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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

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OA.No.2545 of 1989

Dated New Delhi, this 23rd day of December, 1994

Hon'ble Shri J. P. Sharma, Member(J)

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

1. Ms. Pushpa Mathur  
D/o Shri B. G. Mathur  
R/o No.7, Central Lane  
Bengali Market and retired as  
Deputy Adviser  
Planning Commission  
NEW DELHI.
2. Shri P. K. Parashar  
S/o Late Shri K. K. Parashar  
R/o B-310, Curzon Road  
Apartments, K. G. Marg  
NEW DELHI-110001

...Applicants

By Advocate: Shri Gyan Prakash

Versus

Union of India through

1. Secretary  
Department of Personnel & Training  
Ministry of Personnel,  
Public Grievances & Pensions  
Government of India  
North Block  
NEW DELHI
2. Secretary  
Department of Economic Affairs  
Ministry of Finance  
Government of India  
North Block  
NEW DELHI
3. Secretary  
Planning Commission  
Government of India  
Yojana Bhawan  
NEW DELHI
4. Secretary  
Ministry of Commerce  
Government of India  
Udyog Bhawan  
NEW DELHI

...Respondents

(None)

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ORDER(Oral)

Shri J. P. Sharma,M(J)

The applicants belong to Indian Economic Service. The applicant No.1 was granted Non-Functional Selection Grade(NFSG) of the service in the pay scale of Rs.2000-2250 with effect from 1.3.86 vide order dated 20.3.86. By an another order dated 16.3.88, in view of the O.M. dated 14.8.87, the same benefit have been given to applicant No.1 with effect from 1.1.86 and applicant No.2 also from the date.

2. The grievance of the applicants is that the respondents have wrongly fixed their pay in pursuance of the O.M. of Department of Personnel and Training dated 22.5.1989 which lays down that:" when a Government servant appointed from one post to another where the appointment to the new post does not involve assumption of duties and responsibilities of greater importance than those attached to the old post, including appointment of a non-functional selection grade, he will draw as initial pay the stage of the time scale of the new post which is equal to his pay in respect of the old post, or if there is no such stage, the stage above his pay in respect of the old post. While in the former case his next increment will become due on the date he

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would have received an increment in the old post, in the latter case his next increment in the new post, however, will become due on completion of the required period after which an increment is earned in the time scale of the new post. If the minimum pay of the time scale of the new post is higher than his pay in respect of the old post, he would draw that minimum as his initial pay." The O.M. gives an Illustration as an Annexure to the said O.M. The applicants have challenged this O.M. in this O.A. The applicant No.2 has also challenged the order dated 19.7.89 fixing his pay in NFSG at Rs.4800 taking into account the scale of pay in the <sup>pre-</sup>revised scale of grade of NFSG, Rs.1500-60-1800-100-2000. This old scale has been revised by the new scale of Rs.3700-125-4700-150-5000. His next date of increment has been 1.1.87. Similarly, vide order dated 14.9.89, the pay of applicant No.1 has been fixed at Rs.4800 with effect from 1.1.86. The applicants have filed this O.A. in December, 1989 praying for the grant of following reliefs:

"1. The respondents may be directed to amend impugned order No.1/2/86-Estt(Pay1) dated 22nd May, 1989 regarding fixation of pay in Non Functional Selection Grade as prayed in para 2 below since it is discriminatory, against natural justice and violates articles 14 and 16 of the Constitution.

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2. The respondents may be directed to issue amended order on fixation of pay in Non-Functional Selection Grade in Group 'A' Service including Indian Economic Service under which pay of the Group 'A' Officer including applicants may be fixed under FR 22(C) in Non Functional Selection Grade.

3. The respondents may be directed to fix the pay of the applicants in Non-Functional Selection Grade w.e.f. 1.1.1986 under FR 22(C) and give all consequential benefits to the applicants in pay, leave salary, pensionary benefits including revised commutation of pay etc. as pay fixation of respondent No.5, their service colleague, and several others, have been done under FR 22(C). ..."

3. The respondents have contested this O.A. and filed their reply opposing the grant of reliefs prayed for. In short, it is stated that the recommendations of the Fourth Pay Commission in all Group 'A' Central Services, the number of posts in the Selection Grade were made 15 per cent of the senior duty posts (i.e. old duty posts at the level of Senior Time Scale and above in the Cadre), laying down that there should be no increase in the overall strength of the cadre. This NFSG is to be granted in pursuance of the O.M. issued on 9.12.87 on the basis of the selection to seniority based on suitability and the pay has to be fixed under the amended provisions of FR 22(a)(ii) and not under FR 22(a)(i). The applicants were granted NFSG with effect from 1.1.86 and their pay has been rightly

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fixed in accordance with the said O.M.

4. The respondents have also referred to the case of K. V. Bansal and they have clearly stated (in paragraph 4.6 and 4.7 of the counter) that pay of Shri Bansal has been wrongly fixed under FR 22(C) as it stood earlier and the applicants cannot derive any advantage on account of that wrong fixation. It was further pointed out that the applicants were holding the post of Deputy Adviser in the scale of Rs.3700-5000(Revised Pay Scale) while the aforesaid Shri Bansal was holding the post in the revised pay scale of Rs.4100-5300. The respondents, further in their reply, stated that there were two grades of Joint Director in the pre revised scale of Rs.1500-1800 and that of Director Rs.1800-2000 which were merged with a single grade with Deputy Adviser as designation in the pay of Rs.1500-2000. The appointments to the post of Deputy Adviser are made from Senior Research Officer and it involves assumption of duties and responsibilities of greater importance. In view of this, the respondents have categorically stated that the applicants are not entitled to the benefits of FR 22(C) and the benefits erroneously allowed to Shri Bansal cannot be granted to them.

