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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.251/89

New Delhi this the 18th Day of August, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Raghbir Singh,
son of Sh. Mehar Chand,
2, DRDO Complex,
Kashmir House,
New Delhi.

...Applicant

(Applicant in person)

Versus

1. Union of India through
Secretary to the Govt.
of India, Ministry of Defence,
South Block,
New Delhi.

2. Joint Secretary (Admn.)
Office of the Chief Administrative Officer,
(Ministry of Defence), C-II Hutments,
New Delhi-110011.

...Respondents

(By Senior Counsel Sh. P.H. Ramchandani)

Mr. N.V. Krishnan:-

ORDER

This is the second round of litigation by the applicant. Earlier he had filed OA-341/86, which was disposed of by the Annexure A-3 order dated 13.11.86, permitting the applicant to withdraw that application with a further permission to make a representation to the authority concerned and preserving his liberty to approach the Tribunal again. That O.A., along with the reply of the respondents, has been brought on record in this O.A. by the applicant by filing MA-834/94, which has been allowed. Therefore, for the purpose of this O.A., we are also looking into the pleadings in the earlier application (E.A.) also.

2. The applicant was appointed as a temporary L.D.C. (Rs.260-400) on 23.7.75 and was given substantive

appointment on 31.12.77. The post of Stenographer Grade 'D' in the A.F.H.Q. and Inter Service Organisation was being filled up by a limited departmental competitive examination conducted by the Staff Selection Commission. One such examination was held in June, 1979. The applicant qualified in the examination. He was offered a temporary post of Stenographer Grade 'D' (Rs.330-560) which he accepted. He joined on 26.9.1979.

3. While so, and when he was drawing the pay of Rs.360/- in that scale, the Chief Administrative Officer issued the note dated 31.3.1983 (Ex.D/EA) to the D.G. (DL&C) intimating that the applicant was holding the ex-cadre post of Stenographer Grade 'D' and that he had now come up within the zone of officiating promotion to the post of UDC in the AFHQ Civil Service and requested that he be relieved of the present appointment to join in the parent department before 15.4.83 for promotion as UDC. That note also stated as follows:

"In case he/she does not report to this office latest by the specified date to take up the officiating appointment in UD grade, he will forfeit his original position on the panel, on the basis of which this offer is sent to him. If he reverts to his parent cadre later, he will be considered for promotion against a subsequent vacancy in UD grade and his seniority will be regulated accordingly. He will then have claim whatsoever, for the higher seniority in UD grade on the basis of his previous position on the panel. In case he is not desirous of reversion to his parent cadre by the specified date, he may be asked to give a declaration in the enclosed form, which may be forwarded, duly countersigned, to this office, immediately".

4. In respect of this offer, the applicant states that he consulted his friends and he was advised that on such appointment as UDC, his pay would be fixed on the basis of the pay drawn by him as a Stenographer.

He also ascertained that in the past such appointees had been given such benefit.

5. The applicant, therefore, accepted the offer and he was relieved of his duties as a Stenographer w.e.f. 7.4.1983. He was promoted as U.D.C. in the AFHQ Clerical Service from 8.4.83. On such appointment, his pay as UDC was fixed at Rs.360/- i.e. the same pay drawn by him as a Stenographer. However, by the order dated 6.4.1984 (Ex.B/EA) of the Chief Administrative Officer, it was directed that his pay on promotion as UDC would be fixed at Rs.330/- which is the minimum of the pay scale.

6. As a consequence of this order, recovery was made of the excess payments made to him earlier. The applicant made a representation dated 8.5.1984 (Ex.G/EA) against this order. He pointed out that according to the Fundamental Rules, the pay he has drawn as a Stenographer in the scale of Rs.330-560 should be protected when he was promoted to the post of UDC which was also on the same pay scale. He also pointed out that, earlier, such protection was given to some Stenographers who, like him, were promoted as UDCs. He, therefore, requested that his pay should be refixed at Rs.360/- from the date he took over as a UDC (i.e. the same as he was drawing as Stenographer) and the next increments given on 1.9.1983. He further submitted that in case this was not permissible, he should be permitted to go back as a Stenographer Grade 'D'.

