

3

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

.....

Regn. No. OA 1986/1988

Date of decision: 6.4.1989

Shri Gabar Singh Negi

Applicant

**Vs.**

Union of India through  
Secretary, Ministry of Commerce,  
New Delhi.

2. The Chief Controller of Imports &  
Exports, New Delhi.

3. Shri O.P. Malpana, U.D.C. in the  
office of the Joint Chief Controller  
of Imports & Exports, New Delhi.

Respondents

PRESENT

Shri V.P. Gupta, counsel for the applicant.

Shri M.L. Verma, counsel for the respondents.

CORAM

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Gabar Singh Negi, U.D.C. in the office of the Joint Chief Controller of Imports & Exports, New Delhi, against fixation of his salary and not stepping up his pay equal to that of Shri O.P. Malpana (Respondent No.3) who is junior to him, both as L.D.C. and U.D.C.

2. Brief facts of the case, as stated in the application, are that the applicant joined service as L.D.C. on 6.3.64 whereas Shri O.P. Malpana joined as L.D.C. on 9.3.64. In the seniority list of LDCs as issued on 1.10.1980, his Serial No. is 57 whereas Shri Malpana's Serial No. is 61. The respondents had offered the post of U.D.C. on ad hoc basis as a purely temporary measure to the applicant at Kanpur on the clear understanding that the period so spent shall not count for the purpose of seniority, fixation of pay or in respect of any claim to the post of U.D.C. in any manner whatsoever. He, therefore, regretted his inability to go to Kanpur. Shri Malpana, however, joined ad hoc post at Kanpur as U.D.C. In 1980 a regular D.P.C. took place as a result of which the applicant was promoted as U.D.C. in the scale of Rs. 330-

han

560. Shri Malpana was also selected in the same office order. In the Seniority List of UDCs drawn up by Respondent No. 2 as on 1.1.1988, the applicant has been adjudged senior to Shri Malpana as U.D.C. It is stated that the present basic pay of Respondent No.3 who has been considered junior to the applicant both as L.D.C. and U.D.C. is Rs. 1500.00 whereas the basic pay of the applicant is Rs. 1440.00 p.m. The applicant wrote to the higher authorities inviting their attention to FR 22-C for refixation of his salary, stepping up his salary to that drawn by Respondent No.3. The respondents rejected his claim on the ground that Shri Malpana had officiated as a U.D.C. for a longer period than the applicant.

2. In their reply the respondents have stated that the applicant has not come with clean hands as he has suppressed the material fact that he was offered to go to Kanpur as U.D.C. on ad hoc basis as a purely temporary measure, but he did not go there. He was promoted as U.D.C. when a regular DPC took place. The applicant has not produced any documentary evidence bearing out his contention that he was given to understand that if he joined as UDC at Kanpur on ad hoc basis, that service would not count for fixation of his pay when he was appointed as U.D.C. on regular basis. He had first agreed to go to Kanpur, but he withdrew his option later on. It is claimed that the applicant's case is not covered by Order No.10 appended to FR 22-C. The stepping up is to be done only where the anomaly arises directly as a result of application of FR 22-C. In this case Shri O.P. Malpana had already been promoted as U.D.C. on ad hoc basis prior to the applicant and he had earned increments in the scale of U.D.C. prior to his regular appointment by way of promotion to the date of regular appointment of the applicant to the post of U.D.C. As such, Shri O.P. Malpana was already drawing a higher scale of pay than the applicant at the time of his regular promotion. As the applicant had himself opted out of this ad hoc promotion involving going out of Delhi to Kanpur, he cannot be given the benefit of higher salary by way of stepping up his pay to make it equal to that of Shri Malpana.

3. The learned counsel for the applicant argued that when the applicant had given his consent to go to Kanpur, no action was taken by the respondents for seven months. He also said that FR 22-A is clear that ad hoc appointment is not a temporary appointment and, therefore, Respondent No.3 cannot be given any benefit for his ad hoc appointment at Kanpur and since the applicant is senior to Respondent No.3, his pay should be stepped up equal to that of his junior.


4. I have gone through the relevant rules on fixation of pay. The officiating period in the higher scale whether ad hoc, temporary or even broken periods do count for earning increments. In other words, if an LDC has worked as UDC in a number of broken periods exceeding one year, he would be allowed one increment for such broken periods in fixation of his salary in the higher scale. The question is not whether such a person was working on ad hoc basis or temporary basis or regular basis. The total period in the higher scale would be counted for fixation of pay in the higher scale when a person is appointed regularly to that scale. The respondents could not give any undertaking to the applicant that ad hoc period as U.D.C. would not count for increments. Even if they had given such an undertaking, such an undertaking would not be correct. In any case, the respondents deny having given any such undertaking and the applicant has also received the benefit of such ad hoc promotion although for a shorter period. As such, it is held that merely because the applicant is senior to Respondent No.3, his pay should be stepped up on that ground alone would not be valid because Respondent No.3 has actually worked on a higher scale while the applicant did not avail of that opportunity for reasons whatsoever. As such, he cannot claim stepping up <sup>of his salary</sup>. Order No. 10 appended to FR 22-C lays down the the following conditions for stepping up of pay:

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

6

- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of application of F.R. 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

There has been no anomaly directly as a result of the application of F.R. 22-C. In the circumstances of the case, I see no reason to hold that any injustice has been done to the applicant and the of respondents have fixed the pay/both the applicant and Respondent No.3 applying the rules correctly. As such, the application is rejected. There will be no orders as to costs.

  
(B.C. Mathur) 6.4.89  
Vice-Chairman