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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 147/1988 198
T.A. No. 136/1988

DATE OF DECISION 4.7.1988.

1. Shri R.S. Murthy
2. Shri P.C. Kannan Petitioner. Applicants.

In person. Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri N.S. Mehta, Standing Advocate for the Respondent(s)
Counsel.

CORAM :

The Hon'ble Mr. Kaushal Kumar, Member (A).

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether to be circulated to other Benches? *No*

Kaushal Kumar
4.7.88
(KAUSHAL KUMAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

(1) Regn. No. O.A. 147/1988.

DATED: July 4, 1988.

Shri R.S. Murthy Applicant.

V/s.

Union of India through
Secretary, Department
of Legal Affairs and
Others Respondents.

(2) Regn. No. O.A. 136/1988.

Shri P.C. Kannan Applicant.

V/s.

Union of India through
Secretary, Department
of Legal Affairs and
Others Respondents.

Applicants in person.

Respondents through Shri N.S. Mehta, Standing Counsel.

(Judgment delivered by Hon'ble Mr. Kaushal Kumar,
Member (A).)

JUDGMENT

Both these applications are based on similar facts and raise common points of law and rules for interpretation. Accordingly, it is convenient to dispose them of through this common judgment.

2. The grievance of the applicants is that on promotion to the post of Assistant Legal Adviser in the Ministry of Law and Justice, Department of Legal Affairs, their pay has not been correctly fixed under F.R. 22-C. Both of them, before their promotion, were holding the substantive post of Superintendent (Legal) but they had gone on deputation as Senior Research Officer. The applicant in O.A. No. 147/1988 had gone on deputation to the ex-cadre post of Senior Research Officer in the Department of Justice and the applicant in O.A. No. 136/1988 had gone on deputation to the ex-cadre post of Senior Research Officer in the Commission on Centre State Relations.



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Ministry of Home Affairs. The revised scale of pay of the Superintendent. (Legal) is Rs.2375 - 3500, that of the Senior Research Officer is Rs.3000 - 4500 and that of the Assistant Legal Adviser is also Rs.3000 - 4500. Broadly speaking / F.R. 22-C provides that on promotion to a higher post the pay in the earlier post is required to be raised notionally by one increment and the pay fixed in the promotional post at the next higher stage in the pay scale. In the case of the two applicants, instead of taking the last pay drawn in the scale of the Senior Research Officer, the post which they were holding ex-cadre, the applicants' pay in the substantive post of Superintendent (Legal) was taken and with reference to the same, their pay was fixed in the higher promotional post of Assistant Legal Adviser.

3. In support of their claim for application of F.R. 22-C with reference to the pay drawn by them in the ex-cadre post of Senior Research Officer, the applicants have relied on the judgement of this Tribunal (Principal Bench) dated 30.1.1987 in Regn. No. J-686/86 (C.W. 292/81) Bahadur Chand Bhatia v. Union of India & others.

4. The case of the respondents is that the aforesaid judgment cannot be extended to the applicants as the Tribunal in the said judgment had struck down the Ministry of Finance O.M. dated 3rd April, 1972 only with reference to the petitioner in the said case. It is contended that the O.M. dated 3rd April, 1972 is still operative and cannot be said to have been struck down in totality for all time. It is further contended in the counter-affidavit that since the pay scales of the posts of Senior Research Officer and Assistant Legal Adviser are identical, under FR 30 (2) the officiating appointment shall not be deemed to involve assumption of duties and responsibilities of greater importance. As such the fixation of pay in the

