

V3

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
.....

O.A.No.714/86

Date of decision: 20.08.1992

S.N. Teckchandani

...Applicant

Versus

Union of India & Ors.

...Respondents

CORAM:

HON'BLE MR. J.P. SHARMA, MEMBER (J)

Counsel:

For the applicant

...Shri R.L. Sethi,
Advocate

For the respondents

...None.

1. Whether Reporters of local papers may be allowed to see the Judgment ? *Yes*
2. To be referred to the Reporter or not ? *Yes*

JUDGMENT

(Delivered by Hon'ble Mr. J.P.
Sharma, Member (J))

The applicant, Export Promotion Officer,
Ministry of Commerce is aggrieved by the order dated
3-2-1986 and 29-10-1985 passed by respondent no.1.

2. The impugned order dated 29-10-1985 deals
with the fixation of pay of the applicant for the period
from 8-12-1980 to 7-12-1984 when he was allowed to draw
the pay scale of Senior Investigator plus 20% thereof
as Deputation (Duty) Allowance in accordance with the
instructions contained in the Ministry of Finance O.M.

↓
...2.

No.F-10(24)/E.III/60 dated 4-5-1961, as amended from time to time. The order dated 3-2-1986 is rejecting the request of the applicant for stepping up of pay in the post of Export Promotion Officer vis-a-vis to his junior, namely, Miss Vimla Puri.

3. The applicant has claimed the relief to step up his pay at the next stage above the pay being drawn by applicant's junior, respondent no.3, on 8-12-1984, i.e., the date when the applicant returned from deputation to his parent department. Further, a direction to the respondents that the applicant be allowed to draw admissible deputation pay on the pay last drawn by the applicant ^{before} proceeding on deputation on 8-12-1980.

4. The facts of the case are that the applicant was recruited as Investigator on 1-5-1958 in the scale of Rs.425-700. He was promoted as Senior Investigator in the scale of Rs.550-900 w.e.f. September, 1965. He was further promoted as Export Promotion Officer in the scale of Rs.650-1200 w.e.f. 15-3-1975 on ad hoc basis and was subsequently regularised w.e.f. 1-7-1985. The applicant was selected and appointed on deputation as Research Officer in the scale of Rs.650-1200 for a period of three years while he was working as Export Promotion Officer (EPO) and he continued to work till he was reverted to the parent department w.e.f. 8-12-1984. While the applicant was on deputation, many of his juniors had

been promoted as EPO and some of them, particularly respondent no.3, Miss Vimla Puri was drawing more pay than the applicant. The grievance of the applicant is that when he returned from deputation to parent department, the applicant's pay for the period of deputation from 8-12-1980 to 7-12-1984 was fixed in the scale of Senior Investigator and not at the last pay drawn by him at the time of proceeding on deputation as EPO. Further, the pay of the applicant was not stepped up when he joined the parent department vis-a-vis his junior. The applicant made representations but to no avail and the impugned orders were passed.

5. The respondents contested the application and filed the reply and it is stated that the order dated 29-10-1985 relates to the pay fixation of the applicant as Research Officer on deputation. The applicant has accepted the deputation and cannot now assail the same. The applicant was appointed as EPO on ad hoc basis w.e.f. 15-3-1975. He continued to work on that post till he was appointed as Research Officer on deputation. The applicant was appointed in the same department in which he was working as EPO on ad hoc basis and again on reversion from the deputation post, he was appointed as EPO in the same department. As regards the pay of respondent no.3,

she got the benefit of increments in the post of EPO held by her on ad hoc basis but the applicant did not get such benefit of increments in the post of EPO held by him on ad hoc basis prior to his deputation to the post of Research Officer. On deputation, the applicant was allowed to draw his grade pay in the substantive post of Senior Investigator plus 20% thereof as Deputation (Duty) Allowance in accordance with the rules and as per option exercised by him in writing for drawal of such pay. His pay which he was drawing on the post of EPO before going on deputation has not been taken ^{into} account for the fixation of pay on the deputation post of Research Officer because in terms of para 6 of the Ministry of Finance O.M. No.F.I(11)/E-III(B)/75 dated 7-11-75, according to which pay for the purposes of drawal of deputation allowance shall mean the pay drawn in the scale of pay of the substantive appointment held in the scale of pay or the officiating appointment held in the parent cadre provided that officiating appointment ^{so} ~~was~~ held was not in a tenure post and it is certified by the appointing authority that for the deputation, the employee would have continued to hold the officiating appointment indefinitely. Since the applicant, prior to his appointment on the

deputation post of Research Officer, ~~was~~ held an officiating appointment in the post of EPO on ad hoc basis, such certificate could not be given in his favour. It is denied that the certificate to the effect that the applicant would have continued to officiate as EPO but for his deputation as Research Officer was ever given by the respondents. The applicant while officiating as Research Officer on deputation post for a period of four years, did not earn any such increments and so the anomaly in the pay of senior and junior due to this reason and not by virtue of application of F.R. As such, it is prayed that the application is misconceived and liable to be dismissed.

