

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

New Delhi

O.A.No 1961 of 1994

T.A. No.

Date of Decision 5.5.95

Shri O.P. Malhotra & Anr. Applicant

Shri T.C. Aggarwal Advocate for the Applicant

Versus

U.O.I. & Another Respondent

Shri M.M. Sudan Advocate for the Respondent(s)

1. Whether Reporters of local papers may be allowed to see the judgement? no
2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the Judgement? yes
4. Whether it needs to be circulated to other Benches of the Tribunal? no

(K. MUTHUKUMAR  
MEMBER (A

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1961 of 1994

New Delhi this the 5<sup>th</sup> day of May, 1995

Mr. K. Muthukumar, Member (A)

1. Shri O.P. Malhotra  
R/o 245, Sector III,  
Type III, Sadiq Nagar,  
New Delhi.
2. Shri N.K. Sharma  
S/o Shri R.L. Sharma  
R/o BJ 41, Paschim Shalimar Bagh,  
Delhi-52. ...Applicants

By Advocate Shri T.C. Aggarwal

Versus

1. Union of India through  
the Secretary to the  
Government of India,  
Ministry of Petroleum and  
Natural Gas,  
Shastri Bhavan,  
New Delhi-1.
2. Secretary,  
Department of Personnel & Training,  
North Block,  
New Delhi. ...Respondents

By Advocate Shri M.M. Sudan

ORDER

Mr. K. Muthukumar, Member(A)

This application is for the stepping up of the pay of the applicants in the Central Secretariat Service (CSS) to the level of the pay drawn by their junior with effect from 1.4.1986 at the rate of Rs.1700/- and at Rs.1760/- with effect from 2.12.1987 and also for the payment of interest of arrears consequent on the stepping of their pay at the above level.

2. The applicants joined the Central Secretariat Clerical Service (CSCS) in the Ministry of Information

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and Broadcasting. It is averred in the application that the Central Secretariat Service to which the applicants belong consequent on their appointment as Assistants was reconstituted and was decentralised in 1962 and under the zonal scheme introduced by the respondents, the respondent No.2 was to consider the promotion in the CSS, namely, at the level of Assistants on Zonal basis within the range of seniority prescribed by respondent No.2 and in case persons are not available in one zone, the appointment shall be made from the panel furnished by respondent No.2 from the candidates of the different cadre. It is to be noted here that the posts under the CSCS as well as post of the Assistants in the CSS are decentralised and are maintained as different cadres under different ministries. The applicants allege that the cadre authorities make ad hoc promotions fortuitously giving preference to their own cadre employees instead of appointment from the panel furnished by the respondent No.2.

3. The applicant Nos. 1 and 2 were promoted as UDCs in the Ministry of Information and Broadcasting with effect from 16.8.1980 and 29.9.1981 respectively. Subsequently, they were promoted as ad hoc Assistants with effect from 1.4.1986 and ~~subsequently~~ <sup>thereafter</sup> on their regular appointment as Assistants on long term basis, they were promoted as Assistants against the promotion quota for the year 1989 with reference to the panel maintained by respondent No.2 and were posted to the cadre of Ministry of Petroleum and Natural Gas.

4. The grievance of the applicants is that as a result of the earlier appointments of their junior, namely, Shri Kirpa Ram and one another in the Ministry

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of Petroleum as ad hoc Assistant, their rate of pay in the Assistants grade has turned out to be higher than the pay of the applicants even though they have been assigned a higher seniority as per the seniority list of the Ministry of Petroleum circulated with their OM dated 31.3.1984 and that they are getting less pay than the aforesaid junior. In view of this, the applicants have prayed that their pay should be stepped up to the level of their junior, as indicated above, in terms of the instructions under FR 22C as then existing for stepping up of pay of seniors to the pay equivalent to that of junior. It is stated that when the representation was referred to the respondent No.2, their request for stepping up of pay was not acceded to in terms of the circular issued by the respondent No.2 by their notification dated 4th November, 1993 and accordingly, the respondent No.1 had rejected the request of the applicants.

5. The applicants have also cited certain decisions in support of their contention. The respondents have strongly resisted the contention of the applicants and have denied that the junior was given ad hoc promotion erroneously. One of the important points averred by the respondents is that the applicants and the junior Shri Kirpa Ram belong to different cadres of CSCS-CSS. The applicants were originally in the cadre of Ministry of Information and Broadcasting while the junior Shri Kirpa Ram was in the Ministry of Petroleum and Chemicals and, therefore, belong to different cadres. Shri Kirpa Ram got ad hoc promotion in the Ministry as UDC and Assistant earlier than the applicants due to which his pay at the relevant points of time were higher than the applicants.

