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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No.288 of 1994

This 5th day of August, 1994

Hon'ble Mr. B.K. Singh, Member (A)

R.S. Mehta,
R/o B-50, Greater Kailash, Part-I
New Delhi - 48.

Applicant

By Advocate: Shri S.S. Tiwari

VERSUS

Union of India, through:

1. The Secretary,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi.
2. The Chief Controller of Accounts,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi.

Respondents

By Advocate: Shri V.S.R. Krishna

O R D E R.

This application has been filed under Section 19 of CAT Act, 1985 against the impugned orders dated 2.12.93 and 8.11.93, collectively filed as Annexure-A of the paper book.

2. The admitted facts of the case are these. The applicant joined as Asstt. Sub Inspector (Clerk) in CRPF in the pay-scale of Rs.260-400 in August 1985. With the permission of the authorities in the CRPF he appeared in the examination conducted by the Staff Selection Commission for the post of LDC. He was selected for the post of LDC and was given an offer of appointment dated 10.2.87 in the office of Principal Accounts Officer, Ministry of Urban Development, New Delhi. He was asked

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to submit his resignation in CRPF which he tendered and was accepted. On 6.4.87 the applicant joined the Ministry of Urban Development as a regular incumbent. Subsequently, in May 1987 the pay-scale of ASI (Clerk) in CRPF got revised to Rs.1320-2040 as a result of recommendations of Fourth Pay Commission which came into effect from 1.1.86.

3. As per rules, his past service with the CRPF in the scale of 260-400 as ASI (Clerk) was allowed to be counted for purposes of pension and gratuity and other retiral benefits. He filed a representation to the respondents to give him the pay-scale of 1320-2040 which he would have got as ASI (Clerk) after revision of pay-scales as per recommendations of the 4th Pay Commission w.e.f. 1.1.86, had he not resigned that job. The respondents turned down this request (Annexure A). His representation for refixation of his pay under Government of India's Decision No.7 below SR 22-C is at annexure 'D' of the paper-book.

4. Reliefs prayed for are:

(a) to set aside and quash the impugned orders dated 2.12.93 and 8.11.93 passed by the respondents;

(b) to direct the respondents to grant initial pay protection in LDC scale on the basis of the post of ASI held by the applicant in CRPF w.e.f. 6.4.1987 in the present office.

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5. A notice was issued to the respondents who contested this application and grant of reliefs prayed for.

6. Heard the learned counsel, Shri S.S. Tiwari for the applicant and Shri V.S.R. Krishna for the respondents and perused the record of the case.

7. The learned counsel for the applicant stated that the applicant got arrears of pay in the scale of Rs.1320-2040 w.e.f. 1.1.86 till his resignation from CRPF and as such he would be deemed to be in the pay-scale of Rs.1320-2040 at the time of his joining as LDC on his selection by the SSC in the Ministry of Urban Development. He further argued that if the applicant had continued in the old department, CRPF, he would have been entitled to the scale of Rs.1320-2040. He emphatically argued that this case is fully covered by Government of India's Decision No.7 below Rule 22-C of FRSR. FR 22(a) (ii) defines pay fixation of government employees from lower post to higher post. The applicant's case is not that he moved from lower post to higher post. Thus, it is not covered under FR 22 (a) (ii). As regards 22 (a) (ii), it is clear that when the appointment is to the new post and the new post does not involve assumption of higher duties and responsibilities, he shall draw his initial pay, ^{at} the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage and where it is not known whether he is working on regular basis in a higher scale of pay, his pay will be fixed giving him one increment which he would have normally got for rendering services. The applicant joined the CRPF in

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August 1985 and he would have been eligible for drawal of one increment only in August 1986 in his old pay-scale. He joined the new department on 6.4.87 and therefore one increment will fall due to him next year on that date. The respondents fixed his pay at Rs.970/- w.e.f. 6.4.87 after allowing him benefit of the past service and giving him the benefit of one increment. The Assistant Accounts Officer, Ministry of Urban Development, vide his letter addressed to the Pay & Accounts Officer, Ministry of Urban Development, after fixing the pay of the applicant, also stipulated that he will be eligible for his next increment after completion of normal period of 12 months in the grade of LDC. It is also admitted that he had to tender his resignation for joining the new post without which he would not have been permitted to join the new department as LDC. The pay-scale of LDC was Rs.950-1500.

Resignation meant that his lien with the old department was terminated. Since he was on the roll of the CRPF from August 1985 till the date of his resignation, he was allowed the arrears of pay that he would have been eligible to draw had he worked in the CRPF. With the grant of arrears of pay his relationship with the old department came to an end permanently since there was no lien available to him in that department. He was ASI (Clerk) in the CRPF and he joined practically in an identical scale of pay. It is after he joined the new department that the pay-scale of ASI (Clerk) was revised to a higher grade giving it effect from 1.1.86. It is true that the recommendations of the 4th Pay Commission were submitted sometime in 1986 but were

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given retrospective effect from 1.1.1986 and on the basis of those recommendations he was allowed arrears of pay that was admissible to his erstwhile colleagues in CRPF with which he snapped his relationship as a result of his resignation on 2.4.1987. It is also clear that he would have not snapped his relationship with the CRPF if the recommendations of the 4th Pay Commission had been published before that date and ^{if} he had known that he would be drawing a higher pay-scale of Rs.1320-2030. The appointment in the Urban Development Ministry is a new appointment in the scale of Rs.950-1500 and he cannot claim the pay-scale of the previous department which was under the Ministry of Home Affairs.

