

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:NEW DELHI

...
OA. No. 2218 of 1989

Dated New Delhi, this 13th day of January, 1995

(10)

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

Shri Brijesh Bhatnagar
Junior Accounts Officer
P.W.D. XXXV (DA)
NEW DELHI.

... Applicant

By Advocate: Shri S. N. Kalra along with
Smt. Jaishree Taneja.

Versus

1. Union of India through
The secretary
Ministry of Urban Development
Nirman Bhawan
NEW DELHI
2. Secretary
Ministry of Finance
Department of Expenditure
North Block
NEW DELHI
3. Chief Controller of Accounts
Ministry of Urban Development
Nirman Bhawan
NEW DELHI
4. Controller General of Accounts
Ministry of Finance
Department of Expenditure
Lok Nayak Bhawan
Khan Market
NEW DELHI 110003
5. Shri Gurdip Singh
Junior Accounts Officer
Principal Accounts Office
Central Board of Direct Taxes
Lok Nayak Bhawan
NEW DELHI

... Respondents

By Advocate: Shri V. S. R. Krishna

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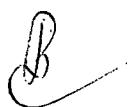


JUDGEMENT

B. K. Singh, M(A)

This OA No.2218/89 has been filed by the applicant against the orders (i)No.A-32017/PF-15/86-87/IV PC/Pr.AO Estt.(C) 5225-26 dated 5.9.89, (ii) No.A-32017/7/88/IV/PC/Anomaly/Pr.AO/Adm.II/42315 dated 17.2.89, (iii)No.A-26017/2/88/MF.CGA(A)JA0/109 dated 13.1.89 and (iv) No.A-32017/7/86/IV/PC/Anomaly/Pr.AO Adm.II/3512 dated 18.5.87/19.5.87 passed by the Pay & Accounts Officer(Adm), Ministry of Urban Development, New Delhi.

2. The facts of the case are that the applicant joined the office of the Chief Pay & Accounts Officer, Department of Supply, Rehabilitation, W.H.S., Food & Agriculture as Auditor (Junior Accountant) on 9.11.74 and Shri Gurdip singh (Respondent No.5) joined as LDC on 1.7.74 in the same office. The applicant as well as the respondent No.5 passed the Junior Accounts Officers' Civil Examination(Part-II) simultaneously in the year 1984 conducted by Controller General of Accounts, Ministry of Finance. After qualifying in the examination held by C.G.A., Ministry of Finance, the applicant was allocated to Ministry of Urban Development as Junior Accounts Officer(JAO) and Respondent No.5 was allocated to Central Board of Direct Taxes as JAO.


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3. On the basis of the recommendations of the Fourth Central Pay Commission enforced with effect from 1.1.86, the pay of the applicant who was drawing Rs.520 and Respondent No.5 who was drawing Rs.500, was fixed at the minimum of the scale of Rs.1640-2900. Thus, both the applicant and respondent No.5 got the same pay scale with effect from the same date, i.e. 1.1.86. The next increment of Respondent No.5 was due on 1.2.86 on account of his promotion with effect from 11.2.85 and thus within a span of one month he got another increment and his basic pay was raised to Rs.1700 with effect from 1.2.86 whereas the applicant being senior remained at the same pay of Rs.1640 upto 1.1.87. Thus, Respondent No.5, though junior, was placed in higher basic pay with effect from 1.2.86.

4. The applicant filed several representations to the respondents to remove the anomaly in the pay scale. But the request of the applicant was not acceded to. Aggrieved by the final orders dated 13.1.89, 17.2.89 and 13.1.89, the present OA was filed before this Tribunal on 30.10.89 by the applicant.

5. The relief sought by the applicant is that he should be allowed stepping up of his pay from Rs.1640 to Rs.1700 by antedating the date of his increment from 1.1.87 to 1.2.86.

6. A notice was issued to the respondents who filed their reply in contesting the application and grant of relief prayed for.

7. I heard the learned counsel for the applicant Shri S. N. Kalra along with Smt. Jaishree Taneja and Shri V. S. R. Krishna for the respondents and perused the record of the case.

8. The learned counsel for the applicant argued that the applicant and Respondent No.5 belong to one and the same cadre of Junior Accounts Officers in C.C.A. and are working as JAO in identical scale although in different departments. The C.G.A. is the controlling authority and a common seniority list is maintained by the C.G.A. The attention of the court was drawn to the seniority list issued by C.G.A. which places the applicant at serial No.233 and Respondent No.5 at serial No.252. According to the learned counsel for the applicant, the sub paragraph-3 of rule 8 of CCS(Revised Pay) Rule,1986 is clear on the point that if there is anomaly in the revised pay scale, the same has to be removed by the controlling authority. In this regard, the learned counsel quoted the Government of India's decision No.21 which has been reproduced in paragraph-5 of the OA. He further referred to the case of similarly situated JAOs, Shri H. L. Arora and A. P. Sharma to whom this benefit had been given.

