

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 738/94

DATE OF DECISION: 7.10.94

1. Shri T.R. Mida
2. Shri Sudesh Kumar
3. Shri K-S. Ramachandran ... Applicants

Vs.
Union of India & ors. Respondents

CORAM: Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Counsel for Applicant Shri/Ms. Raman Oberoi

Counsel for Respondent Shri/Ms. Madhav Panikar

1. Whether to be referred to the Reporter? ✓
2. Whether Reporters of Local Newspapers may be allowed to see the judgement? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether to be circulated to other Benches? ✓


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

(DA)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

O.A. NO. 738/94

New Delhi, this the 7th day of October, 1994

Hon'ble Shri J.P. Sharma, Member (J)

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

1. Shri T.R. Midha,
Under Secretary (Retd.)
Ministry of Surface Transport,
I-C/76, Lajpat Nagar,
New Delhi.

2. Shri Sudesh Kumar,
Under Secretary (Retd.),
Ministry of Surface Transport,
43-Ishwar Colony,
Delhi.

3. Shri K.S. Ramachandran,
Under Secretary (Retd.),
Ministry of Surface Transport,
C/413, Yojana Vihar,
Delhi.

.... Applicants

By Advocate: Mrs. Raman Oberoi,

Vs.

1. Union of India.
through
Secretary, Ministry of Surface
Transport, Parliament Street,
New Delhi.

2. Joint Secretary (Establishment)
Ministry of Surface Transport,
Parliament Street,
New Delhi.

3. Secretary,
Department of Personnel & Training,
Ministry of Personnel,
Public Grievances & Pension,
North Block, New Delhi.

... Respondents

By Advocate: Shri Madhav Panikar

...2.

ORDER

(15)

Hon'ble Shri J.P. Sharma, Member (J)

All the 3 applicants who joined in this application have retired from the post of Under Secretary, Ministry of Surface Transport. Applicant No.3 retired in June, 1987, Applicant No.1 retired in January, 1991 and Applicant No.2 retired in January, 1993. On the recommendation of the Fourth Pay Commission, the scales of pay were revised and in the new pay scale the pay was fixed under the Central Civil Services (Revised) Pay Rules, 1986. By the order of 25th March 1987 Shri T.R. Midha, Applicant No.1 while working as Under Secretary passed an order in pursuance of Note 7 of Rule 7 of the Central Civil Services (Revised Pay) Rules, 1986, hereinafter called the Rules and the pay of Under Secretary was advanced as follows:-

	Pay on 1.1.87	Pay advanced u/s of 30.1.87
Shri T.R. Midha	Rs. 3400/-	Rs. 3625/-
Shri K.S. Rama-chandran	Rs. 3400/-	Rs. 3625/-
Shri Sudesh Kumar	Rs. 3400/-	Rs. 3625/-

The pay of other 4 Under Secretaries were also stepped up to the same level. Certain persons who belong to the regular cadre of Central Secretariat Services challenged the order of Ministry of Agriculture (Department of Irrigation & Cooperation) dated 22.5.89 by which their pay stepped up as per order dated 28.7.87 has been reduced and have prayed that the impugned order

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be cancelled and they be allowed to draw pay equal to their junior with consequential benefits.

Shri Alok Bhatnagar and others filed O.A.1194/89 before the Principal Bench which was decided by the order dated 9.11.89 and the impugned order dated 22.5.89 was set aside with liberty to the respondents to pass fresh appropriate orders after giving an opportunity to the applicants.

Taking guidance from this judgement, the Ministry of Surface Transport issued an order dated 24.1.91 against the proposed cancellation of stepping up pay of the present applicants.

