

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 333 of
T.A. No.

1986

(Handwritten signature/initials)

DATE OF DECISION 8.7.87

Roshan Lal Gupta Petitioner

Shri J.P. Gupta Advocate for the Petitioner(s)

Versus

Union of India Respondent

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

CORAM :

The Hon'ble Mr. JUSTICE J.D. JAIN, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member

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

8/7/87
(Birbal Nath)
Administrative Member

J.D. Jain
(J.D. Jain)
Vice-Chairman

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Regn.No. OA 333/86

DATE OF DECISION: 8.7.87

Shri Roshan Lal Gupta

...Petitioner

Versus

Union of India

...Respondents

For Petitioner: Shri J.P. Gupta, Advocate.

For Respondents: Shri P.H. Ramchandani, Advocate.

CORAM: Hon'ble Mr. J.D. Jain, Vice-Chairman
Hon'ble Mr. Birbal Nath, Administrative Member

JUDGMENT:

(Judgment of Bench delivered by J.D. Jain,
Vice-Chairman)

The controversy in this case lies in a narrow compass. The facts giving rise to the controversy succinctly are that the petitioner was working as a Junior Accounts Officer (for short 'JAO') in the Pay & Accounts Office, Department of Steel in the pay-scale of Rs.500-20-700-EB-25-900 at the relevant time viz., (copy Annexure R-I) May, 1980, when a circular dated 27th May, 1980 was issued by the Controller General of Accounts, Department of Expenditure, Ministry of Finance, Government of India notifying that selection grade was being introduced in the cadre of J.A.O.(Group 'C') in the Departmentalised Accounts Organisation with immediate effect. The strength of selection grade was to be 10% of the posts and the pay-scale of the selection grade was Rs.775-35-880-40-1000. Accordingly, the cases of eligible candidates as per eligibility qualifications mentioned in the aforesaid letter were taken up by a Departmental Promotion Committee on 7.6.80 and the petitioner was approved for the grant

of selection grade. Accordingly, vide letter dated 10.6.80 (Copy Annexure-R-II) was issued by the Principal Accounts Office, Department of Steel vide which the petitioner was appointed to the selection grade w.e.f. 7.6.80 (i.e., the date on which the DPC had met) in terms of the aforesaid circular of the Controller General of Accounts. It was further stated in R-II that the pay of the petitioner was provisionally fixed at Rs.880/- w.e.f. 7.6.80 in the selection grade subject to the revision, if necessary, on receipt of clarification being sought from the Controller General of Accounts. Since the petitioner was due for next increment in the ordinary grade on 1.6.80, he got the advantage of the same in the fixation of salary in the selection grade. In other words, had he been appointed to the selection grade w.e.f. 27.5.80 i.e., the date of issue of the circular (R-I), he would not have got the advantage of the increment for the fixation of his pay in the selection grade.

2. Subsequently, a letter dated 21st May 1981 (copy Annexure R-III) was issued by the Controller General of Accounts, inter alia, stating that the eligibility of the J.A.Os. for grant of selection grade be determined as on 27th May, 1980 (i.e., the date of issue of the order and not the date of DPC which may vary from Ministry to Ministry and create anomalous situation). Still later another letter dated 15.4.82 (copy Annexure R-V) was issued by the Controller General of Accounts attaching therewith a list of all eligible candidates as on 27.5.80 and subsequent dates. It further stated that "in the case of persons already promoted to Selection Grade in

terms of instruction issued vide our circulars dated 27.5.80 and 21.5.81, dates of promotion may be altered and pay refixed where necessary with reference to these dates of eligibility and arrears of pay if accrued due to such refixation may be paid accordingly". The name of the petitioner figured among the JAOs who had been granted selection grade w.e.f. 27th May 1980 as per the annexure to the said letter i.e., ^{dated} 15.4.82. Interpreting this letter as implying that the petitioner's pay had to be refixed at a lower stage in the selection grade without taking into account the increments due to him on 1.6.80, the concerned department refixed the salary at a lower stage in the selection grade w.e.f. 27.5.80. However, in order to avoid total hardship to him as a result of refixation of his salary at a lower stage, the department sought to give him the benefit of the concession contained in the letter dated 1st January 1982 issued by the Department of Personnel & Administrative Reforms, Ministry of Home Affairs on the subject of selection grade for Grade 'C' of C.S.S.S. - Anomaly in the matter of pay on anti-dating the effect of introduction of Selection Grade from 1.10.77 to 1.8.76. Obviously, the said letter had been issued in relation to the Selection Grade granted to Grade 'C' of the C.S.S. which was given effect from 1.10.77 but was anti-dated to 1.8.76. It, inter alia, provided that -

