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CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

Date of decision: 5.9.89

OA 1060 of 1989

Ramesh Kumar

Applicant

OA 1061 of 1989

Madho Ram

Applicant

OA 1080 of 1989

K.K. Kirty

Applicant

Vs.

Respondents

Union of India

PRESENT

Shri Vijay K. Mehta, counsel for the applicants.

Shri P.H. Ramchandani, Sr. Counsel for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

In all the three applications OA 1060/89, OA 1061/89 and OA 1080/89 under Section 19 of the Administrative Tribunals Act, 1985, filed by S/Shri Ramesh Kumar, Madho Ram & K.K. Kirty, Under Secretaries in the Department of Youth Affairs & Sports, New Delhi, ^{resp.} the facts are the same and the relief sought is also the same. As such, a common order is being passed for all these three applications.

2. The applicants were promoted as Under Secretaries from the grade of Section Officers on 1.7.1983, 7.2.1983 and 15.7.82 respectively in the pay scale of Rs. 1200-1600 (pre-revised). On the basis of the Central Civil Services (Revised Pay) Rules, 1986, which came into effect from 1.1.1986, the applicants pays were fixed at Rs. 3300/-, Rs. 3300/- and Rs. 3400/- respectively from 1.1.1986 in the revised scale of Rs. 3000-4500. Vide Office Order dated 23.12.87 and in pursuance of Note below Rule 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.1 to the applications) 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:

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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 Govt. servant should be stepped up to an amount equal to the pay as fixed for his junior in the higher post. The stepping up should be done with effect from the date of promotion of the junior Govt. servant subject to the fulfilment of the following conditions, namely:-

- (a) both the junior and the senior Govt. 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, provision 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 effect from the date of refixation of pay.

3. On the basis of the order of December, 1987, the applicants made representations for stepping up of their 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 were acceded to by the Government and the pay of the applicants 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 pays of the applicants were 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 applicants and without any notice to them, 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 applicants as also the refixation and the annual increments admissible under the order dated 10.3.88. A copy of the order dated 15.3.89 is at Annexure V. Aggrieved against the order dated 15.3.89, the applicants made representations on 17.3.89 (Annexure VI) which were rejected by Memorandum dated 30th March, 1989 and the applicants were informed that their case was not covered by Note 7 below Rule ⁷ of the CCS (RP) Rules, 1986 and there was no anomaly in their original pay fixation. The respondents in pursuance of the order dated 15.3.89 have issued an order dated 3.5.89 regarding the recovery of excess pay and allowances as stated by them (Annex.VIII).

4. The grounds urged by the applicants against the impugned orders are that the applicants are senior to Shri P.K. Malhotra and were promoted as Under Secretaries prior 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 orders result in hostile discrimination in as much as Shri O.P. Gupta, Under Secretary, who is similarly placed as the applicants is enjoying benefits of stepping up of pay to Rs. 3500/- w.e.f. 13.1.86 to bring it at par with Shri P.K. Malhotra, Under Secretary. The applicants were also granted the benefits of stepping 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 applicants have been deprived of the same and this blatantly is 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 nonest. The effect of the order dated 15.3.89 is that the pay of the applicants 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 applicants 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 and 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 applicants. Such a situation is violative of the doctrine of "equal pay for equal work". The applicants are entitled to the stepping up and refixation of pay by virtue of Ministry of Finance's O.M. No.F. 2(78)E.II(A)/66 dated 4.2.66. The prayer of the applicants is that the orders dated 15.3.89 be declared illegal, void ab initio and nonest 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 applicants 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 the orders for stepping up pay in respect of the applicants ~~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 applicants and were 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 applicants 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 applicants on 15.3.89 merely inquired that the rules under which the pay was reduced may be made known to the applicants and till then the orders might be held in abeyance. The applicants were informed on 30.3.89 that the Govt. of India had clarified that their cases were not covered by Note 7 below Rule 7 of CCS(RP) Rules, 1986 and there was no anomaly in the original pay fixation and accordingly the respondents' 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 applicants. The respondents issued orders on 3/4.5.89 to the applicants and 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 respondents against this order also. The claim of the applicants for stepping up their pay with reference to the pay drawn by Shri P.K. Malhotra, Under Secretary, has been examined under

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the provision of Note-7 below Rule-7 of CCS (RP) Rules, 1986, and it is submitted that the applicants claim for stepping up of pay with reference to Shri Malhotra is not covered by the Rules.

6. The Ministry of Finance in O.M. No. I(14)-E.II/89 dated 16th June, 1989 have clarified how the comparison should be made for deciding claims relating to stepping up of pay (Annex. 'A'). The notion^{al} of the applicants and the actual pay of Shri Malhotra in the pre-revised scale on 1.1.86 were as follows:

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| 1. Dr. K.K. Kirty | - Rs. 1040 (Notional) |
| 2. Shri Ramesh Kumar | - Rs. 960 (Notional) |
| 3. Shri Madho Ram | - Rs. 1120 (Notional) |
| 4. Shri P.K. Malhotra | - Rs. 1200 (from 1.10.83) |

From the above position, it will be clear that Shri Malhotra was all along drawing more pay than the applicants and even on January 1, 1986, the notional pay of the applicants was less than the actual pay of Shri Malhotra. Thus under Note 7 of the CCS (RP) Rules, 1986, there is no occasion of stepping up of the pay of the applicants. Respondent No.

1 is not 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. 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 applicants 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

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equality doctrine 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 applicants is also not covered under Ministry of Finance's O.M. dated 4.2.1966.

7. The learned counsel for the applicants, Shri V.K. Mehta, said that the Note 7 clearly specifies that where a senior Government servant was promoted to a higher post before the 1st day of January, 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. Shri Ramchandani, Sr. Counsel for respondents, said that the anomaly should be directly as a result of the provisions of the FR 22-C and as Shri Malhotra was already drawing a salary much higher than the applicants, the condition laid down in sub-para (c) of Note-7 below Rule-7 of the CCS (RP) Rules, 1986, does not make the applicants eligible for stepping up of their pay.

8. Shri V.K. Mehta cited the case of Shri T.R. Sundarajan Iyengar Vs. P.M.G. Karnatka 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 - 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

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and in the context of Shri O.P. Gupta getting a higher salary, the salary of the applicants 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 judgement 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 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 differential 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, ~~has~~ has been promoted as Under Secretary after 1.1.1986 does not by itself entitle the applicants for stepping up of their 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 applicants, 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

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& 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.

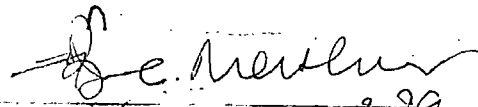
10. Shri Ramchandani emphasised that stepping up of the pay is done in extraordinary circumstances and it is necessary to see that what is the true concept intended by Note 7. It is certainly not the intention that a large number of officers should be allowed to have their pay stepped up, but only those who have a grievance and the stepping^{up} must be as a result of an anomaly. If the applicants were 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 applicants been drawing a higher salary in the lower post of Section Officers, there would have been some grievance if they got lower pay as Under Secretary.

11. I have gone through the pleadings and arguments by the learned counsel on both the sides. It is an admitted fact that the applicants were drawing a lower salary than Shri P.K. Malhotra before their promotion as Under Secretaries and it cannot be said that the anomaly in fixing their 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. The 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, equal 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

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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 applicants and the same is rejected. There will be no orders as to cost.



(B.C. Mathur)

Vice-Chairman