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5. We have heard Shri Gyan Prakash, counsel for the applicant at length and none appears for the respondents in this case. The learned counsel has referred to fixation of pay not only of Shri K. V. Bansal but also of Shri S. S. Rawat and Shri S. I. H. Naqvi. It is also argued that the re-fixation of these persons issued by the Office Order of Department of Economic Affairs dated 19.3.87 (Annexure A-9) goes to show that Shri S. S. Rawat had his basic pay on 1.1.86 Rs.2000 and his pay in the revised pay scale had been fixed at Rs.4700 and, similar is the case of Shri S. I. H. Naqvi. Thus, on the analogy of the cases of Shri S. S. Rawat and Shri S. I. H. Naqvi and that of Shri Bansal, the learned counsel re-enforced the arguments of grant of benefits under FR 22(C) to the applicants also.

6. The learned counsel has also referred to the fact that grant of NFSG also amounts to assumption of a promotional post and in this regard he referred to Annexure M-7 annexed with the M.A.3936/94 to this O.A. wherein the copy forwarding to the Pay & Accounts Officer, Department of Economic Affairs, New Delhi, there is certain mention that Shri S. S. Rawat had been granted NFSG of Rs.2000-2250 with effect from 12.7.86. Since the Grade-I post of Indian Economic Service i.e., Deputy Economic Adviser automatically stands upgraded to the scale of Rs.2000-2250 as a NFSG as personal to Shri Rawat, formal orders upgrading the existing post of Deputy Economic Adviser are not

necessary.

considered  
7. We have all these contentions raised by the learned counsel for the applicants and also the O.M. relating to Group 'C' & 'D' employees filed as an Annexure to the aforesaid M.A. where as a one time dispensation the benefits have been given to Group 'C' & 'D' employees while fixing their pay under that scheme where provisions of FR 22(a)(i) had been applied. The learned counsel has also referred to certain Judgements passed in the case of Group 'C' & 'D' employees and the copies of some of them have been annexed as Annexures to the aforesaid M.A.

8. Statutory Rules etc. in regard to fixation of pay are laid down in the Fundamental Rules. These Fundamental Rules have already been interpreted by Government of India orders as well as instructions in the form of O.M. for guidance of the administrative staff. The terminology "Non Functional Grade" itself suggests that the function of the incumbents are not in any manner changed from the post from which they have been given benefit of the new grade called Non Functional Selection Grade. It is almost a promotion in situ. It also lays down that if duties and responsibilities by virtue of grant of NFSG remains the same as in the old post, provisions of FR 22(C) as understood, will not apply. There are reasons behind this. The cadre strength remains intact of

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the concerned Group 'A' Service in the higher grade and in order to avoid stagnation, a certain percentage of posts to deserving senior officers are given by upgrading the scale of the post which has been laid down by the Fourth Central Pay Commission and accepted by the Government of India.

9. In the present case, the scale of Deputy Adviser earlier was Rs.1500-1800 and Rs.1800-2000 and which was subsequently merged into one scale i.e. Rs.1500-2000. The NFSG has been placed in the scale of Rs.2000-2250 which has been revised to Rs.4500-5700. This clearly indicates a picture that a person who gets NFSG will be placed without getting any benefit of increment in the feeder cadre in the scale fixed for the NFSG. The O.M. of 22nd May,1989 challenged by the applicants, therefore, cannot be said to be in any manner violative of the statutory rules i.e. FR 22(a)(i). This also is not discriminatory in the sense that a person stagnating in the earlier scale of pay if granted the further benefit of pay will discharge no fresh higher responsibilities and duties of the job. He is granted higher pay scale on the same job requirement which he has been earlier performing. We are not persuaded by the argument of the learned counsel that grant of NFSG amounts to a promotion. The benefit of FR 22(C) is not available/  
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it should also be granted in the grade of NFSG.

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10. Regarding the point of discrimination, the learned counsel for the applicant has only referred to Shri K. V. Bansal as an exemplar citing his fixation of pay and giving benefit under FR 22(C). As regards, Shri S. S. Rawat and Shri S. I. H. Naqvi, it has not been averred in the O.A. except a cursory look on having been given benefits and the respondents cannot be taken unaware as having not shown those points in OA. Regarding the case of Shri Bansal, the respondents have clearly stated that the Department of Commerce had wrongly fixed his pay and that cannot be taken as a good precedent for fixing the pay of the applicants. The learned counsel emphatically and rightly argued that there is nothing on record to show that excess payment made to Shri Bansal has been recovered. There is nothing in the counter on this point nor this is the issue in the present case. It is for the respondents to take any step as advised and if they do not take any step, this cannot be said to be discriminatory.

11. We have considered all these aspects in detail and we find that the applicants' pay have been rightly fixed and the they are not entitled to grant of benefit under FR 22(C) while fixing the pay in NFSG.


12. For some ambiguity regarding the scale in which applicants were earlier to the application of the revised scale, the learned counsel emphatically insisted that the applicant No.1 was drawing Rs.2000 on 31.12.85. However, Annexure A-7 filed by the

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applicants does not substantiate this fact. However, there were two grades of the Deputy Adviser in the grade of Rs.1500-1800 and Rs.1800-2000 which was merged subsequently in the newly formed scale of Rs.1500-2000. In any case, the applicants cannot be equated with Shri Bansal who had been shown to be on 1.1.86, in the scale of Rs.4100-5300. This fact has not been rebutted by the applicants by filing a rejoinder to the reply filed by the respondents. The unrebutted statements, therefore, without any fresh substantiation, has to be accepted.

13. In view of the facts and circumstances of the case, we find no merit in this case and the same, therefore, is dismissed without any order as to costs.

  
(B. K. Singh)  
Member(A)

  
(J. P. Sharma)  
Member(J)

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