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post of Assistant Legal Adviser under the FR 22-C with reference to the pay drawn by the applicants in the post of Senior Research Officer, which carries the identical pay scale as that of Assistant Legal Adviser, is not admissible under FR 22-C read with FR 30 (2). It is further stated that the protection of pay drawn in the same time scale or in an identical time scale is not admissible in an ex-cadre post under the provisions of FR-22 and FR 22-C on reversion to the cadre post. The applicants are eligible for promotion as Assistant Legal Adviser from the cadre post of Superintendent (Legal) and not from the ex-cadre post of Senior Research Officer held by them before their appointment as Assistant Legal Adviser on deputation basis. At one stage, during the course of arguments, learned Standing Counsel Shri Mehta contended that before their promotion, the applicants had been reverted from the post of Senior Research Officer to that of Superintendent (Legal) before being promoted to the post of Assistant Legal Adviser. However, later on, on checking the records, he clarified that there was no reversion to the post of Superintendent (Legal) and the applicants were promoted directly to the post of Assistant Legal Adviser. Shri Mehta further contended that persons are sent on deputation not strictly in accordance with seniority whereas promotions are made to higher posts in accordance with seniority in their own cadre. If the benefit of fixation of pay under F.R. 22-C were to be extended with reference to last pay drawn in an ex-cadre post, this will result in an anomaly inasmuch as a junior person will draw more pay on promotion than his senior in the cadre.

5. F.R. 22-C reads as follows: -

"Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity to another post carrying

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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:

Provided that the provision of this rule shall not apply where a Government servant holding a Class I post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to a higher post which is also a Class I post and carries a time-scale of pay with the minimum more than Rs.1,500:

Provided further that the provisions of sub-rule (2) of Rule 31 shall not be applicable in any case where the initial pay is fixed under this rule:

Provided also that where a Government servant is, immediately before his promotion or appointment to a higher post, drawing pay at the maximum of the time-scale of the lower post, 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 an amount equal to the last increment in the time-scale of the lower post:

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
- (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."



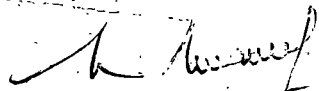
6. The Government of India's Order No.3 under F.R. 22-C based on Ministry of Finance O.M. No.7(75)-E.III (A)/71, dated the 3rd April, 1972 reads as follows: -

"(3) On reversion from an ex-cadre post. - It was earlier provided that in the case of a Government servant who draws pay in the scale of pay attached to an ex-cadre post, if he reverts to his parent cadre and is appointed in that cadre to a post higher than the ex-cadre post immediately held before reversion, his pay shall be fixed under F.R. 22-C with reference to pay drawn in the ex-cadre post.

2. With the amendment to proviso to F.R. 22, vide notification No.1 (25)-E.III (A)/64, dated 30.11.65, benefit of service rendered in an ex-cadre post, counting for increments in a cadre post on an identical scale is no longer admissible except to the extent the conditions laid down therein are fulfilled. A question has been raised whether the benefit of fixation of pay in a cadre post with reference to pay drawn in an ex-cadre post under F.R. 22-C still continues to be available. It is clarified that after the amendment of F.R. 22 as referred to above, the orders have become obsolete and it is not permissible to fix pay in a cadre post on the basis of pay in an ex-cadre post.

3. It has been decided that the pay of Government servants already fixed in respect of promotions taking place on or after 30-11-65, by applying the above provisions should be refixed strictly with reference to their pay in the lower cadre post in the parent cadre. In order, however, to avoid hardship, it has been decided that the difference, as on the date of issue of these orders between the pay already fixed and the pay that would be admissible according to these orders, would be treated as personal pay to be absorbed in future increments or increases in pay.

4. It was also earlier provided that where a person goes from post 'A' in his parent department to a post 'B' elsewhere and reverts to post 'C' in the parent department and post 'C' is higher



than post 'A' but not higher than post 'B', the pay in post 'C' should be fixed under F.R. 22-C with reference to the pay in post 'A', if the pay so fixed is more advantageous than the pay fixed under the normal rules, with reference to his pay in post 'B'. These orders are also cancelled and the pay of the persons affected should be refixed and the difference treated as personal pay to be absorbed in future increments or increases in pay.

