of pay scales in general. Since these provisions are not attracted in the instant case, the applicant has no case for stepping up of his pay.

5. We find that in order to remove the anomaly of a government servant promoted or appointed to a higher post on or after 1.4.1961 drawing lower pay in that post than another government servant, junior to him, in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of a senior officer in the higher post should be stepped up to a figure equivalent to the pay of the junior officer in the higher post. This is as per Govt. of India's instructions in OM No. F.2(78)EIII(A) 66 dated 4.2.1966. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and is subject to the following conditions:-

- "a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been

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promoted or appointed should be identical and in the same cadre;

b) The scales of pay of the lower and higher posts in which they are entitled draw pay should be identical; and

c) The anomaly should be directly as a result of the application of FR 22-C. For example, if in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officers"

6. We find that the pay of respondent no. 3 was fixed at Rs. 2900/- on the decision of Hon'ble Supreme Court w.e.f. 17.11.1988 giving maximum pay of the reduced rank of ACIO-II(G) from the prospective date of joining of respondent no. 3 on re-instatement. As such, the applicant had no case for stepping up of his pay as the anomaly had not occurred as a result of application of normal rules governing fixation of pay. The fixation of pay of the respondent no. 3 at Rs. 2900 w.e.f. 17.11.1988 was allowed by the Apex Court as a special case on individual consideration and not as a general case applicable at the time of re-fixation of pay on promotion/appointment/ revision of pay scales etc. The applicant has to relate to respondent no.3's status as ACIO-II (G) until 29.11.1990 when respondent no. 3 was drawing higher pay than the applicant. This

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disallows stepping up of his pay. The applicant cannot relate to the original ACIO-II (G) status prior to March 20, 1981 when respondent no. 3 was promoted to ACIO-I (G). It is not in doubt that the respondent no. 3's pay in the reduced rank as ACIO-II (G) was wrongly fixed at Rs. 1880/- on 17.11.1988 which was struck down by the Tribunal. The Hon'ble Supreme Court restored it in favour of the applicant at Rs. 2900/-. The applicant cannot question the re-promotion of respondent no. 3 in November, 1990. Infact, as per spirit of the judgement of the Hon'ble Supreme Court, the respondent no. 3 ought to have been re-promoted to ACIO-I (G) in November, 1988 itself. In other words, the fixation of respondent no. 3's pay was not as a result of FR 22C but only owing to reduction in his rank for which he was given maximum pay by DIB in the reduced rank of ACIO-II(G) as decided by the Hon'ble Supreme Court.

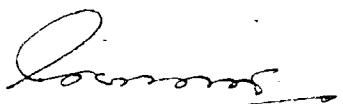
7. We also find that the applicant seeks to justify his case by means of comparison that he has been drawing lesser pay though being a supervisory officer over respondent no.3. A similar situation was decided by a Full Bench of this Tribunal in OA No. 1412/93 & Ors. on 20.11.1996 in the case of B.L. Somayajuly & Ors. Vs. Telecom Commission rep. by the Chairman & Ors. [1997 (1) ATJ 1]. It was held therein that if a junior gets higher pay that does not mean that the senior should also get the similar pay necessarily without a foundation for such a claim in law. Fortuituous events are part of life. Fixation of pay is generally with reference to an individual. Various reasons may account for grant of higher pay to a

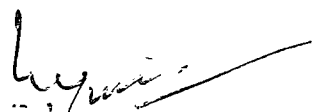
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junior. For example, undergoing a vasectomy operation or achieving excellence in sports or belonging to a certain communities or even a wrong fixation of pay may bring about a situation where a junior gets higher pay. In the instant case we find that respondent no. 3 was given a few stagnation increments to cover up the maximum stage in the reduced rank. If a junior is granted the higher pay for any of those reasons, that will not confer a corresponding right in a senior to get the same. If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a junior. He cannot acquiesce in a wrong, and make a gain from that wrong by a comparison. Such collateral reliefs are alien to law.

8. It is evident in the present case that first two conditions are not fulfilled because the differences in pay scales is not due to application of FR 22-C but because of additional increments having been granted to respondent no. 3 following the judgement of the Hon'ble Supreme Court.

9. In the facts and circumstances of the case as aforementioned, the O.A. has no merit and is accordingly dismissed. No costs.


(S.P. Biswas).
Member (A)


(T. N. Bhat)
Member (J)