"In order to mitigate the financial loss to the employees concerned, it was decided that the pay allowed to an individual on appointment to the Selection Grade from 1.10.77 may be protected by grant of personal pay, from time to time, equal to the difference between the pay admissible to him on that date consequent upon his appointment to the Selection Grade w.e.f. 1.8.76 and the pay fixed on his appointment

to the Selection Grade from 1.10.77".

It was further clarified that -

"the refixation of pay on the basis of their option would be done only on notional basis and they would draw the benefit from the date of issue of these orders".

Still later, the Ministry of Finance issued a letter dated 28.7.1983 (Copy Annexure R-VII) giving option to Group 'C' and 'D' cadres in relation to the selection grade. It clarified that -

"The employees considered fit for appointment to the selection grade introduced in terms of orders contained in this Ministry's office Memorandum No.F.7(21)-E.III(A)/74 dated 10.1.77 as modified from time to time or in relaxation thereof, may be allowed an option to draw pay in the selection grade from the date of their next increment in the ordinary grade. These orders would be deemed to have taken effect from 1.8.76".

The said letter further stated that-

"those already holding selection grade on the date of issue of these orders would be required to give option before 30th August, 1983. The re-fixation of pay on the basis of their option would be done only on a notional basis and they would draw the benefit from the date of issue of these orders."

Pursuant to the said letter, the petitioner exercised his option on 30th August, 1983 stating that he opted for the selection w.e.f. 1.6.80 i.e., from the date of his increment in the J.A.O's ordinary scale. By a separate letter of even date, he also prayed the Controller General of Accounts for waiving of any excess amount which may have been paid to him consequent upon the fixation of his salary earlier at Rs.880/- w.e.f. 7.6.80. Eventually, however, vide impugned letter dated 13/16.2.1984, the Controller of Accounts made an order that re-fixation of the salary of the petitioner in accordance with his option would be notional for the

period 1.6.80 to 27.7.83 and it would qualify only for the purpose of pension and actual benefit would be admissible only from 28th July, 1983 onwards only. As a sequel to the said letter an amount of Rs.2106.10 has been withheld by the respondents from the gratuity payable to the petitioner by the Department of Steel. This constitutes the bone of contention between the parties in this petition.

3. The submission of the learned counsel for the petitioner is two-fold. In the first instance, he has urged that vide letter dated 10th June, 1980, he was appointed to selection grade w.e.f. 7.6.80 and there is nothing in the said letter to warrant an inference that the said date was provisional, the reason being that the date on which the DPC had met was considered to be the date from which the persons found eligible to the selection grade were granted selection grade. He has emphasised that what was provisional as per last para of the said letter was the amount of salary viz., Rs.880/- and not the date from which he was found entitled to the selection grade. His second contention is that in any case he had exercised the option validly, first on 8.2.82 pursuant to the order dated 5.2.82 of the A.S. & F. As and again on 30.8.83 in terms of letter dated 28th July, 1983 (R-VII). He questions the validity of the portion of the said letter (R-VII) which renders the re-fixation of pay on the basis of their option only notional, and restricts the benefit flowing therefrom from the date of issue of the said letter.

