

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1062 of 1989
T.A. No.

DATE OF DECISIÓN 5.9.1989

S.K. Summan Applicant (s)

Shri Vijay K. Mehta Advocate for the Applicant (s)
Union of India Versus Respondent (s)

Shri P.H. Ramchandani, Senior Counsel for Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri S.K. Summan, Under Secretary, Ministry of Human Resource Development (Dept. of Youth Affairs & Sports), New Delhi, against Order No. A-26018/1/88-Admn. dated 15.3.89 passed by the Under Secretary, Department of Youth Affairs & Sports, refixing the pay of the applicant from 1.1.1986 on account of incorrect stepping of pay allowed to the applicant from 1.1.86.

2. Brief facts of the case, as stated by the applicant, are that the applicant joined the Central Secretariat Stenographers Service (CSSS) on 10th December, 1959 as Stenographer Grade II and was drawing Rs. 660/- w.e.f. 10.12.75 in the then existing scale of Rs. 410-800. On being promoted as Private Secretary w.e.f. 1.4.76, the pay of the applicant was fixed at Rs. 710/- in the then existing scale of Rs. 650-1200/-. The applicant was included in the panel of Under Secretaries on the basis of Limited Departmental Competitive Examination 1984 and was promoted as Under Secretary on regular basis w.e.f. 1.5.85 in the pay scale of Rs. 1200-1600/-. On the basis of the Central Civil Services (Revised Pay) Rules, 1986,

which came into effect from 1.1.1986, the applicant's pay was fixed at Rs. 3200/- as on 1.1.1986 in the revised scale of Rs. 3000-4500. Vide Office Order dated 23.12.87 and in pursuance of Note ⁷ below ⁷ of the CSS (Revised Pay) Rules, 1986, the Govt. of India stepped up the pay ^{of} one Shri O.P. Gupta, Under Secretary in the CSS, to Rs. 3500/- w.e.f. 13.1.86 (Annex.I to the application) which was done to bring it at par with that of Shri P.K. Malhotra, Under Secretary in the CSS, who is junior to Shri O.P. Gupta as Shri Gupta was promoted as Under Secretary prior to 1.1.1986 whereas Shri Malhotra was promoted as Under Secretary w.e.f. 13.1.1986.

Note 7 below Rule 7 reads as follows:

NOTE 7 - In cases, where a senior Government servant promoted to a higher post before the 1st day of January, 1986 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1986, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions, namely:-

- (a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre,
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical, and
- (c) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22-C or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer.

The orders relating to refixation of the pay of the senior officer in accordance with the above provisions should be issued under Fundamental Rule 27 and the senior officer will be entitled to the next increment on completion of his required qualifying service with/ from the date of refixation of pay.

3. On the basis of the order of December, 1987 the applicant made a representation for stepping up of his pay to Rs. 3500/- w.e.f. 1.1.86 as also the revision of annual increments w.e.f. 1.1.87 and 1.1.88 which was acceded to by the Government and the pay of the applicant alongwith 3 other Under Secretaries working in the CSS was stepped upto Rs. 3500/- w.e.f. 1.1.86 in the scale of Rs. 3000-4500 to bring it at par with that of Shri P.K. Malhotra, Under Secretary. The Office Order dated 10th March, 1988 is at Annexure-III. On the grant of annual increments, the pay of the applicant was raised from Rs. 3750 to Rs. 3875 w.e.f. 1.1.89 vide Office Order dated 16.1.89 (Annexure-IV). But to the utter surprise and shock of the applicant and without any notice to him, the Govt. of India by an order dated 15.3.89 cancelled the earlier order dated 10.3.88 stepping up the pay of the applicant along with 3 other Under Secretaries as also the refixation and the annual increments admissible under the order dated 10.3.1988. A copy of the order dated 15.3.89 is at Annex-V. Aggrieved against the order dated 15.3.89, the applicant made a representation on 17.3.89 which was rejected by Memorandum dated 30th March, 1989 and the applicant was informed that his case was not covered by Note 7 below Rule 7 of the CCS (Revised Pay) Rules, 1986 and there was no anomaly in his original pay fixation. The respondent in pursuance of the order dated 15.3.89 have issued an order dated 3.5.89 regarding the recovery of excess pay and allowance as stated by them (Annex. VIII).

