

- 4 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1937/89

New Delhi, dated the 30th May, 1994.

Hon'ble Mr. B.N. Choundiyal, Member (A)

Hon'ble Mrs. Lakshmi Swaminathan, M(J)

Sh. Subhash Sethi,
resident of 180, Hakikat Nagar,
SGTE Nagar, Delhi-9

... Applicant.

(By Advocate Sh. S.S. Rana)

Versus

1. U.P.S.C. through the Secy.,
UPSC New Delhi.
2. Govt. of India, Deptt. of Personnel
and Training through the Secy.,
Department of Personnel and Training,
New Delhi.
3. Govt. of India, Ministry of Surface and
Transport, New Delhi through the
Secretary, Ministry of Surface Transport,
Transport Bhawan, Sansad Marg, New Delhi.

... Respondents

(By Advocate Sh. V.K. Mehta)

ORDER (ORAL)

(Hon'ble Sh. B.N. Choundiyal, Member (A))

The issue raised in this C.A. is whether the benefits of increments earned in an ex cadre post carrying identical pay-scale is available ~~for~~ to the applicant after his appointment in the cadre post. Initially appointed as LDC in the Ministry of Surface and Transport, ^{on} the applicant was appointed as stenographer Grade-13 on ^{basis} adhoc/and worked for nearly six years.

2/4/94

On 16.7.1986, he was appointed as UDC in the same scale of Rs 330-560 on long term basis. On such appointment, his pay was fixed at the minimum of the scale but after considering his representation an order refixing his pay at Rs 1320/- as on 1.12.1986 was passed on 22.1.1987. In April, 1989, the applicant was transferred to UPSC and his last pay certificate shows his basic pay at Rs 1350/-P.M. However, UPSC granted him provisional pay of Rs 1200 only. His pay was refixed @ Rs 1350/- vide order dated 17.5.88. He drew his next increment on 1.12.1988. ^{in and} His pay was raised to Rs 1380/- On 14.8.89, the impugned order reducing his salary from ^{Rs} 1380 to Rs 1290 was passed. His representation was rejected by the Under Secretary, UPSC vide order dated 15.9.89.

2. The applicant has prayed that the impugned order dated 15.9.89 and 14.8.1989 be quashed and the basic pay drawn by him i.e. Rs 1380/-P.M. be protected. The respondents/^{be} restrained from making any recovery for any alleged over payment. On 26.9.89, this Tribunal passed an interim order restraining the respondents from effecting any recovery from the applicant on account of past payments. This order continues till date.

3. In the counter filed by the respondents, the main averments are these. The applicant was transferred to UPSC from Ministry of Surface Transport against select list of vacancies of U.D.C.. At the time of his transfer he was officiating as U.D.C. prior to his promotion as U.D.C., he had worked as Stenographer Grade-D in an

ex-cadre post and earned five increments in that grade.

On his reversion from ex-cadre post, his pay in the grade of UDC was erroneously fixed by the Ministry of Surface and Transport after taking into the consideration, the pay drawn by him in the ex-cadre post of Steno-grade-D. Clarification was sought from the Ministry of Personnel and Training, the pay of the applicant was corrected with reference to his pay in the grade of LDC which is cadre post of CS/S from which he was promoted as UDC.

4. Heard the learned counsel for both the parties.

Ld.counsel for the respondents has drawn our attention to the decision No.3 under FR 22(C) which is reproduced below:-

"With the amendment to provision to FR 22 vide Notification No.1(25)-E.III(A)/64 dated 30.11.65, benefit of service rendered in an ex-cadre post, counting for increments in Cadre post on an identical scale is no longer admissible except to the extent the condition laid down therein are fulfilled. A question has been raised whether the benefit of fixation of pay in ex-cadre post with reference to his pay drawn in ex-Cadre post under FR 22(C) still continues to be available. It is clarified that after the amendment of FR 22 as referred to above, the orders have become absolute and it is not permissible to fix pay in a Cadre post on the basis of pay in an ex-Cadre post."

It is clear from the aforesaid decision that the applicant was erroneously granted increments drawn by him in ex-cadre post as Steno. Grade 'D'. Ld.counsel for the applicant

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has contended that in terms of Ministry of Law dated 8.8.62

"Once fixation was done by competent authority in exercise of the discretion vested in it under FR 27 that authority was not competent under the law to reduce initial pay originally fixed even when such pay was based on some data which subsequently turned to the incorrect."

As against this, learned counsel for the respondents cited the case of Shri R.P. Verma V/s UOI AIR 1980 SC 146 wherein it was held that Administrative orders can be reviewed with retrospective effect to correct the mistakes.

5. In the facts and circumstances of the case, we hold that even though the benefit of the increment in ex-cadre post was not available to the applicant in terms of decision No.3 F.R. 22(C) referred to above, it would cause grave hardship, if after the delay of more than 2 years, revoceries are made for payment received by him from 1986 onwards. We, therefore, hold that in the interest of justice, any excess payment made to him should be treated as personal pay. We note that he has already been promoted to a higher post. The impugned order dated 14.8.89 ^{EW} shall stand modified to that extent. No recovery shall be made for any excess payment that applicant may have received so far.

Interim order dated 26.9.89 made absolute.

There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member(Judicial)

B.N. Dhoundiyal
(B.N. Dhoundiyal)
Member(A)