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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 242 1986
~~EXX-118.~~

DATE OF DECISION 13.7.1986

Shri B.B.L. Mathur Petitioner

Petitioner in person Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri K.C. Mittal Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER

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

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O.A. No. 242 1986

DATE OF DECISION 18.7.1986

Shri B.B.L. Mathur

Petitioner

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Advocate for the
Petitioner(s)

Versus

Union of India

Respondent

Shri K.C. Mittal

Advocate for the
Respondent(s)

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JUDGEMENT

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The petitioner who is working as Deputy Director (Engineering) and belongs to the Indian Broadcasting (Engineers) Service, under the Directorate General, Doordarshan New Delhi has come up with his application under Section 19

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of the Central Administrative Tribunals Act, 1985 praying that the order dated 5.3.1986 (Annexure V to the application) of the D.G., A.I.R. to the Pay & Accounts Officer, Ministry of Information & Broadcasting to recover the payment of alleged overpayment made to him between 25.9.1982 to 31.12.1984, should be quashed. He has also prayed that his name should be deleted from the refixation of pay order dated 7th November, 1985 (Annexure III to the application) and that the order dated 2.7.1983 (Annexure II) by which he was allowed increased pay with effect from 25.9.1982 should be amended to pre-pone the stepping up of the pay from 25.9.1982 to 25.5.1982 when his junior Shri G.C. Rai got the higher pay.

2. The brief material facts of the case are as follows. On the 14th November, 1975 the Government of India in the Ministry of Defence issued an O.M. No.F.12/21/74-IC in which they removed anomalies in the implementation of the recommendations of the Third Pay Commission for application of the concordance table between the revised junior and senior scales of certain specified organised Services mentioned in Annexure II to the O.M. The modalities of fixing the pay of officers promoted from the junior to the senior scale corresponding to the concordance table were also spelt out in that O.M. The concordance table gave, on promotion, from the junior to the senior scale a jump in the

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pay which was much higher than under the normal rules applicable on promotion from lower to higher scales of pay. The crucial date for giving the benefit of the concordance table was fixed as 1.1.1973. This O.M. took care of the anomaly that by the benefit of the concordance table, junior officers who were promoted from junior to the senior scale on or after 1.1.1973 were likely to get much higher pay in the senior scale than the pay of their seniors who had been promoted before 1.1.1973 without the benefit of the revised concordance table as recommended by the Pay Commission. In order to remove this anomaly, the O.M. laid down that in such a case and subject to certain conditions specified, the pay of the ^{senior &} officer promoted earlier shall be stepped up to bring it at par with that of the ^{junior &} officer promoted later.

3. The petitioner had been appointed as Assistant Station Engineer(Rs.700-1300), i.e. junior scale of Class I Service in July, 1971 through the UPSC and was promoted as Station Engineer(Rs.1100-1600) i.e. senior scale of Class I Service in May, 1981 and his salary was increased from Rs.1060 in the lower scale to that of Rs.1100/- in the higher scale as per normal rules. The organised Service known as the Indian Broadcasting(Engineer) Service was constituted in November, 1981 and the Government decided on 5th April, 1982 to apply

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the aforesaid O.M. of 14th November, 1975 for fixing the pay on promotion of officers from the junior scale (700-1300) to the senior scale (1100-1600). Since the petitioner had already been promoted from the junior to the senior scale before the organised Service was constituted, the benefit of concordance table for such promotion was not applicable to him. However, in May, 1982, the batch next junior to him as Assistant Station Engineer, got promoted as Station Engineers and got the benefit of the concordance table, as a result of which the pay of his next junior Shri G.C. Rai was fixed at Rs.1300/- from May, 1982 when the petitioner as his ^(for Rai's) next senior was drawing the pay of Rs.1150/- only. The petitioner represented in May, 1982 praying that in accordance with the removal-of-anomaly provisions of the O.M. of 14.11.1975, his pay should be stepped up to Rs.1300/- per month. The Ministry thereon stepped up his pay to Rs.1300/- in the scale of Rs.1100-1600 with effect from 25.5.1982 vide their order dated 2nd July, 1983 (Annexure II to the petition) by applying the Ministry of Home Affairs O.M. of 25.9.1982. It appears that the Pay & Accounts Officer in his letter of 12.8.1983 (Annexure VI to the counter affidavit) raised technical objection stating that since the O.M. of 25.9.1982 did not visualise application of any order other than the O.M. of 5.10.1982 and since the petitioner's junior got the benefit of higher pay by virtue of order of 14.11.1975 (and not by the O.M. of 25.9.1982) the petitioner cannot get the benefit of the O.M. of 25.9.1982. The Pay and Accounts