Thereafter, the respondents have passed the order dated 21.3.94 by which the order of stepping up pay was cancelled and the pay of the officer was fixed as follows:-

	Pay as on 1.1.87 Rs.	Pay ste- pped up w.e.f. 30.1.87	Pay now refixed as on 1.1.87 Rs.	Date of incre- ment.	
Shri K.S.Rama- chandran	3400.00	3625.00	3400.00	1.3.87 to 30.6.87	3500.00
Shri Sudesh Kumar	3400.00	3625.00	3400.00	1.3.87 1.3.88 1.3.89 1.3.90	3500.00 3625.00 3750.00 3875.00
Shri T.R.Midha	3400.00	3625.00	3400.00	1.8.87 1.8.88 1.8.89	3500.00 3625.00 3750.00

It was further directed that overpayments made to them be recovered and that the pension will be re-determined on the basis of refixed pay and over-payments recovered from them.

2. The applicants jointly challenged this order and prayed for the grant of the reliefs, that the impugned order dated 21.3.94 be cancelled so also the administrative instructions issued by the Ministry of Finance dated 16.6.89 and the recovery arising out of stepping down in terms of directions issued by

Department of Personnel & Training by O.R dated 29.6.93 arising out of stepping down in terms of directions be written off.

3. A notice was issued to the respondents, who contested this application and stated that by the order dated 25.3.87 the officers of CSS borne on the cadre of Ministry of Surface Transport was stepped up to bring at par with the pay drawn by the juniors namely S/Shri Mange Ram, P.S. Aggarwal and J.S. Bhatia. Later on these orders were revised. Stepping up was done in pursuance of Note 7 of Rule 7 of Rules. The Department of Personnel & Training pointed out that the pay cannot be stepped up as the junior officers in this case were of a different cadre from the senior officers. The cadre of junior officers being CSS while some of the senior officers belonging to CSSS cadre. In view of this, the orders for stepping up of pay of 8 officers were withdrawn, 2 in April, 1989 and 6 in March, 1990 and stepping up of pay in case of remaining 2 officers was found to be correct. Orders were issued for downward revision of pay in March, 1990 and against this representations were received. In view of another judgement of CAT in similar case of an officer of Ministry of Agriculture the stepping down of pay orders of 21.2.89 and 13.3.90 were cancelled and the concerned officers were given an opportunity to show cause against the stepping down of pay. The representations received in this regard were examined in consultation with

Department of Personnel & Training. In view of this, the impugned order dated 21.3.94 was issued cancelling the wrong stepping down in 1987. In view of these facts, the applicants have no case.

4. The applicants have also filed rejoinder to the aforesaid reply. In the rejoinder it is stated that the respondents are estopped because the applicants have also been granted pensionary benefits on the basis of stepped up pay and pension once fixed cannot be reduced save under pension rules. The pay of the applicants was stepped up under FR 27 as provided in Note 7 of Rule 7 of the Rules, 1986. The pay once fixed under FR 27 becomes substantive pay, which cannot be reduced even if it is fixed on the wrong data. Besides stepping up of pay of the applicants was done in March, 1987 under FR 27. The same cannot be reduced in 1994 by the respondents after lapse of 7 years. In view of this, it is stated that the applicants be granted the reliefs.

5. We heard the learned counsel for the parties at length and perused the records. The relevant provision of stepping up i.e. Note 7 of Rule 7 of the Rules, 1986 is quoted below:-

"In cases where a senior Government Servant promoted to a higher post before the 1st day of January 1986, draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1986, the pay of the senior Government Servant should be stepped up to an amount equal to the pay as fixed

for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government Servant subject to the fulfilment of the following conditions, namely:-

- (a) both the junior and the senior Government servants should belong to the same cadre and the post in which they have been promoted should be identical in the same cadre;
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical, and
- (c) the anomaly should be directly as a result of the application of the provision of Fundamental Rule 22-C or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer.

The orders relating to refixation of the pay of the senior officer in accordance with the above provisions should be issued under Fundamental Rule 27 and the senior officer will be entitled to the next increment on completion of his required qualifying service with effect from the date of refixation of pay.