4. On a careful consideration of the whole matter

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we do not find any force in the submissions made by the learned counsel for the petitioner. It is for the simple reason that the letter R-I dated 27th May, 1980 purported to introduce the selection grade for the first time w.e.f. 27th May, 1980 itself. On a plain reading of the said letter, there can be no manner of doubt that all those JAOs who satisfied the conditions of eligibility as laid down therein on 27th May, 1980 became entitled to the grant of selection grade. The petitioner being one of those officers cannot be heard to say that he would opt for the same from a subsequent date. The date of meeting of the DPC as was rightly pointed by the Controller General of Accounts in his letter dated 21st May, 1981 (Annexure R-III) was not at all germane for the grant of selection grade because such dates may vary in the case of various DPCs appointed by the different departments/ministries. That apart, the date of eligibility to the grant of selection grade cannot be postponed at the sweetwill of the concerned department of the government to the prejudice of the incumbent of the post unilaterally. They have to give the benefit to all the eligible Officers in terms of the conditions embodied in the order introducing the selection grade itself, unless of course, the government considers that it will be more beneficial to the employee if he is given an option to select a subsequent date which may be beneficial to him on account of his having earned an increment in the meanwhile. This contention of

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the learned counsel for the petitioner is therefore wholly falacious. Likewise, the condition that the refixation of pay on the basis of the option exercised by the concerned official would be done only on notional basis and that he would draw the benefit from the date of his exercising the option constitutes an integral part of both the letters dated 1.1.82 (Annexure R-IV) and 28th July, 1983 (Annexure R-VII). For obvious reasons, the petitioner could not have the cake and eat it too. In other words, he could not claim the benefit of the option from a future date at his sweet-will as the letter qualifies the right of option by restricting the benefit of selection grade from the date of option exercised by an official and it must be given its full effect. The above mentioned letters have to be read as a whole and not piecemeal as is sought by the learned counsel for the petitioner. In this view of the matter, therefore, there is substance in the stand of the respondents that the petitioner was not entitled to the grant of selection grade w.e.f. 7.6.80 inasmuch as he was eligible from the date of the circular R-I.

5. The matter, however, does not end there and it has still to be considered whether having regard to the peculiar circumstances, the respondents would be justified in withholding or recovering the excess amount paid to the petitioner. A sheer pedantic and narrow doctrinaire approach implying insistence on strict adherence to formal rules may perhaps lead to miscarriage of justice. Here is a case where the petitioner had almost completed a full year of service so as to qualify for the next increment only four days

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after the introduction of the selection grade. In all fairness, therefore, his claim for the grant of selection grade from the subsequent date viz., 7.6.80 from which date he had actually been given the selection grade albeit by mistake, cannot by any stretch of reasoning be called a tall or even exaggerated claim. To deprive him of the benefit of almost one full year's service would surely work hardship and cause endless heart-burning especially when he has already retired and no steps were taken by the respondents at any time while he was still in service to recover the excess amount paid. Indeed the excess payment made to the petitioner under mistake is tantamount to compensation paid to him for full one year's service at negligible cost to the exchequer. Obviously, he received the benefit of the selection grade for all these years in good faith and now he has been asked to disgorge the same at a time when he has nothing more but paltry pensionary benefits to fall back upon. We may, however, sound a note of caution in that we should not be misconstrued as laying down that the petitioner was entitled as of right to selection grade w.e.f. 7th of June, 1980. All that we mean to emphasise is that simple mathematics flowing from a hypertechnical view of the matter does not always solve the problem equitably. The petitioner is putting forward his claim on the strength of full one year's service rendered by him only as a shield in defence and not as a shot in his armoury. Quite often considerations of equity and substantial justice creep in a situation like this. So, even though the respondents may be right

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in their interpretation of the letter Annexure R-I on a literal construction, we do not think it a fit case, having regard to the peculiar features thereof to decline the relief sought by the petitioner. It may also be noticed that there was some delay on the part of the respondents in paying pensionary benefits and therefore, the petitioner has laid claim for interest. Hence taking into consideration these peculiar circumstances, we consider that it would be just and proper that the relief claimed for is allowed. After all it is a small amount which the State in all its dignity and grace can afford to waive.

6. As a result, we allow this petition to the extent that the respondents shall not withhold or recover the amount allegedly paid to the petitioner in excess of his dues under letter Exhibit R-I read with letter R-VII. Under the circumstances, we make no order as to costs.

8/7/87
(Birbal Nath)
Administrative Member

J.D. Jain
(J.D. Jain)
Vice-Chairman
7/8/87