(G.I., M.F., O.M. No. 7(75)-E. III (A)/71, dated the 3rd April, 1972.) "

It will be seen from the above that it was only after the amendment to proviso to F.R. 22, vide notification dated 30.11.1965 that the benefit of service rendered in an ex cadre post, counting for increments in a cadre post on an identical scale became no longer admissible except to the extent the conditions laid down therein were fulfilled.

7. The Bench of this Tribunal in their judgment dated 30.1.1987 in para 9 thereof observed as follows: -

"Having studied the whole perspective in great detail, we have come to the conclusion that the clarificatory O.M. of 3rd April, 1972 taking away the benefit given by a statutory provision of F.R. 22-C is erroneous, unwarranted and has to be struck down for the following reasons:

(a) The O.M. disallows pay in the ex-cadre post on the wrong assumption that the benefit of service rendered in an ex-cadre post counting for increments is not admissible. This is wrong because the amended proviso to F.R. 22 does not completely disallow increments for service rendered in an ex-cadre post with identical pay-scale, but simply lays down certain conditions in which such officiation will count for increments. Therefore, if these conditions are satisfied increments against officiation in equivalent post will be given and therefore, the question of totally excluding officiating pay in an ex-cadre post for fixing pay in the cadre on promotion should not arise.

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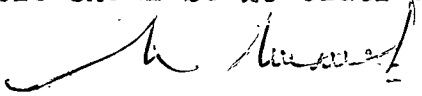
(b) The provisos allow a further benefit of previous service in the identical scale for the purposes of increments. This is in addition to what initial pay is fixed on the basis of the main provisions of F.R. 22 or F.R. 22-C. If for certain reasons increments are not allowed, it does not mean that even the basic pay should not be fixed as laid down in the statutory rules. Disallowing fixation of initial pay under the main provision of the F.Rs. merely because additional increments are not permissible / admissible will be as good as saying that since interest is not allowed for some reason, the principal amount also should get liquidated and not paid." XXX XXX

8. I am inclined to agree with the above observations. The clarificatory O.M. dated 3rd April, 1972 cannot override the basic provisions of the Fundamental Rules. F.R. 22-C does not envisage that in promotions made from an ex-cadre post, the last pay drawn in the ex-cadre post will not be taken into account for purposes of fixation of pay under F.R. 22-C. What it does envisage is that there has to be a promotion of a Government servant holding a post in a substantive, officiating or temporary capacity to another post in a substantive, officiating or temporary capacity carrying duties and responsibilities of greater importance than those attached to the post earlier held by him. Even though after the recommendations of the Fourth Pay Commission, the revised pay scale both of the Senior Research Officer and that of the Assistant Legal Adviser has been made as Rs.3000 - 4500, the pre-revised scale of the Senior Research Officer was Rs.1100 - 1600 whereas that of Assistant Legal Adviser in the Ministry of Law and Justice was Rs.1200 - 1600, equivalent to the grade of Under Secretary to the Government of India. Even though after the revision, the pay scales have been made identical,

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there is no difficulty in holding that the post of Assistant Legal Adviser in the Department of Law & Justice carries duties and responsibilities of greater importance than those attached to the post of Senior Research Officer either in the Department of Justice or the Commission on Centre State Relations. This being the position, the applicants are entitled to fixation of pay under FR 22-C with reference to the pay last drawn by them as Senior Research Officer. Even though extending the benefit of fixation of pay under F.R. 22-C may lead to an anomaly, as pointed out by the learned counsel for the respondents, the applicants cannot be denied the benefit available to them under the Fundamental Rules.

9. The applications are accordingly allowed with the direction that in supersession of the earlier orders, the pay of the applicants shall be fixed under FR 22-C from the date of their promotion with reference to the pay last drawn by them immediately before promotion in the post of Senior Research Officer and they shall be entitled to all arrears of salary in terms of such fixation. However, the respondents are not to pay any interest on the arrears. This order shall be complied with and the arrears paid to the applicants within a period of three months from the date of receipt of this order by the respondents. There shall be no order as to costs.


(KAUSHAL KUMAR)
MEMBER (A)
4.7.1988.