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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1194/ 1989.
~~TA-No~~

DATE OF DECISION November 9, 1989.

Shri Alok Bhatnagar & Others Applicant (s)

Shri T.C. Aggarwal Advocate for the Applicant (s)

Union of India Versus
Respondent (s)

Shri M.L. Verma Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (A).

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

yes.
yes.
No.
No.

JUDGEMENT

The applicants, who belong to the regular cadre of the Central Secretariat Service, have challenged in this application under Section 19 of the Administrative Tribunals Act, 1985, Ministry of Agriculture (Department of Agriculture & Cooperation) order dated 22.5.1989 by which their stepped up pay as per order dated 28.7.1987 has been reduced, and have prayed that the impugned order (Annexure A-2) be cancelled and they be allowed to draw pay equal to their junior, and they may also be allowed all consequential benefits.

2. The salient facts of the case, in brief, are as below: -

The applicants belong to the regular cadre of the Central Secretariat Service; applicants No.1, 2 and 3 are permanent Under Secretaries in the Ministry of Agriculture, Department of Agriculture & Cooperation in the pay scale of Rs.3000 - 4500 and applicant No.4 is posted as Chief Administrative Officer, Directorate of Plant Protection Quarantine & Storage, RH-IV, Faridabad. New pay scales came into operation from 1.1.1986 in pursuance of the Fourth

Central Pay Commission Report. The applicants opted for revised pay scale with effect from 1.1.1986. The pay of the applicant No.2 as on 1.1.1986 in the pay scale of Rs.3000 - 4500 was fixed at Rs.3200 and of the other three applicants at Rs.3300. The applicant No.2 was to draw his next increment of Rs.100 with effect from 1.3.86 and the other three applicants were to draw their next increment with effect from 1.10.86 and thereafter at the end of one year. On 19.2.87, one Shri J.P. Mehta, who was working as Section Officer in the revised pay scale of Rs.2000 - 3500 and was junior to the applicants, was promoted as Under Secretary and his pay was fixed at Rs.3625/- with effect from 19.2.87, whereas the applicants were drawing less pay as on that date. They made representations and as a result, their pay was also stepped up to Rs.3625 with effect from 19th February, 1987 vide order dated 28.7.1987 (Annexure A-1 to the application). This was done in accordance with Note 7 under Rule 7 of the CCS (Revised Pay) Rules, 1986. However, by order dated 22.5.1989 (Annexure A-2 to the application), the pay of the applicants was revised downwards, in supersession of order dated 28.7.1987.

3. The applicants have challenged the downward reduction of pay with retrospective effect on the ground that no show cause notice was given to them and as such, the action of the respondent is violative of the principles of natural justice and is illegal; the junior should not get higher pay on subsequent promotion; and the impugned order is violative of Articles 14 and 16 of the Constitution.

4. I have carefully gone through the pleadings and have also heard the learned counsel for the parties.

5. Vide Notification dated 13.9.1986, the Government of India, Ministry of Finance (Department of Expenditure) notified the Central Civil Services (Revised Pay) Rules, 1986 and they were deemed to have come into force on the 1st day of January, 1986. These rules have been notified in

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exercise of the powers conferred by the proviso to Article 309, and clause (5) of Article 148 of the Constitution. Rule 7 of these rules provides for fixation of initial pay in the revised scale. Note 7 below rule 7 reads as below: -

"Note 7. 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 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 fulfilment of the following conditions namely: -

- (a) both the junior and the senior Government servants should belong to the same cadre and the posts 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 provisions 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. "

6. The respondent passed an order on 28.7.1987 (Annexure A-1 to the application), which, in brief, shows that due to promotion of Shri J.P. Mehta, a permanent Section Officer, belonging to the cadre of the Department of Agriculture & Cooperation, was promoted as Under Secretary with effect from 19.2.1987 and his pay was fixed at Rs.3625/- in the revised pay scale of Rs.3000 - 4500, under F.R. 22(C) with effect from the said date, and keeping in view the fact that
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Shri J.P. Mehta was junior to the applicants in cadre of the Department of Agriculture & Cooperation, the pay of the applicants was stepped up as Under Secretary to Rs.3625/- per month with effect from 19.2.1987 in the revised pay scale of Rs.3000 - 4500, the date of their next increment falling on 1.2.1988. This stepping up was ordered under the provisions of Central Civil Services (Revised Pay) Rules, 1986 as amended from time to time, and the applicants were allowed to draw arrears of pay and allowances on account of above stepping up of their pay. This order was superseded by another order dated 22.5.1989 (Annexure A-2 to the application) and the stepping up benefit was taken away with retrospective effect. Reason for doing this as mentioned in the aforesaid order was as below: -

"AND WHEREAS, it has been held by the Ministry of Finance and Department of Personnel & Training that stepping up of pay with reference to the pay of the Junior Officer was not admissible in their cases since, Shri J.P. Mehta, Under Secretary with reference to whose pay, the stepping up was sanctioned, was drawing higher pay even in the lower post of Section Officer. "

7. The reason given in the impugned order does not refer to any provision / note of the CCS (Revised Pay) Rules, 1986. The conditions mentioned in Note 7 below Rule 7 of the CCS (Revised Pay) Rules, 1986, are also not stated in the impugned order to be violated. Shri J.P. Mehta and the applicants admittedly belong to the same cadre and the posts to which they have been promoted are also identical. The pre-revised and the revised scales of pay of lower and higher posts in the case of the applicants and Shri J.P. Mehta are also identical. The anomaly ^{as appears to have} arisen as a result of the application of the provisions of F.R. 22 (C) as is established by para 3 of Order dated 28.7.87 by which the pay of the applicants was stepped up, as it is stated therein that the pay of Shri J.P. Mehta in the revised pay scale of Rs.3000 - 4500 has been fixed under F.R. 22(C).