6. I heard the learned counsel for the applicant and none appeared for the respondents. It is not disputed that at the material time when the applicant was selected for the deputation post as Research Officer w.e.f. 8-12-1989, the applicant had already rendered nearly six years service as EPO on ad hoc basis. The notification appointing the applicant as Research Officer designated him as officiating EPO and not as Senior Investigator. The scale of pay of EPO and Research Officer (RO) is identical. Before going on deputation as Research Officer, the applicant was never reverted to his substantive post of Senior Investigator. The scale of pay of the post of Senior Investigator is Rs.550-900

and that of EPO is Rs.650-1200. Thus, when the applicant was selected for deputation and he was already officiating as EPO, he has to draw the pay on deputation post protecting his last pay as EPO. Though applicant has exercised the option to draw the Deputation (Duty) Allowance, it is not disputed that both these posts are under the control of Ministry of Commerce. The post of RO on deputation basis is in the nature of incentive and is also filled on merits criterion. The notification invited eligible persons holding the post of EPO on ad hoc basis also. Thus, it does not appear reasonable that a person will join the deputation post in identical scale on lesser pay. Since the applicant was not reverted to his substantive post of Senior Investigator before his appointment in ex-cadre post of RO, so his pay fixation on the basis of substantive post of Senior Investigator would be against the principles of natural justice. Particularly, in view of the fact that in his appointment order for RO, he was designated as EPO. Further, a certificate has also been issued in favour of the applicant that the applicant would have continued to officiate as EPO on ad hoc basis indefinitely but for his deputation and this is dated 8-9-1983. The applicant has also represented for reversion to the

parent cadre in case it was not possible to protect his pay drawn as EPO for the purpose of deputation allowance. It is also evident from the record that the applicant put in more service than his junior, Miss Vimla Puri, respondent no.3. The letter dated 23-5-1980 filed as annexure A for filling up the post of EO clearly go to show that officers under the Central Government holding analogous post or with at least 5 years service in post in the scale of Rs.550-900 or equivalent and having experience in Economics/Statistical investigation work, were eligible to be considered for the posting as RO. The pay of such officer was to be regulated in accordance with Ministry of Finance O.M. No.10/24-E.III(B)/60 dated 4-5-1961, as amended from time to time. The learned counsel for the applicant has filed an extract from Swamy's Compilation of F.R.S.R. Part-I, General Rules Seventh Edition, Appendix V regarding definition of the term 'Pay' and in para 6, the pay for the post shall mean the pay drawn in the scale of pay of the substantive appointment held or the pay in the scale of pay of the officiating appointment in an employee's parent cadre provided that the officiating appointment so held was not in tenure post and it is certified

by the appointing authority that for the deputation, the employee would have continued to hold the substantive appointment indefinitely. The learned counsel for the applicant has also filed the extract of the seniority list as on 1-7-75 of Senior Investigators ^{where} he has ^{been} shown senior to Km. Vimla Puri. The learned counsel for the applicant has also referred to the comparative chart of the pay drawn by the applicant since September, 1980 vis-a-viz Miss Vimla Puri. From 1980 to 1984, the pay of the applicant was Rs.1080, i.e., Rs.900 plus 180 as deputation allowance. Both of them were getting the same pay as Senior Investigator in September, 1980 but Miss Vimla Puri continued to earn the increments on the post of EPO from 1981 to 1984. In 1985-86, the applicant was drawing lesser pay of Rs.120 per month than that of Miss Vimla Puri. The case of the applicant is that when he went on deputation, his last pay as EPO was Rs.960/-. The learned counsel for the applicant has also referred to another chart of pay drawn in the post of Senior Investigator and EPO vis-a-vis Miss Vimla Puri. Having gone through the comparative chart, it is evident that the applicant has been put to financial loss. In the representation,

dated 7-2-86, however, the applicant himself has admitted that he exercised the option to draw the deputation allowance in the lower post much to his financial disadvantage. In view of this fact, the applicant cannot have any grudge regarding the deputation allowance and protection of pay while he was working as RO on deputation.

7. However, after he reverted back to his parent department, he has been regularised w.e.f. 1-7-1985 and since he had gone on deputation after selection with the consent of the parent department, then he cannot draw lesser pay vis-a-viz his junior, respondent no.3. The objection taken by the respondents in their counter is that since the applicant was on deputation, the junior to the applicant, respondent no.3, continued to earn the increments and that is why the pay of his junior, respondent no.3 is more than the applicant. Had the applicant remained in the parent department, he would have continued to officiate as EPO on ad hoc basis and so would have earned increments which he was denied while he was on deputation post as RO. There is also on record a certificate issued by the parent department that if the applicant had not gone

on deputation, he would have continued to officiate as EPO upto date he joined back. There is an established principle that the pay of the senior has to be stepped up to the level of junior from the date of regularisation if the anomaly in the pay has arisen not because of any fault of such senior. Though there is a policy decision taken by the Department of Personnel and Training, but, at the same time, the applicant's pay has to be stepped up as no junior can be allowed to draw more pay than his senior. The applicant has also cited certain instances by filing annexure to Rejoinder where the pay of Shri M. Samuel, Sr. Economic Investigator, Shri R.M. Chatterjee, Sr. Investigator and Miss Kamlesh, Jr. Investigator have been given the benefit (annexure A-4).

8. Taking all these facts into account and on the basis of above discussion, the application is partly allowed and the respondents are directed to step up applicant's pay at the next stage above the pay being drawn by the applicant's junior, respondent no.3 with effect from the date of regular promotion to the post of Export Promotion Officer, that is, 1-7-85. The other part of the relief claimed by the applicant regarding

admissibility of deputation pay on the pay last drawn while proceeding to deputation on 8-12-1980 is not allowed.

9. The application is disposed of as above, with the aforesaid directions. The respondents to comply with the above directions within a period of three months from the date of receipt of the order.

There is, however, no order as to costs.

J. P. Sharma
(J.P. SHARMA)
JUDICIAL MEMBER

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