

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO.799/89

DATE OF DECISION : 8.5.92

Shri O.P. Sharma

...Applicant

vs.

Union of India & Ors.

...Respondents

CORAM

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

For the Applicant

...IN PERSON

For the Respondents

...Shri M.L. Verma

1. Whether Reporters of local papers may be allowed to see the Judgement? y
2. To be referred to the Reporter or not? y

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant has the grievance that in spite of the order of the Tribunal in the case of Shri B.D.Verma vs. Union of India, who was similarly situated as the applicant was not given the benefit of fixation of pay under FR 22(c) and by the impugned order dt.18.4.1988, he was informed that the judgement in B.D.Verma was applicable only in his case and the same cannot be uniformly applied to the other cases, so the applicant has filed this application for the relief that the pay of the applicant be fixed under

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FR 22(c) on the post of Professional Assistant (Hydromet) to which he was promoted w.e.f. 6.3.1973 in accordance with the judgement of B.D.verma vs. Union of India (T. 58/86) decided on 27.7.1987 by the Principal Bench, as the applicant's case is quite analogous to the above mentioned case.

He has also claimed arrears from 1.5.1981 to 13.10.1985 after quashing the order dt.14.4.1981 (Annexure E to the amended application) so far as it concerns the applicant.

2. The facts of the case are that the applicant was promoted from the post of Senior Computer to Professional Assistant w.e.f. 6.3.1973. The pay scale of Senior Computer was Rs.150-380 and that of the promoted post was Rs.210-485. On promotion to the post of Professional Assistant (H), the pay of the applicant was fixed at Rs.250 p.m. under FR 22(c). There was a revision of the pay scale on the recommendation of the Third Central Pay Commission and the post of Senior Computer was bifurcated in two scales; one the junior scale of Rs.330-560 and the other senior scale of Rs.425-15-560-20-700. In view of this, since the applicant was among those 20% of the posts of Senior Computer which came in the senior scale, his pay was fixed from 1.1.1973 in the said scale of Senior Computer at Rs.455. The Third Central Pay Commission also recommended almost the same pay scale of Rs.425-15-560-20-700 for the post of Professional Assistant (H). The pay

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of the applicant was fixed at Rs.485 as Professional Assistant (H) w.e.f. 6.3.1973. However, subsequently on 1.3.1981, the pay of the applicant was refixed under FR 22(ii) at Rs.455 and the date of increment which he was having as Senior Computer in the month of November was maintained and so on 1.3.1981, the pay of the applicant was reduced from Rs.620 to Rs.580, The applicant made representation on 22.4.1981 and he was informed in June, 1981 that his matter is under consideration. The applicant sent subsequent reminders in November, 1983 and January, 1984 and ultimately he was informed by the order dt.16.4.1985 that his representation has been rejected. In the meantime, Shri B.D.Verma who was also Senior Computer along with the applicant, who was given a promotion as Research Assistant and also was not given the benefit of FR 22(c) filed a Writ Petition (CW No.2871/84) in Delhi High Court (B.D.verma vs. UOI) which was transferred to the Tribunal and numbered as TA 58/86 which was decided on 27.7.1987, and the plea of Shri B.D.verma was accepted and the application was allowed directing the respondents to refix the pay of Shri B.D.Verma on the post of Research Assistant in accordance with FR 22(c) as had been done earlier. After this judgement came, the applicant again made a

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representation in February, 1988 which was rejected in April, 1988. On 14.10.1985, the applicant was promoted to the post of Senior Professional Assistant and he retired on superannuation in April, 1988. Since the applicant was not given any relief, the applicant has filed this application in April, 1989.

3. The case of the applicant is simple that since he was promoted from the post of Senior Computer to the post of Professional Assistant and as the post of Professional Assistant carries higher responsibilities and duties, so the applicant is entitled to fixation of his pay under FR 22(c). The relevant provisions of FR 22(c) are reproduced below :-

"FR 22-C. Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, 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:

xxx	xxx	xxx
xxx	xxx	xxx
xxx	xxx	xxx

Provided that if a Government servant either-

- (1) has previously held substantively, or officiated in-
 - (i) the same post, or
 - (ii) a permanent or temporary post on the same time-scale, or

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(iii) a permanent post other than a tenure post, or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale; or

(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated;

then proviso to F.R. 22 shall apply in the matter of the initial fixation of pay and counting of previous service for increment."

4. The respondents have also fixed the pay at Rs.435 w.e.f.

6.3.1973 giving him the benefit of FR 22(c). It is not

disputed by the respondents that the post to which the

applicant has been promoted, i.e., of Professional

Assistant (H) carries higher responsibilities and duties,

so there is no justification in refixation of pay of the

applicant under FR 22(ii).

5. The case of the applicant is similar to that of

Shri B.D. Verma (TA 58/86) decided on 27.7.1987 and

also that of Shri R.L. Khara (OA 1443/88) decided on

21.10.1988. So the applicant is entitled to the same benefit

as has been extended to both these applicants. The ratio

of OA 1942/87 (A.K.Khanna vs. UOI & Ors.) decided by

the Principal Bench on 6.9.1988 clearly applies to the

present case where it has been held that there is no

valid reason not to extend the benefit of the judgement

to the applicants, who are similarly placed in their position

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with regard to a decision given earlier in a case. The relevant portion of the said judgement is reproduced below :-

"It is true that the applicants were not parties to the Civil Writ Petition which was allowed by this Tribunal. But there is no valid reason not to extend the benefit of that judgement to the applicant when they were similarly placed as the petitioner in T.A. No.335/85. In fact instead of driving each of the Senior Computers to seek redressal of grievance before the Tribunal, when the judgement in T.A. No.335/85 has become final, the respondents should have extended the benefit of that judgement to the entire class of Senior Computers similarly placed...." In Baldev Pal Vs. State of Punjab (1984 SCC (L&S)650) the Hon'ble Supreme Court made an observation that "The State should extend the benefit of judgement of this court to all who are similarly situated." So the law so laid down is clear."

6. Having given a careful consideration to the arguments advanced by the learned counsel for the respondents, the only objection taken being that the case of Shri B.D.Verma is judgement in person^a and that cannot be accepted as correct proposition of law, so the applicant is also entitled to the relief claimed.

7. In view of the above discussion, the application and is allowed the impugned orders dt.18.4.1988 and also of 14.4.1981 are set aside and quashed and the pay of the applicant is ordered to be fixed under FR 22(c) in accordance with the judgement in the case of Shri B.D.Verma vs. Union of India (TA 58/86) and giving the applicant the benefit of arrears of pay etc. from 1.5.1981 to 13.10.1985 leaving the parties to bear their own costs. The respondents to implement the judgement within three months from the date of receipt of a copy of this judgement.