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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 584/87.
T.A. No.

198

DATE OF DECISION 17.11.1987.

Shri B.N. Chopra & Ors.

Petitioner Applicants.

Shri K.L. Bhatia

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondents

Shri P.P. KHURANA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Birbal Nath, Administrative Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

17/11/87
(BIRBAL NATH)
Member (A)

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PRINCIPAL BENCH
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DATE OF DECISION: 17.11.1987.

Shri B.N. Chopra & Ors. Applicants.

Vs.

Union of India & Ors. Respondents.

COMAM:

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicants: Shri K.L. Bhatia, Advocate.

For the respondents: Shri P.P. Khurana, Advocate.

J U D G M E N T

Per this Original Application (No. 584/87) filed in April, 1987 before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the applicants S/Shri B.N. Chopra, B.P. Jain and O.P. Khosla have prayed for quashing the impugned order No. 19-4/85-Estt. I dated 5th March, 1986 (Annexure I) vide which, consequent upon the promotion of the applicants to the post of Office Superintendent, their pay was re-fixed and reduced on the ground that the earlier pay fixation taking into account the pay drawn by them in the ex-cadre post of Junior Accountant was not in order.

2. The relevant facts leading to the instant application can be briefly stated as follows.

The three applicants had been working in substantive posts of Upper Division Clerk in the Delhi Milk Scheme under the

Ministry of Agriculture from the dates indicated against each:-

Shri B.N. Chopra	3.8.1960.
Shri B.P. Jain	1.11.1961
Shri O.P. Khosla	15.1.1962.

S/Shri B.N. Chopra and B.P. Jain were appointed Junior Accountants in the pay scale of Rs. 425-600 on 18.4.1975.. The third applicant, Shri O.P. Khosla, was appointed to the said post on 12.2.1976. The orders of promotion (Annexures V and VI) show that these promotions were made on transfer basis.

Later, the applicant No. 1 (Shri B.N. Chopra) was promoted to the post of Office Superintendent vide order dated 30.11.1977 (Annexure VIII-1) and para. 3 of the said order reads as under:-

"Shri B.N. Chopra, permanent Upper Division Clerk and at present working as Jr. Accountant is appointed to officiate as Office Superintendent in the pay scale of Rs. 550-20-650-25-750 purely temporary and on an ad-hoc basis with effect from he takes over the charge against the resultant vacancy of Sh. Sheo Ram, Office Superintendent who has since been appointed to officiate as Assistant Administrative Officer on ad-hoc basis till further orders."

Shri B.P. Jain was promoted on 27th June, 1980 vide order dated 27th June, 1980 (Annexure VIII-iii). This order reads as under:

"Shri B.P. Jain, a permanent Upper Division Clerk and at present working as Junior Accountant is promoted to officiate as Office Superintendent against the higher post of Assistant Administrative Officer, in the pay scale of Rs. 550-20-650-25-750 with effect from the date he takes over charge of the post.

He is further directed to report to Transport Office as Office Superintendent."

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Shri D.P. Khosla was similarly promoted vide order dated 4.12.1981 which reads as under:-

"Shri D.P. Khosla, a permanent Upper Division Clerk and at present working as Junior Accountant is promoted to officiate as Office Superintendent in the scale of pay of Rs. 550-20-650-25-750 with effect from the date he takes over the charge of the post."

The pay of the applicants on promotion from the post Junior Accountant to the post of Office Superintendent was fixed as follows:-

	<u>Pay as Jr. Accountant</u>	<u>Pay as Office Superintendent.</u>
1. Shri B.N. Chopra	Rs. 600/-	Rs. 630/-
2. Shri B.P. Jain	Rs. 600/-	Rs. 630/-
3. Shri D.P. Khosla	Rs. 620/-	Rs. 650/-.

However, the pay of the applicants was revised by the impugned order of 5th March, 1986 as follows:-

S.No.	Name	Effective dates	Pay as already drawn as D.S.	Pay now to be fixed as D.S.	Amount of recovery of basic pay (exc. allowances)
1.	Sh.B.N. Chopra	1.12.77	Rs. 630/-	Rs. 590/-	Rs. 40/- per month and above.
2.	Sh.B.P. Jain	26.6.80	Rs. 630/-	Rs. 590/-	Rs. 40/- per month and above.
3.	Sh.D.P. Khosla	14.7.81	Rs. 650/-	Rs. 530/-	Rs. 60/- per month and above.

The applicants were required to defray as arrears of the excess pay drawn by them as under:-

Shri B.N. Chopra	Rs. 10,956.40 upto June, 1986.
Shri B.P. Jain	Rs. 7,348.85 upto June, 1986.
Shri D.P. Khosla	Rs. 12,454.00 detained against the gratuity since he had retired w.e.f. 31.1.1987.