Note 7 ibid provides that if 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. (emphasis supplied). The impugned order does not disclose that Shri J.P. Mehta, junior to the applicants, was drawing higher pay in the lower post of Section Officer as compared to the pay drawn by the applicants in the lower post, due to any advance increments granted to him. Reasons given in the reply filed by the respondent due to which Shri J.P. Mehta, officer junior to the applicants, was drawing more pay than the applicants are (i) the length of service of the junior in the lower cadre of Section Officer is more than the senior, and, therefore, he had been drawing pay at higher rate than his senior; and (ii) the junior was stagnating at the maximum of his scale and on that account, he had been allowed advance increments in terms of third and fourth proviso to Rule 8 of CCS (Revised Pay) Rules, 1986. The case of the respondent, therefore, is that the junior was ^{not} drawing more pay because of application of F.R. 22 (C) but for other reasons and as such, it did not constitute anomaly in terms of Note 7 below Rule 7. The stagnation increments granted in the old scale as per proviso to Rule 8 cannot be said to be advance increments as referred to in sub-clause (c) of Note 7 under Rule 7 ibid. Therefore, the only point for consideration is whether the anomaly, i.e., the senior getting less pay than his junior on the promotion post, has arisen directly as a result of the application of the provisions of Fundamental Rule 22 (C) or any other rule or order regulating pay fixation on such promotion in the revised scale. (emphasis supplied). The respondent's contention is, as already stated, that the anomaly has not arisen because of application of F.R. 22 (C). Though the Order dated 28.7.1987 shows that the pay of the junior on promotion to the post of Under Secretary has been fixed under F.R. 22(C),

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yet it cannot be said that the anomaly has arisen entirely due to this. The contention of the respondent that the junior was also drawing more pay than the applicants in the lower cadre of Section Officers as the length of service put in by him was more than the one^{or} put in by the applicants, has not been rebutted by the applicants in their rejoinder-affidavit. It cannot, therefore, be said that the anomaly has arisen only on account of the reasons mentioned in clause (c) of Note 7 below Rule 7.

8. Admittedly, no notice was given to the applicants to show cause before the impugned order reducing their pay which had been stepped up earlier, was issued. It was argued by the learned counsel for the applicants that the impugned order was issued on the basis of the advice given by the Ministry of Finance, which was shortly thereafter issued as a clarification in O.M. No. 1(14)-E.III/89, dated 16.6.89, on the question of stepping up of pay of senior under Note 7 of Rule 7. A copy of this O.M. was also shown at the bar. It has been clarified in this O.M. that anomaly can be said to exist only if a senior employee drawing equal or more pay than his junior in the lower grade and promoted earlier starts drawing less pay than any such junior promoted later on regular basis. It is further stated that two employees are said to be drawing equal pay if they have been drawing pay at the same stage with the same date of increment, and in case the junior had been drawing the same pay with date of increment earlier than senior, then senior cannot be said to have been drawing equal pay and hence no anomaly. If the junior employee started drawing more pay not because of application of F.R. 22 (C), but more pay as a result of increments in lower scale of pay under proviso 3 and 4 of Rule 8 *ibid*, Note 7 below Rule 7 *ibid* is not affected. It was further laid down that even if the anomaly is as a result of increments in terms of Proviso 3 and 4 of Rule 8 of CCS (RP) Rules, 1986 combined with application of F.R. 22 (C), anomaly may be rectified by stepping up the pay of senior promoted before 1.1.86 equal

to the junior promoted on or after 1.1.86. This condition is not prima-facie fulfilled by the applicants in the case before me.

9. The clarifications contained in the Office Memorandum dated 16.6.89, referred to above, are in the nature of modification of the provisions of Note 7 of Rule 7. It is well established proposition of law that statutory provisions cannot be modified by executive instructions. Note 7 below Rule 7 of the CCS (Revised Pay) Rules, 1986 has been notified under proviso to Article 309 and clause (5) of Article 148 of the Constitution. Any modification therein, though on the face of it stated to be a clarification, by executive orders cannot supersede the statutory provisions. It is also an established proposition of law that civil rights conferred on a person cannot be taken away by executive orders without following the principle of audi alteram partem. (Shri C.S. Bedi Vs. Union of India - ATR 1988 (2) CAT 510; Surya Bhan Gupta Vs. Union of India - ATR 1988 (2) CAT 142; Ram Bilas Vs. Union of India, O.A. No.1717/1988, decided on 20.9.1989 by a Division Bench at the Principal Bench of CAT). The pay of the applicants was stepped up vide order dated 28.7.1987 with effect from 19.2.1987 and under the provisions of the Central Civil Services (Revised Pay) Rules, 1986. The pay of the applicants has been brought down by Order dated 22.5.89 with retrospective effect, without reference to any statutory provision and no opportunity has been given to the applicants to show cause before issue of impugned order dated 22.5.89.

10. In view of the above discussion, the impugned order dated 22.5.1989 (Annexure A-2 to the application) issued by the Department of Agriculture & Cooperation, Ministry of Agriculture, is held to be violative of principles of natural justice and thus of Articles 14 and 16 of the Constitution, and is accordingly set aside. Respondents would be free to pass fresh appropriate orders

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after giving an opportunity to the applicants to show cause against the action which might be proposed to be taken. The fresh orders shall be passed with prospective effect.

11. The application is disposed of on the lines indicated in para 10 above. There shall be no order as to costs.

(P.C. JAIN) 9/21/89
MEMBER(A)