7. This plea for refixation of pay was rejected on 5.3.1986 (Annexure 'A'/E-A). He filed the earlier O.A. to quash this order.

8. In their reply thereto the Department pointed out that fixation of pay on reversion from an ex-cadre post is done on the basis of the Ministry of Finance O.M. dated 3.4.1972. The applicant's pay as UDC has been correctly fixed on this basis. However, there were representations by others also, similarly situated and a final order has been passed on 20.6.86 (Annex.R-I/EA). Copy is also furnished at Annexure A-1 to the present O.A. Relevant extracts are given below:

"2. Steno Grade 'D' holding lien/informal lien in the grade of Lower Division Clerk are considered for promotion to the grade of Upper Division Clerk based on their seniority in the LD Grade and those found fit are including in the relevant panel. They are offered posts of UD Grade of AFHQ Clerical Service in their turn. On reversion from the posts of Steno Grade 'D', their pay in the grade of UDC is fixed under FR 22(C) which stipulates that where a Government servant holding a post in a substantive capacity, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued. Obviously, service rendered by them in the posts of Steno Grade 'D' is not counted for the purpose of fixation of pay and increments in the grade of UDC which results in substantial decrease in their basic pay.

3. One of the affected UDCs, who had earlier served as Steno Grade 'D' made a representation requesting either to fix his pay under FR 22 giving him the benefit of service rendered in the post of Steno Grade 'D' towards fixation of pay in UD Grade or to allow him to revert back to the grade of Steno Grade 'D'. His representation was considered in consultation with Department of Personnel and Training who have opined that for those holding the posts of LDC on regular basis, their appointment as Steno Grade 'D' cannot be considered as an appointment within their cadre. The post of UDC is the cadre post for the LDCs and not for Stenographers. Accordingly, it is not possible to fix the pay of individuals appointed as UDC after taking into account their service rendered by them in ex-cadre post of Steno Grade 'D'.

4. However, in order to obviate the hardship being faced by some of the UDCs who served as Steno Grade 'D' earlier, it has now been decided that as a special case and as one time measure, all Stenographers Grade 'D' who exercised their option to be UDC may be allowed to give another option to continue as Steno Grade 'D'. If they opt to revert to the post of Steno Grade 'D', the seniority, pay etc. as Steno Grade 'D' will be the same as they would have enjoyed, had they continued in the same line. It is, however, made clear that this option is available only to those who were regularly recruited to the post of Steno Grade 'D' through Staff Selection Commission and not to those who might have been promoted on ad-hoc basis by local tests etc.

5. The option either to continue as UDC or revert to the post of Steno Grade 'D' held on regular basis earlier will be final and irrevocable. No further option will be allowed to them and those who may opt to revert to the post of Steno Grade 'D' will not be considered for promotion in the UDC Grade in future. It is also made clear that pay drawn as UDC will not be protected in the matter of fixation of pay in the UDC Grade."

9. Therefore, the applicant sought permission to withdraw the earlier O.A. to enable him to exercise the fresh option now given. This was permitted. He was also permitted to make claim regarding pay fixation after he joined as UDC. The earlier OA was, therefore, disposed of (Annexure A-3) on 13.11.1986.

10. Taking advantage of the Annexure A-1 order the applicant and 9 others opted to revert back as Stenographer. Those options were accepted subject to certain conditions mentioned /in the order dated 6.11.1986 (Annexure A-2). The applicant rejoined as Stenographer on 17.11.1986. On such reversion, he was given notional continuity of service as Stenographer from the date he was relieved to join as UDC (i.e. 7.4.83) till he joined back as Steno (i.e. 17.11.86), for the purpose of increments. During the intervening period 8.4.1983 to 16.11.1986 when he worked as a UDC his pay was fixed taking into account his pres-umptive pay as a LDC in the parent cadre, before he was promoted as UDC and during this period he was drawing less pay than what he would have drawn had he continued as a Stenographer.