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9. According to the learned counsel for the applicant, the cadre controlling authority is one and it is a centralised cadre and the stepping up has to be done by C.G.A. As against this, the learned counsel for the respondents argued that the cadre is not a centralised one. The cadre controlling authority maintains the seniority list and on the basis of the examination results in accounts the promotions are made and allocations to the various Ministries/Departments are made by him and the stepping up has to be done only when senior and junior both are working in the same Ministry/Department and not when they are working in different departments. For all practical purposes, the cadre is decentralised and the question of stepping up will arise only when the senior and junior are working in the same Ministry/Department and not when they are working in different Ministries/Departments.

10. The applicant's main grievance is that he should be allowed antedating of his increment from 1.1.87 to 1.2.86, i.e. the date on which 5th respondent was granted increment. The benefit has been claimed on the basis of Second Proviso to rule 8 of the Central Civil Services(Revised Pay)Rules,1986 which reads as under:

"...the next increment of a Government servant, whose pay is fixed on the 1st day of January,1986 at the same stage as the one fixed for another Government servant junior to him in the same cadre and drawing pay at a lower stage than his pay in the existing scale, shall be granted on the same date as admissible to his junior, if the date of increment of the junior happens to be earlier."

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The claim of the applicant is based on the contention that he and 5th respondent belong to the same 'cadre' and that 5th respondent is junior to him. It is not disputed that the applicant and the 5th respondent belong to different departments as JAOs. In support of his claim, the applicant has relied upon the following Government of India's decision:

"Seniority of Government servants for the purpose of stepping up their pay or fixing date of increment with reference to the pay or the date of increment of juniors envisaged in the above mentioned rules may be determined with reference to seniority rosters maintained for the purpose of confirmation/promotions etc."

The above decision of Government of India relied upon by the applicant is not quoted in full. The additional portion of the said Government of India's decision runs as follows:

"Doubts have been expressed as to which gradation list i.e., circle or Divisional list should be taken as criterion for purpose of allowing the benefit under proviso to rule 8 in certain cadres.

It is clarified that the seniority list maintained in the Divisions in respect of Divisional Cadres such as Telephone Operators, Time Scale Clerks and RMS Sorters, etc. may be taken/the basis for allowing the benefit to the officials borne on the aforesaid cadres. /as

This issues with the concurrence of P&T Finance vide their U.O. No.307,FAI/76, dated 14.11.76.(DG, P&T No.3-50/70-PAT, dated 5.2.76)."

A reading between the lines and the complete text of the said Government of India's decision, negatives the contentions of the applicant. These instructions of the DG, P&T cannot be applied automatically to the facts of the present case. First, because instructions of the DG, P&T are not binding on other departments of the Central Government. Secondly, staff structure and service rules of P&T Department are different from those applicable to the applicant. Hence, it would be seen that these

instructions are not relevant to the facts of the instant case.

11. The applicant's case is to be considered on the basis of Second Proviso to rule 8 of the CCS(Revised Pay)Rules,1986 which is clear and unambiguous. It lays down that senior and the junior should belong to the same cadre. The term 'cadre' is not defined in the CCS(Revised Pay)Rules,1986. But it is defined in F.R.9(4) as follows:

" 'Cadre' means the strength of a service or a part of service sanctioned as a separate unit."

The word 'or' implies that even a part of service, which is sanctioned as a separate unit can also constitute as 'cadre'. This interpretation of the term 'cadre' is in consonance with the provision of the Central Civil Accounts Service (Group'C')Recruitment Rules,1978 which inter-alia, governs applicant's appointment as JAO. Schedule-A to the Recruitment Rules enumerates Group'C' posts (which include Junior Accounts Officers) have been indicated Ministry-wise, i.e. the posts have been sanctioned as a separate unit and, therefore, each Ministry/Department constitutes a separate 'cadre'. This is more or less like All India Services where the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training is the cadre controlling authority in case of IAS officers, the

