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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, Principal
Bench, New Delhi.

***** Date of Decision: 5-5-1989.

Registration (O.A.) No. 283 of 1989

Inder Kumar Dewan Applicant.

Versus

Union of India & others Respondents.

Hon'ble Ajay Johri, A.M.

By this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is working as a Stenographer Grade 'D' in the Air Head Quarters (AHQ) at New Delhi, challenged^{3/} an order dated 11.10.1988 in regard to recovery of excess payment made^{3/} ~~from~~ ^{to} him during the period he was working as an Upper Division Clerk (UDC) on return to his parent cadre from the post of Steno. Gr. 'D'.

2. The facts of the case are that the applicant, while he was working as a Lower Division Clerk (LDC), appeared in a regular selection for the post of Stenographer through a Limited Departmental Examination in 1976 conducted by the Staff Selection Commission (SSC). He was eligible for this selection. On being selected he was appointed as a Steno.Gr. 'D' with effect from 30.1.1977. Towards the end of 1979 he was asked to give an option whether he would like to accept promotion as UDC. As alleged by the applicant, on his private enquiry, that the post of UDC and Steno.Gr. 'D' are in the same grade so he would get the same pay, he opted for the post of UDC and was so promoted on 7.1.1980. He was allowed to draw his annual increments in the post of UDC

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in continuation of whatever pay he was drawing as a Steno. Gr. 'D'. He was further granted annual increment upto 1.1.1984. However, on 21.3.1984, he received a letter saying that on reversion from the post of Steno Gr. 'D', the applicant is promoted to the grade of UDC in an officiating capacity and that he will draw a pay of Rs. 330/- p.m. w.e.f. 7.1.1980, which was the minimum of that scale, ~~from that date~~. He was also given proforma annual increments and his pay was fixed as on 1.1.1984 at Rs. 370/- instead of Rs. 404/- which he was earlier drawing as a Steno. It is against this action of the respondents that the applicant has filed this application. According to the applicant, in the note issued by respondent No. 2 on 26.2.1986 it was stated that there has been a mistake in fixation of pay of individuals who had joined the post of UDC from the post of Steno Gr. 'D' and, therefore, recoveries of the amount paid in excess were to be made. On representation made by one of the affected employees on 26.6.1986, the affected individuals were asked to exercise another option to decide afresh whether they will like to continue as a UDC or revert back as Steno Gr. 'D'. In case they opted to go as Steno Gr. 'D', their seniority and emoluments were to be protected. The applicant exercised this option and has been sent back as Steno Gr. 'D' with effect from 18.11.1986 and he has been restored his seniority and pay in the category of Stenographer, but he has been asked to refund the excess paid during the period he worked as UDC after leaving the post of Steno Gr. 'D'.

3. The respondents' case is that when the applicant exercised option to revert back to his parent cadre, which was the clerical cadre, he was reverted to the clerical cadre and since posting in the cadre of Stenographer was treated as ex-cadre posting, his pay in his parent cadre was fixed with reference to his notional pay in the grade

of LDC and no protection was to be granted to him of the pay that he was drawing as a Steno Gr. 'D' because of the posting having been treated as ex-cadre posting. However, since the pay was not fixed in terms of the rules and he continued to draw his annual increments also and when the pay was refixed due to the financial effect of the same, the affected applicants made representation and were allowed the option to go back as Steno Gr. 'D'. They exercised option and were posted back, but during the period they worked as UDC from 7.1.1980 to 17.11.1986, i.e. the date they were reverted back as Steno Gr. 'D', they got paid excess in the cadre of clerks and, therefore, recoveries had to be made.

4. The applicant has also filed a rejoinder affidavit where his earlier stand has been reiterated.

5. I have heard the applicant in person and the learned counsel for the opposite party. On the part of the applicant, the contention made before me was that the applicant was working as a Steno Gr. 'D' and had changed the post to an identical grade of UDC. Therefore, he should not have been made to suffer by refixation treating his post as Steno Gr. 'D' as an ex-cadre post. On behalf of the respondents, the learned counsel said that there was an administrative mistake in fixing the applicant in the cadre of UDC on the basis of his post as Steno Gr. 'D' because he could only be fixed with reference to his notional pay as LDC, i.e. on being reverted to the parent cadre he should have been considered as having reverted to the post of LDC and then repromoted as a UDC on his turn and the pay fixed under F.R. 22-C. It was in 1984 that this wrong fixation came to the notice and the case was reviewed and over-payments were ordered to be recovered and the pay was also fixed properly. But when representations were received, the applicant, who opted to go back as a Stenographer, was allowed to go back, but recoveries of the

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wrong payments made during the period he worked as UDC had to be made. The learned counsel for the respondents said that the main issue before the Tribunal is whether the pay was properly fixed as UDC or not on return of the applicant from the ex-cadre post and whether the recoveries could be made on account of wrong fixation which continued for certain period due to administrative oversight. The applicant submitted that a show cause notice should have been given to him before his pay was revised and since no opportunity was given, justice has suffered. I have also seen the records of the case and the applicant's appointment as a Stenographer Gr. 'D' on his selection by the S.S.C. which paper was produced by the applicant at the time of hearing. I have also seen the personal file of the applicant which was produced by the learned counsel for the respondents.