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Officer however went on to say that the petitioner should get the benefit of the O.M. of 14.11.1975. Based on the objection raised by the Pay & Accounts Officer, the respondent Ministry of Information and Broadcasting issued an order on 7th November, 1985 (Annexure VII to the counter-affidavit) still fixing the pay of the petitioner at Rs.1300/- with effect from 25.5.1982 but giving him the benefit of actual pay increase notionally from 25.5.1982 and actually from the date of the issue of order, i.e. 7th November, 1985. By a further order dated 5th March, 1986 (Annexure IX to the counter-affidavit)^{however,} they gave the benefit of actual stepping up from 1.1.1985 with notional stepping up from 25.9.1982 and ordered that the excess payment made to the petitioner should be recovered. It is against the notional stepping up of pay and recovery of payments already made that the petitioner has come up before the Tribunal.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. While the petitioner has based his claim on the O.M. of 14.11.1975 which according to him entitles him to get the actual stepping up of pay from 25.5.1982 when his junior got higher pay than his, the respondents have argued that the petitioner cannot get the stepping up from 25.5.1982, because of the Department of Personnel & A.R. O.M. of 25.9.1982 and the Pay and Accounts Officer's objection. They have gone on to state that the petitioner is entitled to get the benefit of stepping up from the date of the issue of their revised order dated 7th November, 1985 and that their original order stepping up petitioner's pay dated 2.7.1983 was incorrect. As a matter of

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grace, they have allowed the petitioner to get the benefit of actual stepping up from 1.1.1985.

5. The root of the whole case goes to the interpretation of O.M. of 14.11.1975 issued by Government of India. We have gone through this O.M. very carefully and find that the O.M. basically propounds two themes. Firstly, it says that for certain Services specified in Annexure II, the benefit of concordance table with revised junior and senior scales of pay will be available to those promoted on or after 1.1.1973 from junior to the senior scale. Secondly, recognising an anomaly of senior officers promoted earlier than 1.1.1973 getting lesser pay than their juniors promoted after them, it lays down as follows:-

"If by fixation of pay in this manner, the pay of a directly recruited officer in a Cadre becomes higher than the pay of another directly recruited officer in the same Cadre promoted prior to him whether before or on or after 1.1.1973, the pay of the officer promoted earlier shall be stepped up subject to the fulfilment of the conditions specified in sub-paragraph(d) below, to bring it at par with that of the officer promoted later."

Sub-para (d) mentioned above is as follows:

"The stepping of the pay of an officer promoted earlier (whether before or on or after 1.1.1973) as envisaged in sub-paragraphs(b)(i), (b)(ii) and (c) above will be allowed only on one occasion at his option. However, no stepping up shall be allowed to an officer promoted earlier, who on the date of his promotion to the senior scale was drawing lesser pay in the junior scale or Class II scale (if promotions to the senior Class I scale in any Service were made direct from Class II), as the case may be, than the officer of the same category, viz. direct recruit or promotee in the same cadre promoted later and whose pay gets fixed at a higher stage in the senior scale."