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Ministry of Home Affairs in case of IPS officers and the
Ministry of Forest and Environment in case of Indian
Forest Service officers. But every State/Union
Territory has its own cadre and it has its own sanctioned
strength. The sanctioned cadre strength of every State
is determined by the cadre controlling authorities and
the recruitment and allocations are also ^{made} by the cadre
controlling authorities. But the officers are borne on
the cadre of the State and if a senior
officer in any of these Services reverts to the parent
cadre after the end of his tenure of deputation in
Government of India ^{if} and his junior is drawing a higher
pay because of earlier promotion in that cadre, the
senior person is given the benefit of fixation of pay,
but he does not get the benefit of back wages. But here,
the cadre is one and both the senior and junior belonging
to the same cadre, are drawing lower and higher pay, then
the pay of the senior has to be stepped up in order to
remove the anomaly on a par with the junior because when
a junior is promoted, the senior gets pro-forma promotion
and it is written therein "but for his deputation, he
would have been promoted to that scale."

12. The decision in this case turns on whether the cadre
to which the applicant belongs is controlled by C.G.A. or
it is a decentralised cadre where the JAOs are
working in the various Ministries/Departments.

13. There is no joint cadre as would be evident from the facts indicated below:

(i) Schedule-A to the Recruitment Rules shows that Group 'C' posts (which include JAOs) have been indicated Ministry-wise, i.e. the posts have been sanctioned as a separate unit and, therefore, each Ministry/Department constitutes a separate 'cadre'. (ii) Rosters for watching reservations for Scheduled Castes and Scheduled Tribes, both at initial appointment as JAO and at the time of confirmation are maintained by individual Ministries/Departments. (iii) DPCs for clearing of probation period and crossing of E.B. cases are also constituted Ministry-wise. (iv) Powers of Appointing Authority/Disciplinary Authority/Appellate Authority under the CCS(CCA) Rules, 1965 are also exercised by the designated officers in the concerned Ministries/Departments. (v) Similarly, various powers relating to investments, borrowings, acquisition/disposal of movable/immovable property etc. under the CCS(Conduct)Rules, 1964 are also exercised by the designated officers in the concerned Ministries/departments. All these facts will go to show that notwithstanding the fact that there is a common departmental examination for promotion as JAO and allocations of candidates to different Ministries/Departments out of a common seniority list but it are made by the C.G.A. /does not establish the fact of a centrally controlled cadre as has been contended by the

learned counsel for the applicant.

Examination conducted by UPSC.

14. As stated above, there is a common Civil Service for IAS/IPS/IFS and 26 other central services. But that does not prove that these services are all controlled by the same Ministry or by UPSC. As I have stated above, cadre controlling authority for IAS is Ministry of Public Grievances and Pensions, Department of Personnel and Training and in case of IPS, it is Ministry of Home Affairs and in case of Indian Forest Service, it is Ministry of Forest and Environment and, the allocations are made by these Ministries of various States/UTs and though these cadre controlling authorities allot the officers to various States/UTs and also sanction the authorised strength but the parent cadre is the State/UT to which they are allotted. Similarly, in case of all other services like Railway, Customs and Excise etc. there are other departments which function as the parent cadre and they allocate the officers though they all come from the same source, i.e. the Civil Services Examination conducted by the UPSC.

15. Hence, the applicant's contention that he and the 5th respondent before their promotion were working in the same office and they passed the same examination and they were promoted out of combined list of successful candidates. Their next promotions are also regulated according to combined seniority and thus he is entitled to

stepping up of his pay with reference to the pay of the 5th respondent, is untenable. Existence of a combined gradation list of JAOs for purposes of regulating their promotions to the higher grade cannot itself be considered as the existence of a single cadre. The respondents have raised the question of limitation and no reasonable cause has been shown for which the Tribunal should normally entertain the application. However, since the matter has been admitted and has come for final adjudication, I am ignoring the plea of limitation raised by the respondents. The applicant and respondent No.5 belong to two different Ministries/Departments though they qualified in the same examination and were allocated to the respective Ministries/Departments by C.G.A. There is no joint cadre and the two are not posted in the same Ministry/Department and as such there is no justification for granting the benefit of stepping up of pay to the applicant. This could have happened if they had been allocated to the same Ministry/department. It is not so. There may be a chain reaction if I grant this benefit of stepping up of pay because there may be other similarly placed persons working in other Ministries/Departments who may come forward to claim the same benefit and this will be opening a Pandora's Box.

16. In view of the foregoing facts, no case is made out for stepping up of pay of the applicant from Rs.1640 to Rs.1700 with effect from 1.2.86 and accordingly the O.A. fails and is dismissed as such, leaving the parties to bear their own costs.


(B. K. Singh)
Member(A)

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