4. The grounds urged by the applicant against the impugned orders are that the applicant is senior to Shri P.K. Malhotra and was promoted as Under Secretary prio to 1.1.1986 whereas Shri Malhotra was promoted as Under Secretary w.e.f. 13.1.86. Shri Malhotra was never granted an advance increment in the lower post of Section Officer. The impugned order results in hostile discrimination in as much as Shri O.P. Gupta, Under Secretary, who is similarly placed as the applicant is enjoying benefits of stepping up of pay of Rs. 3500/- w.e.f. 13.1.86 to bring it at par with

Shri P.K. Malhotra, Under Secretary. The applicant was also granted the benefits of stepping up of pay at Rs. 3500/- w.e.f. 1.1.86 on the very same basis on which Shri O.P. Gupta was granted the benefit. However, Shri Gupta is still enjoying the benefits whereas the applicant has been deprived of the same and this blatantly / violative of Article 14 and the doctrine of equality enshrined in the Constitution of India. The order dated 15.3.89 withdrawing the benefits is violative of principles of natural justice and is, therefore, illegal, void ab initio and honest. The effect of the order 15.3.89 is that the pay of the applicant has been reduced with cumulative effect and such reduction in the pay is a penalty under CCS (CCA) Rules, 1965 and which penalty cannot be inflicted without holding a proper departmental enquiry and giving a reasonable opportunity to the applicant in regard to the same. The order dated 15.3.89 is punitive in nature and absolutely arbitrary and an abuse of process of law and needs to be quashed. The reduction of pay is violative of Articles 14 & 39(d) of the Constitution of India in as much as Shri Malhotra who is junior to the applicant continues to draw pay higher than the applicant. Such a situation is violative of the doctrine of "equal pay for equal work". The applicant is entitled to the stepping up and refixation of pay by virtue of Ministry of Finance's O.M. No.F. 2(78)E.III (A)/66 dated 4.2.66. The prayer of the applicant is that the orders dated 15.3.89 be declared illegal, void ab initio and honest as being arbitrary, against rules, violative of the Constitution and the principles of natural justice and set aside and direct the respondents to step up the pay of the applicant to Rs. 3500/- in the scale of Rs. 3000-4500 w.e.f. 1.1.86 and to grant subsequent annual increments on the basis of such stepped up pay as also arrears in this regard.

5. The respondents in their reply while admitting that the orders for stepping up pay in respect of the applicant and three others were issued have stated that the orders clearly stated that the fixation of pay was subject to post audit and excess payment, if any, made would be recovered from the respective officers in one lump sum. They have denied that the orders dated 15.3.89 caused any surprise or shock to the applicant and was without any notice. The orders dated 10.3.88 clearly mentioned that the fixation of pay was subject to post audit, and excess payment if any would be recovered from the respective officers, it is abundantly clear that the officers were fully aware that excess payment if

noticed at any stage would be recovered from them. After issue of the self explanatory and speaking order dated 15.3.89, the applicant on 17.3.89 merely inquired that the rules under which the pay was reduced may be known to the applicant and till then the orders might be held in abeyance. The applicant along with three others was informed on 30.3.89 that the Government of India had clarified that their cases were not covered by Note 7 below Rule of CCS (RP) Rules, 1986 and there was no anomaly in the original pay fixation and accordingly the respondent's order dated 10.3.88 stepping up of their pay was cancelled on 15.3.89. There was no further representation or query from the applicant. The respondent issued order on 3/4.5.89 to the applicant and three other officers intimating the excess pay drawn by them and the number of instalments in which it was to be recovered from their salary. There was no representation whatsoever to the respondent against this order also. The claim of the applicant for stepping up of his pay with reference to the pay drawn by Shri P.K. Malhotra, Under Secretary, has been examined under the provision of Note-7 below Rule-7 of CCS(RP) 1986, and it is submitted that while Shri Malhotra belongs to the cadre of Section Officers, the applicant belongs to the cadre of Stenographers (CSSS). As two officers do not belong to the same cadre, the question of comparing the pay of the applicant with reference to the pay of Shri Malhotra does not arise and as a logical conclusion his claim for stepping up of pay with reference to Shri Malhotra is not covered by the Rules.