6. It is clear from the O.M. that it gives ^{the} benefit of stepping up of pay from the date the junior gets higher pay in the revised senior scale, to the senior officers belonging to the same cadre so long as the senior officer

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was not getting lesser pay in the junior scale than that of his junior promoted later but getting a higher stage in the senior scale.

7. It is admitted by the Respondents that by their order of 5th April, 1982 (Annexure I to the counter-affidavit) the provisions of the O.M. of 14th November, 1975 have been made applicable to the Indian Broadcasting (Engineers) Service to which the petitioner and his juniors belong.

8. The argument of the respondent is that since the O.M. of 14.11.1975 applies to only those Services which are organised or specified in Annexure II and since the Indian Broadcasting(Engineers) Service is not mentioned in the Appendix-II of that O.M. the petitioner cannot get the benefit of O.M. This argument has to be summarily dismissed as illogical and bereft of any reason and deserves no counter argument. The question of including the Indian Broadcasting(Engineer) Service in Annexure II to the O.M. of 14th November, 1975 cannot arise because the Indian Broadcasting(Engineers) Service was constituted in November, 1981 whereas the O.M. had been issued in 1975. The order of 5th April, 1982 (Annexure I to counter affidavit) adopting the O.M. of 14.11.1975 is as good as presuming that the Indian Broadcasting (Engineers) Service is as much governed by the O.M. of 14.11.1975 as any other Service specified in Annexure II of that O.M. The respondents themselves had issued the order of 2nd July, 1983 stepping up the petitioner's pay to the level of his junior with effect from 25.2.1982 when his junior was promoted to the revised senior scale. The mischief, if it can be called a mischief, was done by a reference to the O.M. of 25.5.1982 (Annexure II to counter affidavit) in the order of 2nd July, 1983 (Annexure V to the counter-

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affidavit). The O.M. of 25.9.1982 also states as follows:-

"After careful consideration, the President is pleased to decide that in order to remove the aforesaid anomaly, the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post, promoted on or after 5.10.1981. The stepping up may be done with effect from the date of promotion of the junior officer and will be subject to the following conditions (emphasis supplies):

- (a) Both the senior and junior officers should belong to the same cadre and the posts in which they have been promoted on a regular basis should be identical in the same cadre.
- (b) The 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 orders contained in O.M. No.1/9/79-Estt.P.I dated 5.10.1981. For example, if even in the lower post, the junior officer was in receipt of higher pay than the senior officers by virtue of fixation of pay under the normal rules or due to any advance increments granted to him OR fixation of pay of junior on promotion was regulated under different provisions other than O.M. dated 5.10.1981, then the provisions contained in this O.M. should not be invoked to step up the pay of the senior officer."

9. We do not see any basic difference between the O.M. of 25.9.1982 and that of 14.11.1975. As a matter of fact, the former seems to be based on the latter. However, the Pay and Accounts Officer in his letter of 12.8.1983 (Annexure VI to the counter) observed as follows:-

"Kindly refer Ministry of I&B letters No.9/10/71-S.III and 9/47/72-S.IIIB(D) dated 29.6.1983 stepping up the pay of Sarvashri V.K. Lamba and M.L. Keswani P&D Unit and to state that the pay of both these officers has been stepped up in terms of DPAR O.M. No.F.11/3/82-Estt.P.I dated 25.9.1982. A scrutiny of these cases has revealed

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that the officers junior to the two officers had received the benefit in pay fixation on their promotion to Senior scale (Rs.1100-1600) under the concordance table provided in Ministry of Finance O.M. No.12/21/74-IC dated 14.11.1975 and it was the reason for their pay being higher than those of their seniors. The DPAR orders dated 25.9.1982 clearly state that if the pay of Junior on promotion was regulated under different provisions other than their O.M. dated 5.10.1981 (introduced under FR 22C), then the provisions of O.M. dated 25.9.1982 should not be invoked to step up the pay of the senior officer. It is, therefore, not correct to step up the pay of Sarvashri Lamba and Keshwani under DPAR's O.M. dated 25.9.1982. Their cases for stepping up of pay should be considered under the provisions of Ministry of Finance O.M. No. 12/21/74-IC, dated 14.11.1975 and if eligible, revised sanctions may kindly be issued." (emphasis added)