8. It is clear from the recommendation of the Ministry of Urban Development and also the reply of Department of Personnel & Training, Estt. (Pay-I) Section, that he was not entitled to protection of pay drawn in higher scale of Rs.1320-2040 on his appointment in lower scale of Rs.950-1500. The Ministry of Finance have considered this case and formulated the policy that the protection of pay in the event of technical resignation can be allowed only for pay drawn in equivalent scale of pay. The Ministry of Personnel went further and said that even if the resignation was considered technical, the applicant would have got the benefit of the higher scale of Rs.1320-2040, if he had been a substantive holder of that post. It is admitted by both the parties that the applicant joined CRPF only in August 1985 and left the organisation on 2.4.87 and thus he did not complete even two years service. Also, there is no averment on record that he was confirmed in CRPF and that he was substantive holder of the post in

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CRPF. It is also uncontroverted that on the advice of the Department of Personnel & Training, the applicant was allowed the benefit of one increment of Rs.20/- which was found due to him. Government of India's Order No.5 below FR 27 stipulates certain principles to be observed while exercising the powers under this Rule. According to this Rule a Government servant transferred from a higher to a lower post must complete years of service in higher post for counting it for the purpose of advance increments in the lower post. In the present case, it was not a case of transfer in public interest from a higher post to lower post nor was it a transfer of a temporary government employee from one post to an equivalent post. It was a fresh appointment in a different scale of pay, i.e. Rs.950-1500, as a result of selection through SSC and the respondents gave him the benefit of one years service for purpose of grant of one increment since he had put in less than two years service in the old department and no increment fell due on 6.4.87, the day when he joined the new department.

9. The respondents have also filed annexures R-I and R-II to their counter reply regarding the advice of the Department of Personnel & Training and also fixation of pay. The contention of the learned counsel for the applicant that the case is covered by FR 22-I (a) (1) does not hold good since it is not the case of the applicant of getting promotion or being appointed to another post carrying responsibilities and duties of greater importance than those attached to the post held by him in the old department. As a matter of fact, these

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are identical posts. He was working as ASI (Clerk) in the CRPF from where he applied for and got selected as LDC through SSC to work in the Ministry of Urban Development. He was treated as direct recruit w.e.f. 6.4.1987 in the scale of Rs.950-1500. The applicant is not entitled to protection of higher pay, the arrears of which were allowed to him w.e.f. 1.1.86 till the date of his resignation from CRPF. It is not a case of transfer in public interest but a case of resignation from one department for joining a new post in another department as a direct recruit. The protection is available on identical pay-scales but not when one goes from a higher pay-scale to lower scale. In terms of Government of India's Decision No. 4 below FR 22 read with FR 27, weightage can be given in identical time scales but the said benefit cannot be allowed in case of resignation from higher scale to join lower scale. The applicant was given the offer of appointment in the scale of Rs.950-1500 and he joined the new department on the same scale. As the resignation of the applicant was considered to be 'technical', he was given the benefit under Rule 26 of CCS (Pension) Rules 1972 according to which the past service is counted for pensionary benefits. As the applicant was drawing Rs.970/- as basic pay in the scale of Rs.950-1500 in the old department, CRPF, which was identical having the same duties and responsibilities, the benefit of service rendered by him was allowed to him by fixing his pay at Rs.970/- from the date of his joining the new department.

It was only subsequently in 1987 that the pay-scale of ASI (Clerk) was revised from Rs.950-1500 to Rs.1320-2040 and the pay of the applicant was fixed at Rs.1320/- w.e.f. 1.1.86 and arrears paid to him. As already stated above, the protection of last pay drawn in the higher

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pay-scale cannot be permitted and the applicant cannot be allowed that scale because he had severed his links with the old department and joined the new department, Ministry of Urban Development in the lower scale. The subsequent pay revision in the CRPF has no bearing on the fixation of pay granted to the applicant in the post of LDC by giving him the benefit of one increment to which he was entitled in the scale of Rs.950-1500. The Department of Personnel & Training observed that if he had been a substantive holder of the post of ASI in the scale of Rs.1320-2040 his pay was required to be protected in the new department. This also is not true in the case of the applicant. He was not a substantive holder of the post of ASI (Clerk) and he was not drawing that pay-scale (Rs.1320-2040) when he applied for and was selected for appointment as LDC in the scale of Rs.950-1500 which he voluntarily accepted after resigning his post in the CRPF.

10. The respondents have acted in a bonafide manner in fixing the pay of the applicant. Any subsequent revision of pay-scale of the post of ASI (Clerk) in the CRPF will not confer any right or benefit on the applicant and accordingly ~~the~~ application is dismissed as devoid of any merit or substance, leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)

5/01/94