6. The Ministry of Finance in their O.M. No. 1(14)-E.III/89 dated 16th June, 1989 have clarified how the comparison should be made for deciding claims relating to stepping up of pay (Annexure 'A'). The notional pay of the applicant and the actual pay of Shri Malhotra in pre-revised scale on 1.1.86 was as follows:

Shri S.K. Summan	- Rs. 1120 (notional)
Shri P.K. Malhotra	- Rs. 1200 (from 1.10.1983).

From the above position, it will be clear that Shri Malhotra was all along drawing more pay than the applicant and even on January 1, 1986, the notional pay of the applicant was less than the actual pay of Shri Malhotra. Thus under Note 7 of Rule 7 of CCS (RP) Rules, 1986, there is no occasion of stepping up of the pay of the applicant. The respondent No. 1 is not

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aware of the circumstances under which Shri O.P. Gupta (who is reported to be Under Secretary in the Department of Food) is continuing to enjoy certain benefits granted to him. The respondent No.1 is not a party to the grant of benefits to Shri O.P. Gupta. The respondents have reiterated that the orders dated 10.3.88 clearly stated that the fixation of pay was subject to post audit and excess payment, if any, made will be recovered from the officers in lump-sum. It is not clear what further notice or opportunity is to be given before revising certain orders which were issued earlier under wrong premises. Payment of arrears due and recovery of excess payment are part and parcel of administrative process. They are neither rewards nor punishments. The question of holding enquiries and giving opportunities does not, therefore, arise. Note-7 below Rule-7 of CCS (RP) Rules, 1986 does not cover the case of the applicant and there was no anomaly. There is no Rule or order in the Govt. of India which provides that the pay of a senior should always be equal to or more than that of a junior. If there are justifiable grounds for granting higher pay to the junior, the seniors cannot invoke the provisions of the equality doctrine as enshrined in Articles 14 and 16 of the Constitution. The Supreme Court in Civil Appeals Nos. 307-316 of 1988 - State of Andhra Pradesh and others Vs. G. Sreenivasa Rao & Others - held that when pay fixation is done under valid statutory Rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at Efficiency Bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or as incentive for efficiency, are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The case of the applicant is also not covered under Ministry of Finance's O.M. dated 4.2.1966.

7. The learned counsel for the applicant, Shri V.K. Mehta, said that the Note 7 clearly specifies that where a senior Government servant promoted to a higher post before the 1st day of January, 1986 draws less pay in the revised scale than the junior promoted on or after 1.1.1986, the pay of the senior Government servant should be stepped up and his contention is that the junior and the senior Government servants in this

case belong to the same cadre and posts from which they have been promoted were identical in the same cadre. His point is that Shri S.K. Summan was working as Section Officer just like Shri P.K. Malhotra and both were promoted from Section Officer to Under Secretaries. Shri P.H. Ramchandani, Sr. Counsel for the respondents, stated that factually this is not correct. Although Shri Summan was wrongly shown as a Section Officer, actually he was working as a Stenographer Grade 'A' in the pre revised scale of Rs. 650-1200. Even the Department of Personnel's orders dated 7.4.85 erroneously showed him as S.O. promoted as Under Secretary. Besides, he said that the anomaly should be directly as a result of the provisions of the FR 22-C and in this case as Shri Malhotra was already drawing a salary much higher than the applicant, in the condition laid down in sub-para (c) of Note-7 below Rule-7 of the CCS(RP) Rules, 1986, does not make the applicant eligible for stepping up of his pay.

