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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1338/94

New Delhi: May 26, 1995.

HON'BLE MR.S.R.ADIGE, MEMBER (A).

Shri Pooran Chandra,
s/o Late Shri Ram Gopal,
r/o 4301/59, Regharpura,
Karol Bagh, New Delhi-110005.

.....Applicant.

By Advocate Shri Gyan Prakash.

Versus

Union of India through
General Manager,
Delhi Milk Scheme,
New Delhi-110008.

.....Respondent.

By Advocate Shri V.S.R.Krishna.

JUDGMENT

In this O.A., Shri Pooran Chandra, Office Superintendent, Delhi Milk Scheme, seeks refixation of pay in the grade of Office Superintendent w.e.f. 15.5.93, at the level of pay said to have been drawn by his juniors S/Shri L.D.Chhabra and P.Sharma, together with arrears of pay and allowances and recomputation of pensionary benefits with arrears thereon, together with interest at market rate.

2. The applicant's case is that while working as UDC (Rs.1200-2040) he was promoted as Office Superintendent (Rs.1600-2660) w.e.f. 17.1.90 and his pay was fixed at Rs.1800/- with effect from that date. Subsequently the applicant's two juniors S/Shri Chhabra and Sharma were first promoted to the grade of Senior Clerk (Rs.1400-2300) and then to the grade of Office Superintendent, with the result that w.e.f. 15.5.93 both have been drawing more pay than him. The applicant states that this is the result of the intermediate promotion given to S/Shri Chhabra and Sharma as Sr. Clerks before they were finally promoted as Office Superintendent, because of which

their pay under FR 22C has been fixed twice, unlike the applicant who was promoted as O.S. directly from UDC. The applicant states that not having received any satisfactory response to his representation he has been compelled to file this O.A.

3. The respondents in their reply state that the applicant was promoted as O.S. w.e.f. 17.1.90 in accordance with the recruitment rules, as they then existed, under which UDCs with only six years' service in the grade were eligible for promotion as O.S. Due to creation of posts of Senior Clerks in between the posts of UDC and O.S., the Recruitment Rules to the post of O.S. were subsequently revived, which came into effect from 15.5.93. The two officials junior to the applicant in the cadre of UDC were first promoted as Sr. Clerks w.e.f. 28.2.90 (after the draft Recruitment Rules to the newly created posts of Sr. Clerks were framed and sent for approval), and then as O.S. w.e.f. 2.3.91, as per the these notified recruitment rules while the applicant had already been promoted as O.S. w.e.f. 17.1.90. They state that stepping up of pay is permissible only if the following conditions are satisfied:-

- a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been 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 to draw pay should be identical;
- c) The anomaly should be directly as a result of the application of FR-22C. For example, if even 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 officer.

In the present case Conditions (a) and (b) are not satisfied.

4. I have heard Shri Gyan Prakash for the applicant and Shri V.S.R.Krishna for the respondents.

5. Shri Gyan Prakash has contended that this anomaly in pay fixation has arisen due to multiple application of FR 22C in the case of the applicant's juniors who were first promoted as Senior Clerk and then as O.Ss. He has argued that had the applicant's juniors been promoted as Senior Clerks and then as O.Ss, this anomaly of less pay than the juniors would not have arisen. In this connection, he has urged that an identical situation had arisen in the Income Tax Department where promotion to the post of Inspector is made from the UDC's cadre as well as from the cadre of Head Clerk/ Supervisor. Those who were promoted directly as Inspector from UDCs' cadre got less pay than those who were first promoted as Head Clerk/Supervisor and then as Inspector and to remove this anomaly, the Finance Ministry had issued O.M. dated 12.6.75 (Annexure-A6), in pursuance of that the pay of the seniors was raised to the level of juniors. It has also been asserted that the Controller Auditor General of India had also issued a Circular dated 26.7.85 (Annexure-A7) to remove an identical anomaly in his department and the conditions laid down in the above Circular are satisfied in the applicant's case also. Furthermore, it has been asserted that the applicant was eligible for promotion as Senior Clerk w.e.f. 28.12.89, but he was promoted directly as O.S. w.e.f. 1.7.1.90. In

this connection, reliance has been placed on the Tribunal's decision dated 28.4.89 in O.A.No.1627/87 (Annexure-A9) G.P.Gupta Vs. UOI. Reliance has also been placed on O.A.No.342/92 and connected case K.K.Pillai vs. UOI decided on 29.10.93 and reproduced in Swamy's CL Digest as well as O.A.No.576/91 S.C.Mishra Vs. UOI, decided on 29.5.92 In this connection, Shri Gyan Prakash has also invited my attention to DPAR's O.M. dated 15.2.83 referred to at pages 93-94 of Swamy's Compilation of FR SR Part I General Rules 10th Edition.

6. On the other hand, Shri Krishna has reiterated the stand taken by the respondents in the O.A. and has pointed out that the CBDT's & Audit Department's instructions have no application in the present case as the facts are distinguishable in as much as no intermediary posts were created after the senior had been promoted. He has stated that in view of the facts of the present case, the judgments relied upon by Shri Gyan Prakash also do not help the applicant because the conditions specified in paragraph 3 above are not satisfied.

7. I have given anxious consideration to the rival contentions. I find that by DPAR's O.M. dated 15.2.83 (Supra) stepping up of pay has been allowed where a senior Govt. servant is promoted to a higher post before the introduction of a non-functional selection grade draws less pay than his junior who is promoted to a higher post later after having been appointed in the selection grade provided:

- a) The scales of pay of the lower post (ordinary grade) and higher post in which both junior and senior are entitled to draw pay, are identical. In the present case, this condition is satisfied as the lower post (UDC) as well as higher post (OS) are identical.

b) the senior should be eligible for appointment to selection grade but for his working in the higher post. In the present case, this condition is also satisfied as the applicant was eligible to be appointed as Senior Clerk when his juniors were so appointed.

c) the junior should not have drawn more pay than his senior This condition also appears to be satisfied.

8. The cases covered by DIPAR's O.M. dated 15.2.83 appear to be on all fours with the present case, and when stepping up of pay has been allowed consequent to the introduction of a non-functional selection grade after the senior was promoted, it appears just, fair and equitable that stepping up of pay be allowed in the present case also where an intermediary level was created after the applicant who was admittedly senior was promoted, resulting in his drawing less pay than his junior!

9. Under the circumstances, the O.A. succeeds and is allowed. The respondents are directed to refix the applicant's pay in the grade of O.S. w.e.f. 15.5.93 at the level of pay drawn by his immediate junior and pay him arrears of pay and allowances and recompute his pensionary benefits with arrears thereon, and pay the total sum thus arrived at but without any interest thereon within three months from the date of receipt of a copy of this judgment. No costs.

Anjali
(S.R. ADIGE)
MEMBER (A)

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