11. The applicant made a representation dated 19.11.1987 to the Secretary, Ministry of Defence containing a number of demands (Annexure A-4). That has been rejected by the impugned Annexure A-5 order dated 4.2.1988.

12. Hence, this O.A. has been filed. At the time of hearing, the applicant pressed only one relief viz., that during the period he was working as a UDC his initial pay should have been fixed taking into account the pay drawn as Stenographer, which is the substance of the relief sought at (a) of para 8 of the O.A.

13. The respondents have filed a reply contending that the application has no merit. It is stated that when the applicant joined as UDC, there was some doubt about how his pay was to be fixed. Tentatively, he was allowed

to draw the same pay as he was drawing as a Stenographer. After examining the case his pay was fixed at the minimum of the pay scale. The reasons therefor are indicated in the subsequent order dated 26.6.1986 (Annexure A-1) which has been extracted above.

14. The applicant contends that, by their earlier decisions in other cases, regarding pay fixation in similar circumstances, he was misled into opting for promotion to the post of UDC. Admittedly, the respondents fixed the pay of other persons similarly promoted as UDC earlier taking into account their pay as a Stenographer. But, for this circumstance, he would not have opted for promotion to the post of UDC. Secondly, he also points out that as early as in May, 1994, he had requested the Department to revert him back as a Stenographer, if his plea for fixation of pay as requested by him was not acceded to. Yet, the respondents took nearly two years to pass the necessary orders during which period the applicant suffered heavy financial loss.

15. The applicant also contends that he was not on deputation to an ex cadre post. As mentioned above, the post of Stenographer was filled up by holding a regular limited departmental competitive examination. In other words, his appointment as Stenographer is not by way of deputation, but by way of a regular appointment. As the post was temporary, he had his lien on the post of LDC, so that, in case he was not confirmed in the post of Stenographer or if the temporary posts were abolished, he could revert back to the post of LDC. Therefore, in so far as his case is concerned the respondents should not have followed the rule which it applied in the case of a Government servant on deputation to an ex-cadre post who was later repatriated to his parent cadre for promotion.

16. The learned counsel for the respondents submitted that as far as the correctness of the decision is concerned, the dispute is now settled by the Full Bench decision in the case of R.P. Upadhyay Vs. Union of India, Full Bench Judgements of 1989-1991, Vol-II. It has been held therein that the service rendered in an ex cadre post and the pay drawn therein cannot be considered when pay is fixed in the parent cadre on promotion.

17. The learned counsel for the respondents also admits that, initially, a mistake was committed in fixing the pay of the applicant at the same stage on which he was drawing pay as Stenographer. It is only after a detailed examination that this could be rectified by the order dated 6.4.1984. Further, the applicant is not singled out for such treatment. There were a number of Stenographers promoted as UDC, whose pay was also initially fixed wrongly and which was rectified subsequently. Recovery of overpayments had also been ordered. Some had opted to go back as Stenographer on the same terms as have been given to the applicant (Annexure A-2). The respondents are entitled to fix the pay correctly in accordance with law and correct their mistake. Therefore, the applicant has no right in law to receive the same pay as a Stenographer, particularly in the light of the Full Bench judgement and the application should be dismissed.

18. In so far as the law is concerned, that has admittedly been settled by the decision of the Full Bench in the case of R.P. Upadhyay (Supra). In other words, the decision ultimately taken by the respondents is correct. On reversion of the applicant to the parent cadre for being appointed on promotion as UDC, the pay being drawn by him as Stenographer could not have been taken into account. The presumptive pay which he would have drawn as LDC on the date immediately preceding the date of his promotion

but for his having been appointed as a Stenographer, would alone be the basis for fixing his pay under FR 22-C as UDC. That has been correctly fixed at Rs.330/- w.e.f. 8.4.1983, the date he joined as UDC. That decision cannot be faulted.