3. It is the case of the applicants that their original pay was fixed under Rule 22-C of the Fundamental Rules as averred in para. 6.10 of the application and its re-fixation in terms of

of Office Memorandum No. 7(75)-Estt.III(A)/71 dated 3rd April, 1972 was bad in law because they were visited with civil consequences without being given an opportunity to show cause and secondly, the case of the applicants is fully covered by the judgment delivered by the Bench of the Hon'ble Shri S.P. Mukerji and Hon'ble Shri H.P.

Bagchi in the case of Shri Bahadur Chand Bhatia Vs. Union of India & Ors.¹

Shri Bahadur Chand had been working in an ex-cadre post and on his promotion, he was denied appropriate grade on that ground. The same ground has been taken by the respondents in the case of the applicants in their counter affidavit vide para 16.13 in which it is conceded that the pay was fixed under F.R. 22-C but in terms of the aforesaid Office Memorandum, it was reduced because the applicants were working in the ex-cadre posts.

Para. 6.13 of the counter reads as under:

"6.13 Admitted to the extent that the pay of the plaintiffs were fixed under FR 22C. In fact the pay of these officials should have been fixed/regulated as per Ministry of Finance O.M. No.7(75)-Estt.III(A)/71 dated 3.4.1972 as it is not permissible to fix pay in a cadre post on the basis of pay drawn in ex-cadre post. Their promotion to the post of Office Supdt. was from the cadre of Upper Division Clerk as provided in the Recruitment Rule for the post of Office Superintendent."

The stand taken by the respondents in the above paragraph of their counter is in accordance with the provisions of the Office Memorandum dated 3rd April, 1972 on the subject.

The concluding line of paragraph 2 of the said Office Memorandum states that it is not permissible to fix pay in a cadre post on the basis of pay in an ex-cadre post. The learned counsel for the applicants argued that this O.M. has no validity because it takes away the benefits given by the statutory provisions of F.R. 22C.

1. A.T.R. 1987 (1) CAT 496.

In this regard, he relied upon the judgment delivered by the Tribunal in the case of Shri Bahadur Chand Bhatia Vs. Union of India & Ors. (supra) wherein the provisions of this O.M. have been struck down in the following words:-

"9. 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...."

Thus, the respondents cannot rely on the provisions of this O.M. while deciding the case of the applicants.

2. The learned counsel for the applicants relied on the judgment delivered by the Punjab & Haryana High Court in the case of Suresh Kumar and another v. Union of India & Ors.¹ His contention was that the civil right given to the applicants vide F.R. 22-C cannot be taken away by executive instructions particularly, with retrospective effect. He further relied on the judgment of the same High Court in the case of Subhashni Mahajan Vs. the State of Punjab & Ors.² wherein selection grade granted to the petitioner was cancelled and the order was quashed because the cancellation had taken place without any notice or hearing given to the petitioner.

The learned counsel for the applicants also relied on the similar judgment delivered by the Delhi High Court in the case of Iqbal Singh Vs. Inspector General of Police, Delhi & Ors.³ wherein it was held that executive orders which had adverse effect can be passed only after complying with the principles of natural justice. He also relied on the judgment of the Tribunal delivered in the case of Sukhpal Singh Vs. Union of India & Ors.⁴ wherein

1. AIR 1969 Punjab & Haryana 257.

2. 1984(1) SLR 341.

3. 1971 SLR 257.

4. 1986(2) ALSLJ 1.

stoppage of special pay and orders for recovery of the special pay were quashed because the affected party had been given no opportunity of hearing. Lastly, the learned counsel for the applicants relied on the judgment of the Kerala High Court in Aleyamma Vs. Dy. Director, Education, Kinnakulam & Ors.¹

wherein higher scale of pay was granted on the basis of total service and after the lapse of several years, the Government had directed the petitioner to refund the excess amount drawn by way of higher scale of pay on the basis that length of service was calculated wrongly.

5. In view of the ratio given in the whole catena of judgments quoted above, it is found that the pay of the applicants is being reduced and excess pay is to be recovered by a unilateral decision of the respondents. The applicants were not given any chance to show cause against the proposed re-fixation and recovery of pay. Accordingly, the impugned order of 5th March, 1986 is in violation of the principles of natural justice and cannot be legally sustained. The same is therefore, hereby quashed. The amount of Rs. 12,454.00 recovered from the death-cum-retirement gratuity of applicant No. 3, Shri O.P. Khosla will be reimbursed to him since the order of recovery is found to be illegal.

6. In view of the foregoing position of law as discussed, the application is allowed, with no order as to costs *and without discussing other contentions raised on behalf of the applicants*

(BIRBAL NATH)
Member (A)
17.11.1987.