6. It is not under dispute that the applicant was selected as a Steno Gr. 'D' according to the recruitment rules for the post of Stenographer and that he was originally a L.D.C. It is also not disputed that the two services are different. The point that has to be examined is whether on being selected as a Steno Gr. 'D', the applicant's posting was an ex-cadre posting or was it that as a result of proper selection, he was posted as a Stenographer in the Stenographers' grade. The appointment letter produced by the applicant does not say that he was being posted in an ex-cadre capacity. In any case, it could not have been so because he appeared in a selection consequent to an advertisement issued by the S.S.C. He was duly selected and thereafter, was appointed as a Stenographer Gr. 'D'; therefore, he substantially came to belong to the cadre of Stenographers. In such cases, till confirmation in the new post is made, normally, the lien in the parent Department is retained. The appointment letter showed that the applicant

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was on probation for a period of two years and he could not have been left without a lien. This does not mean that he was in all circumstances to return back to the parent cadre and that his posting as a Stenographer was for a limited period only.

7. When options were asked from those who had lien in the posts of LDCs whether they would like to come back to the parent cadre and seek promotion as UDC, the consequences of their coming back were not advised to them. Though I do not find any mistake in seeking the option of those who had lien in the parent cadre, yet if the implications were advised, the situation would perhaps have been different. As a matter of fact, when the financial effect of reverting back to the cadre came to be known, the affected persons made the representations and the respondents ultimately allowed them to go back as Stenographers with full benefits.

8. The cadre of clerks is separate from the cadre of Stenographers. So if there were vacancies in the grade of UDCs, those who had their lien on the posts of LDCs and those who were working as LDCs had to be considered for the post of UDCs on their turn. In this background, if a person who had the lien, decided, after due consideration, to come back to the cadre because he was still temporary in the new cadre to which he was posted, he could not get any benefit of the pay he was drawing in the new cadre for fixation in his parent cadre. The fixation in parent cadre had to be governed by the principles laid down in FR 22-C, and his return had to be treated as return from deputation or from a post outside his cadre, though his posting was not ex-cadre. There could be no application of FR 22-C between the posts of Stenographer and UDC. It could also not be treated as a case of posting in identical time-scales where ^{3/ Some} ~~similar~~ benefit is available.

A Stenographer could not, in normal circumstances, be considered for posting as a clerk as the posts belong to different cadres.

9. On the plea of denial of opportunity before effecting the revision of pay on detection of the mistake, the respondents have said in para. 4.9 of their reply that the applicant was given due hearing and his representation dated 23.4.1984 was considered in consultation with the Ministry of Home Affairs. The applicant's second representation dated 22.5.1986 was also considered. So, there is no force in the plea that adequate opportunity was denied to the applicant.

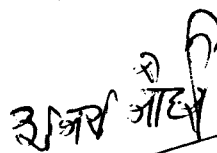
10. If an administrative error is detected, the administration cannot be denied the right to correct it. An administrative order can be revised if found to have been issued by mistake or misinterpretation of rules. What is necessary is that the affected persons must be given opportunity to represent against it. This had been done.

11. Another aspect of the case is that the applicant was posted back to his parent cadre, though on his own option and on his turn, to a post that had the same pay scale as that of a Stenographer. When a person returns from outside his cadre ^{or en} appointment to a lower post in his own cadre his pay may not be protected but if he returns to a post with identical pay scale, the pay that he drew in the other post may need to be protected by treating the difference in fixation as pay personal to the person, to be absorbed in future increments. This principle is adopted in matters of pay fixation where the fixation affects the employee adversely and is done to avoid financial loss due to such fixation. I feel that the applicant is entitled to get this relief.

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12. In the above view, I dispose of the application with the direction that the applicant would be entitled to have the difference in his pay in the grade of Rs.330-560 on refixation in his parent cadre, to be counted as personal pay to be absorbed in future increments. The respondents would be at liberty to make recovery of the excess payments after adjusting the increments as personal pay.

13. The application is disposed of in the above terms. I leave the parties to bear their own costs.



(Ajay Johri)
Member.