19. The questions that remain are (i) whether the Government could have rectified the mistake (ii) whether the applicant is entitled to any relief on the consideration that he was misled by the fixation of pay of other UDCs made earlier, and (iii) whether he is entitled to any relief on the consideration that there was considerable delay in disposing of his representation dated 8.5.1984 in which the alternative request made was that he should be sent back as a Stenographer, if his request for proper pay fixation was not considered. We have carefully considered these issues.

20. There is no doubt that Government can always correct its mistake. If the pay fixation done earlier, is found to be not in accordance with law, Government is duty bound to rectify it. There can be no doubt that Government has this right.

21. The applicant's appointment as UDC is/^{not} in the nature of a transfer. If it was ~~made~~ a transfer then the pay drawn as a Stenographer should certainly have been protected. It should have been clear to the applicant that, in any case, on his joining as UDC he certainly would not be given any pay higher than what he was drawing as a Stenographer. Therefore, what appears to have persuaded him to join as UDC was the warning contained in the note dated 31.3.1983 (Ex.D/EA) extracts of which have been reproduced in para 3.

3. If he wanted information as to how his pay would be fixed if he joined as a UDC, in order to enable him to exercise the option properly, he should have asked the respondents to give him the information. Respondents point out that the O.M. dated 3.4.1982 (Ann.R-I/EA) governs the case. If he still had a doubt, he should

have asked the respondents to clarify the position. If he had been told by the respondents that his pay as UDC would be fixed taking the pay as Stenographer as the basis, and later on respondents went back on this assurance and they revised it in a manner which affected him adversely, one could have held that the respondents are estopped from taking such action, even if it was in accordance with law. At any rate, the applicant could not have been put to any monetory loss in this circumstance. That situation does not obtain here. It is the applicant who seemed to have entertained the view that his pay would be fixed in a particular manner. The initial fixation of pay also confirmed the applicant's view. Nevertheless, it cannot be held that any assurance was given on which the respondents cannot be allowed to go back. The respondents admit that they committed a mistake, not only in the applicant's case, but in a large number of cases which they rectified later.

22. In these circumstances, we are unable to hold that any relief is due to the applicant on the ground that he was misled when he was required to exercise an option. We hold that respondents had not given any assurance to the applicant in this regard and they did nothing to mislead him.

23. No doubt, there has been a delay in ultimately passing the order dated 26.6.1986. However, that also does not furnish any ground for relief to the applicant. After all, the applicant reverted to his parent cadre by deliberately opting for promotion to the post of UDC. Having done so, he had no right to claim that he should be sent back as a Stenographer. If he had such a right, we could, perhaps, have held that the respondents ought to have conceded the request made in the representation dated 8.5.1984 (Ex.G/EA) for repatriation within six months and not having done so, a declaration could, perhaps, have been granted that the applicant should be deemed

to have been sent back as Stenographer on 8.11.1984 (i.e. on the expiry of six months from the Ex.G/EA representation) and consequential financial limits. No such right existed. The respondents, nevertheless, gave an opportunity to exercise a fresh option. No doubt, the respondents took about two years time to take a decision on this issue. If the same decision had been taken in 1984 itself, instead of in 1986, the period for which the applicant was getting a lesser pay than what he would have got, had he continued as a Stenographer, could have been reduced. That, however, is no ground to give him any relief.

24. Respondents have been fair enough to stipulate that if any UDC wanted to go back as Stenographer, he could exercise a fresh option. It was also provided that the pay as Steno on reversion would be fixed at the stage at which it would have reached, if the employee had continued as Steno and not opted to be promoted as UDC.

25. In this way, substantial justice has already been done to the applicant, though, no doubt, for about three years, there has been loss in his emoluments.

26. We are not satisfied that this loss is entirely attributable to the laches on the part of the respondents. In the circumstances of the case, we are of the view that the applicant is not entitled to any relief. Accordingly, the O.A. is dismissed. No costs.

ur Roy
(C.J. ROY)
MEMBER(J)
18.8.94.

"SRD"

N.V. Krishnan
(N.V. KRISHNAN)
VICE CHAIRMAN(A)

18.8.94.