It will be clear from the above that even the Pay and Accounts Officer on whose objection the impugned order was passed, himself insisted that the stepping up should be on the basis of the O.M. of 14.11.1975. The respondents however interpreted the observations of the Pay and Accounts Officer adversely not only for S/Shri Lamba and Keshwani but also for the petitioner whose case was similar to the above two officers and issued impugned order of 7th November, 1985 (Annexure VII to the counter) giving the benefit of stepping up notionally from 25.5.1982 and actually from 7th November, 1985 which was later ante-dated to 1.1.1985.

10. We need not go into the analysis of the objections raised by the Pay and Accounts Officer in his interpretation of the order of 25.9.1982 with reference to the order of 5.10.1981. The order of 5.10.1981 has not been produced by the respondent before us. However, even taking the observations of the Pay and Accounts Officer at its face value that officer had categorically stated

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that the stepping of the petitioners pay should be considered under the provisions of the O.M. of 14.11.1975. Since admittedly, the respondents have applied the provisions of 14.11.1975 to Shri G.C. Rai, the petitioner's junior and stepped up his (petitioner's) pay to Rs.1300/- per month, we have no doubt whatsoever in our mind that in accordance with the O.M. of 14.11.1975 the petitioner is fully entitled to get his pay stepped up to Rs.1300/- with effect from 25.5.1982 the date on which his junior was given that pay on promotion. Both the petitioner and Shri G.C. Rai, his junior are direct recruits and both belong to the same Service and the principle of stepping up is ideally applicable to the petitioner vis-a-vis his junior Shri G.C. Rai. The respondents themselves have accepted the petitioner's entitlement to the stepping up both by their order of 2nd July, 1983 and also by their revised order of 7th November, 1985. The only point at issue is whether the stepping up should be notional or actual from 25.5.1982 when the petitioner's junior got the higher pay.

11. By all counts, the petitioner should get the benefit of stepping up from 25.5.1982 itself and not from 7.11.1985 when the revised orders were issued. Some of the reasons can be straightaway given as follows:-

- (a) The O.M. of 14.11.1975 which admittedly has been adopted by the respondents, for fixing the pay of Shri G.C. Rai, the petitioner's junior, gives the benefit of stepping up the pay of the seniors from the actual date from which the juniors get higher pay. Even the order of 25.9.1982 as quoted in para 8 above visualises stepping up of pay of the senior from the date the junior is promoted.

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- (b) The O.M. of 14.11.1975 does not visualise notional fixing of pay.
 - (c) Giving actual benefit from 7.11.1985 will be arbitrary as it happens to be the date on which the revised order was issued. Further it would perpetuate the discrimination qua his junior in matter of pay and would therefore offend Articles 14 & 16 of the Constitution.
 - (d) The petitioner had already been paid the stepped up salary without his taking any part in the issue of the order sanctioning the stepping up. Unilaterally stepping down his salary with retrospective effect and making recovery from him would violate the principles of natural justice and the principle of not disturbing the vested civil rights established through acquiescence.
 - (e) The argument of not giving retrospective effect to the impugned order of 7th November, 1985 has already been violated by the respondents themselves by giving to the petitioner the benefit of actual stepping up from 1.1.1985. They could as well give him the benefit from 25.5.1982 itself as is due to him.

12. In the facts and circumstances discussed above, we find considerable merit in the petition and allow the same. We direct that the pay of the petitioner should remain stepped up with effect from 25.5.1982 and that no recovery

should be made from him and the recovery if made should be refunded to the petitioner. The impugned orders are quashed or amended accordingly. There will be no order as to costs.


(H.P. BAGCHI) 18.7.86


(S.P. MUKERJI) 18.7.86