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6. A perusal of the above provision of the Revised Pay Rules, 1986 goes to show that certain conditions have to be filled up before the pay of senior Govt. servant is to be stepped up to the pay fixed of the junior Govt. servant at a higher level. These conditions are that both the junior and the senior Govt. servants should belong to the same cadre and the post in which they have been promoted should be identical in the same cadre. The applicant's counsel has not denied that the junior officers belong to CSS cadre while the applicants who claim seniority over them belong to CSSS cadre. The DOPT has rightly pointed out that the pay cannot be stepped up as the junior officers in this case were of a different cadre from the senior officers. In fact Shri T.R. Midha Applicant No.1 has been the Under Secretary who is the signatory of the order dated 25.3.87 and passed the Order No.95/87 in pursuance of Note 7 of Rule 7 of the Revised Pay Rules, 1986. This order goes to show that the date of increment of the applicants of CSS on the cadre of Ministry of Surface Transport is advanced raising their pay to bring them at par with S/Shri Mange Ram, P.S. Aggarwal and J.S. Bhatia. Applicant No.3 Shri K.S. Ramachandran has taken the plea in his representation dated 16.4.91 that the stepping up of his pay was sanctioned by the Government suo-moto. Shri T.R. Midha also made a representation on March 30, 1994. He has admitted that the action of stepping up of

pay can be due to mis-interpretation of the rules or at worst a deliberate act. The learned counsel for the applicant, however, could not show under what provision the pay of the applicant can be stepped up to bring at par with pay drawn by S/Shri Mange Ram, P.S. Aggarwal and J.S.Bhatia. Thus, it is obvious that the order of stepping up of pay of the applicant passed under the signature of Applicant No.1 Shri T.R. Midha dated 25.3.87 is not in accordance with the provisions of Note 7 of Rule 7 of the CCS(Revised Pay)Rules, 1986.

7. The next contention of the learned counsel for the applicant is that the show cause notice issued to them was non-speaking/one, but it is not so. Firstly, the orders of stepping down of the pay of the applicants was quashed by the order dated 22.8.90 in accordance with the decision in another case of Alok Bhatnagar O.A.1194/89 and show cause notice was issued on 24.1.91. The notice of Shri Sudesh Kumar has been filed by the applicant and is at Annexure A-8. It fully incorporates a reason for stepping down the pay of applicant Shri Sudesh Kumar and in the light of the same he was asked to give his reply. It cannot therefore be said that the show cause notice is vague or has taken the applicant unawares. The applicants have also filed their representation in detail which goes to show what was conveyed to them by the show cause notice has been correctly understood and appreciated by them.

8. The learned counsel also placed on record the judgement in the case of Alok Bhatnagar in O.A.1194/89 but this judgement does not give any help to the applicant. The learned counsel for the applicant highlighted the fact observed in the order that an executive order cannot supersede the statutory provisions. In the present case there is no question of administrative instructions being contradictory to Note 7 below Rule 7. The said provisions have been quoted above. Stepping up of pay cannot be claimed as of right when the ~~plaintiff~~ belongs to another cadre which fact is not denied by the applicants. FR 27 also lays down that an authority may grant a premature increment to the Govt. servant at a time scale of pay if it has a power to create a post in the same cadre on the same scale of pay. Thus, the stepping up of pay by the order of 25.3.87 also does not fall within the ambit and scope of FR 27. Moreover, the judgement in Alok Bhatnagar case(supra) gave a liberty to the administration to decide the matter of stepping up of pay afresh of Alok Bhatnagar and others after hearing them on a show cause notice.