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The respondents have also contended that the benefit of stepping up of pay provided under the Rules under FR 22C cannot be extended to the applicants as the conditions prescribed therein are not satisfied. The extent of application of the stepping up benefit is also clarified by the respondent No.2 in their G.M Circular dated 4.11.93 annexed as Annexure A-4 to the application.

6. The learned counsel for the applicants argued that in the light of the decision in several cases of this Tribunal on the question of stepping up of pay benefit, the applicants' case for stepping up is fully justified. The learned counsel chiefly relied on the decision of the Ernakulam Bench of this Tribunal in K. Krishnai Pillai Vs. Union of India, reported in 1994 (2) 26 ATC 641.

7. I have heard the learned counsel for the parties on the rival contentions and have carefully perused the decisions cited by the learned counsel and also the circulars/instructions issued by the respondent No.2.

8. FR 22C is the main rule as it then existed for fixation of pay of the Government servants who are promoted to a higher post in the cadre. Anomalies arose particularly with reference to fixation of pay of a senior employee compared to the pay of a junior employee who has also been similarly promoted to a higher post. It, therefore, became necessary for the Government to rectify the anomaly arising out of such fixation of pay of senior and junior employees. The respondent No.2 issued orders for stepping up of pay of seniors in a pay scale to that of a junior, if the following conditions are satisfied:-

- (a) both the junior and senior officer 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;

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- (b) the scales of pay of the lower and higher posts in which the junior and senior officer are entitled to draw pay should be identical; and
- (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 or on any other account the above provisions will not be invoked to step up the pay of senior officer.

In applying the above conditions, there have been references to various instances/circumstances under which these anomalies arose and the matter was clarified in the OM dated 4.11.1993. The important point stressed in this clarification is that the anomaly in the pay fixation of the senior vis-a-vis his junior should arise directly as a result of the application of FR 22C. It was further clarified that if even in the lower post the junior officer draws from time to time the higher rate of pay than the senior by virtue of advance increments and on any other account, the above provision for stepping up will not be invoked in favour of the senior officer. The clarification gives further instances where such stepping up of pay is not permissible. These instances are, however, not of any direct relevance to the case of the applicants. The applicants have not assailed the conditions governing the stepping up orders under ~~rule~~ FR 22C. On the other hand, they are claiming the benefit of stepping up orders. It is, therefore, necessary to critically examine whether the conditions stipulated in the aforesaid stepping up order under FR 22C are satisfied in their cases. Admittedly,

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the applicants and their junior Shri Kirpa Ram belong to two different cadres when they were promoted as UDCs and later on as ad hoc Assistants in their respective ministries. The position in respect of the applicants, vis-a-vis, his junior can be extracted as follows:-

*S. K. Kulkarni*

	<u>O.P. Sharma</u>	<u>N.K. Sharma</u>	<u>Kirpa Ram</u>
LDC	08.08.1961 (I&B)	15.04.1975 (I&B)	10.03.1967 (Pet.)
UDC	16.08.1980 (I&B)	29.09.1981 (I&B)	01.10.1979 (Pet.)
Assistant	01.04.1986 (Ad hoc I&B)	01.04.1986 (Ad hoc I&B)	09.01.1984 (Ad hoc Pet.)

Consequent on their inclusion of their names in the zone for making addition to the select list of Assistants' grade against the promotion quota for the year 1989, the applicants were appointed as Assistants on select list basis in the cadre of Ministry of Petroleum and Natural Gas with effect from 18.5.1992 and in accordance with the aforesaid appointment, the Ministry of Petroleum and Natural Gas had prepared the seniority list Annexure A-3 (ii) at page 17 of the application. According to this seniority, the applicants are shown as seniors to Shri Kirpa Ram. Admittedly, applicants are senior to Shri Kirpa Ram in the Assistants' grade after their appointment as Assistants on select list basis in the cadre of the Ministry of Petroleum and Natural Gas, but as regards rate of pay of the officials, the application of FR 22C was originally made at the time when the applicants were appointed as ad hoc Assistants with effect from 1.4.1986 in the Ministry of Information and Broadcasting and in the case of junior Shri Kirpa Ram with effect from 1.1.1984 in the different cadre of the Min. of Petroleum & Natural Gas. It is also pertinent to point out