8. Shri V.K. Mehta cited the case of Shri T.R. Sundarajan Iyengar Vs. P.M.G. Karnataka Circle - 1989 (9) A.T.C. 43 - where the Bangalore Bench of the Tribunal has clarified this matter with reference to the recommendations of the Pay Commission. He also cited the case of State of Andhra Pradesh & Others etc. Vs. G. Sreenivasa Rao & Others etc. - 1989 (2) Supreme Court Cases - 290 - where it has been stated that there can be situations where a senior Government servant may get a lower salary than his senior, but there cannot be arbitrariness in such matters and in the context of Shri O.P. Gupta getting a higher salary, the salary of the applicant must be stepped up according to the mandate given by the Government.

9. Shri Ramchandani also quoted the case of Andhra Pradesh & Others Vs. G. Sreenivasa Rao and Others to bring out the fact that there can be a number of situations when a senior can get a lower salary. The relevant extract from the Supreme Court judgment is as follows:

"Equal pay for equal work" does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal

pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when pay fixation is done under valid statutory Rules/ executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at Efficiency Bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or as incentive for efficiency; are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentiation on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved. We do not therefore find any good grounds to sustain the judgments of the High Court/Tribunal."

Shri Ramchandani said that merely because the junior, Shri P.K. Malhotra, ~~who~~ has been promoted as Under Secretary after 1.1.1986 does not by itself entitle the applicant for stepping up of his salary. He also said that the case of Shri R.L. Marwah Vs. Union of India & Others - 1987 (4) Supreme Court Cases 31 - cited by the counsel for the applicant was not applicable in this case as the facts are quite different dealing with a matter of pension. The other case of Shri B. Prabhakar Rao & Others Vs. State of Andhra Pradesh & Others - 1985 (Supp) S.C.C. 432 - is also not applicable as the facts are quite different as that case is about retirement based on discriminatory treatment on the age of superannuation.

10. Shri Ramchandani emphasised that stepping up of the pay is done in extraordinary circumstances and it is necessary to see what is the true concept intended by Note 7. It is certainly not the intention that a large number of officers should be allowed to have their pay stepped up, but only those who have a grievance and the stepping must be as a result of an anomaly. If the applicant was drawing less salary than Shri P.K. Malhotra in the cadre of Section officer, there cannot be any grievance on getting a lower salary even on promotion. Stepping up is provided for reducing the grievance of service personnel and had the applicant been drawing a higher salary in the lower post of Section Officer,

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there would have been some grievance if he got lower pay as Under Secretary. In any case, the case of Shri Summan is not covered as he was working as a Stenographer Grade 'A' before promotion as Under Secretary.

11. I have gone through the pleadings and arguments by the learned counsel on both the sides. It is an admitted that the applicant was drawing a lower salary than Shri P.K. Malhotra before his promotion as Under Secretary and as he did not belong to the same cadre in the lower grade, it cannot be said that the anomaly in fixing of his salary is a direct result of the application of the provisions of FR 22-C. It is also noted that the Ministry of Finance in their O.M. dated 16.6.89 have clarified this matter further. This O.M. deals with cases where the pay of a senior Government servant has been allowed to be stepped up equal to junior even though there was no anomaly because the senior had no occasion to draw more or equal pay than junior in the lower post. It has been stated that the pay of a senior can be stepped up, if the senior is promoted before 1.1.86, ^{equd to} the pay drawn by the junior promoted on or after 1.1.86 subject to fulfilment of the condition that the senior Government servant promoted before 1.1.86 has been drawing equal or more pay in the lower post than his junior promoted after 1.1.86. In view of this O.M., it is clear that the intention of the Government has been to allow stepping up of the pay only in such cases where the anomaly is directly as a result of the application of FR 22-C and not where even before promotion the pay of the junior person was higher because of various circumstances like working in a different cadre or working against promotion posts vis-a-vis direct recruitment posts where there would be difference in pay in a particular cadre. Keeping in view the above considerations, I feel that no case has been made out to step up the pay of the applicant and the same is rejected. There will be no orders as to cost.

B.C. Mathur
5-9-89
(B.C. Mathur)
Vice-Chairman