9. The impugned order dated 21.3.94 of stepping down the pay of the applicants and refixing the same as follows:-

	Pay now refixed as on 1.1.87	Date of increment	Rs
			Rs.
Shri K.S. Ramchandran	3400.00	1.3.87 to 30.6.87	3500.00
Shri Sudeesh Kumar	3400.00	1.3.87 1.3.88 1.3.89 1.3.90	3500.00 3625.00 3750.00 3875.00
Shri T.R. Midha	3400.00	1.8.87 1.8.88 1.8.89	3500.00 3625.00 3750.00

10. The impugned order also goes to show that payments paid in excess due to re-fixation of pay be recovered from them. Though there is no order that the amount should be recovered on the pension payable to the applicants but the learned counsel for the applicant argued that the respondents are likely to recover the amount from the pension payable to the applicants. Under Rule 9 of the CCS(Pension)Rules,1972 it is only the right of the President withholding or withdrawing a pension or ordering the recovery of the pension only in case any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. That is not the case here. So the excess amount paid to the applicants by virtue of wrong fixation of pay by stepping up order dated 25.3.87 cannot be recovered from the amount of pension on account of re-fixation of pay of the applicants by the impugned order dated 21.3.94. The respondents shall be free to resort to common law of the land in that respect.

11. The learned counsel for the applicant also argued that pension once fixed cannot be revised after final assessment has been arrived at to the disadvantage of the Govt. servant and referred to Rule 70 of CCS (Pension) Rules, 1972. The said rule is quoted below:-

"70. Revision of pension after authorisation

(1) Subject to the provisions of Rules 8 and 9 pension once authorised after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently:

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Department of Personnel and Administrative Reforms if the clerical error is detected after a period of two years from the date of authorisation of pension.

(2) For the purpose of sub-rule (1), the retired Government servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment, shall be adjusted in instalments by short payments of pension in future, in one or more instalments, as the Head of Office may direct.

A perusal of the above rules goes to show that only clerical error is detected after a period of two years from the date of authorisation of pension. A revision can be made with the concurrence of Department of Personnel & Administrative Reforms. The contention of the learned counsel is that the wrong fixation of pay is not a clerical error and

fixation of pension therefore cannot be said to be a clerical error. The learned counsel has referred to a number definitions and also quoted the definition of clerical error from the reported case AIR 1966 S.C. 1047 - Master Construction Co. Vs. State of Orissa.

An arithmetical mistake is a mistake of calculation while a clerical mistake is of writing or typing. An accidental slip or error is an error due to a careless mistake or omission unintentionally made and such mistake should be apparent on the face record of the record. It should not depend for its discovery on elaborate arguments on question of law and fact.

AIR 1966 SC 1047.

The contention of the learned counsel therefore is that since there is no clerical error in the fixation of pension, the same cannot be revised. Here the question is of wrong fixation of pay by virtue of an order of 25th March, 1987 and that fixation was done for stepping up of pay by Applicant No.1 himself giving benefit to himself and 6 others. This mistake was detected subsequently that the order of stepping up of pay said to have been in pursuance of Note 7 of Rule 7 of the Revised Pension Rules, 1986 is not a correct order. Thus, the pay of the applicants have to be re-fixed under the Revised Pension Rules of 1986 withdrawing benefit of stepping up of pay granted to by an erroneous order dated 25.3.87. The delay caused has been because of giving a show cause notice to the applicants and thereafter disposing of their representation in consultation with DOPT. Thus, the

pension has to be fixed on the basis of the last pay drawn. In fact the earlier pension fixed of the applicant was on the basis of last pay drawn after stepping up was done by the order dated 25.3.87. The respondents therefore have revised the pay of the applicant and re-fixed the same by the impugned order dated 21.3.94. When that order has been upheld in the present application, the normal consequences would be that the pension of the applicants have to be fixed on the basis of re-fixed pay and the fixation of pension done earlier was erroneous. Thus, this very much falls within the definition of clerical error which has crept into the assessment of the pension of the applicants.

12. The application therefore is disposed of as follows:-

The impugned order dated 21.3.94 is upheld to the extent of re-fixation of the pay of the applicants and the same has been quoted above. The respondents will also re-determine the pension of the applicants on the basis of re-fixed pay.

The order for recovery shall not be effected from the pension of the applicant which is payable to them with liberty to the respondents to pursue their remedy according to law and extent rules in consultation with DOPT. The order for recovery of the excess

amount from the pension of the applicant
is therefore quashed.

The parties are directed to bear
their own cost.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)