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that even as UDCs, the junior Shri Kirpa Ram was promoted on 01.10.1979, i.e., on a date earlier to the dates of appointments of the applicants in their Ministry. Even at that time also, their pay had been fixed with reference to the substantive provision under FR 22C at the relevant point of time. When the applicants were promoted as ad hoc Assistants with effect from 1.4.1986 with reference to the pay of UDC in the revised scale, their pay was fixed at Rs.1640/- whereas in the case of the junior because of his earlier appointment as ad hoc Assistant with effect from 9.1.1984 his pay became Rs. 1700/- on 1.4.1986. Therefore, the fundamental requirement for stepping up of pay in the case of the applicants in the cadre of Assistants in the Ministry of Petroleum and Chemicals that the anomaly should be as a result of direct application of FR 22C is not satisfied as the applicants carried their pay as fixed from time to time from their appointment as UDCs and then ad hoc Assistants in different cadres, when they were finally included in the cadre of the Ministry of Petroleum on select list basis. In fact, the FR 22C had been applied in their cases when they were initially appointed as ad hoc Assistants when they were in different ministries and subsequently their pay had been regulated. It is not the case of the applicants that the stepping up rule should be applied even if they were originally promoted on ad hoc basis as Assistants in the different ministries/cadres. It cannot, therefore, be stated that the anomaly has arisen in their case directly as a result of application of FR 22C in the post which they were holding at the time when the FR 22C was

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applied when they were promoted in the different cadres. The contention of the applicants that the respondents had made ad hoc promotions fortuitously to the junior giving preference to their own cadre employees is not tenable. Ad hoc appointments are sometimes necessary in the cadre management of different ministries particularly when they are separate cadres and when, at the point of time, the select list candidates were not made available for appointment on regular basis. In fact, the applicants themselves were beneficiaries of such appointments as ad hoc Assistants.

9. I have gone through the decision cited by the learned counsel for the applicants, in particular the decision contained in K.K. Pillai's case (Supra). It is seen that in these decisions, the applicants and their juniors were in the same cadre at the time when FR 22 C was applied and the anomaly arose as a result of ad hoc promotion of the juniors. In the case of K.K. Pillai (Supra) also the applicants were Telegraph Office Superintendents and their case was for stepping up of their pay with reference to their juniors. Even in this case also, the applicants and their junior belong to the same cadre at the time when the anomaly arose and, therefore, it was held that whatever may be the reasons for difference in the pay and allowances, the senior will be entitled to

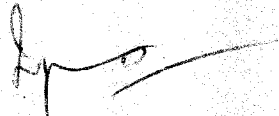
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have his pay stepped up to the level of the pay received by his junior. It was held that whatever may be the reasons for such anomaly in all such cases, a senior will be entitled to have his pay stepped up to the level of the pay received by his junior due to fortuitous circumstances. It was also stated that the similar view taken in Anil Chandra Das Vs. Union of India by the Tribunal was affirmed on merits by the Apex Court.

10. I have seen the case of the Anil Chandra Das and Others Vs. Union of India, 1988(7) ATC 224. Here also the applicants were claiming stepping up benefits with reference to the pay of their juniors in the same cadre when the fixation under FR 22C was made. It is stated in the above decision that "both the applicants and their juniors were in the same cadre before promotion and were promoted to the identical cadre after promotion and the unrevised and revised scales of pay of lower and higher in which the applicants and the juniors were entitled were also identical". This case as well as K.K. Pillai's case (Supra) are clearly distinguishable in view of the fact that the applicants <sup>in the above case</sup> belong to the same cadre before promotion also and were promoted to the identical cadre after promotion and has no application in the present case where the applicants, when they were promoted as Assistants though on ad hoc basis, belonged to different cadres at the time when their pay under FR 22C was fixed. Thus they did not fulfil the essential conditions for stepping up of pay and it was, therefore, rightly held by the respondent No.2 that the applicants were not entitled to the benefit of stepping up of pay to the level of their junior subsequently when they were allocated to the Ministry of Petroleum, on the basis of their inclusion in the select list of Assistants grade under promotion quota.

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11. In the light of the above discussions, the application is devoid of merit and is accordingly dismissed. The parties shall bear their own costs.

  
(K. MUTHUKUMAR)  
MEMBER (A)

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