

44

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Regn. No. OA 633/87

20.8.87

Shri Brahm Avtar Aggarwal ... Applicant

vs

Union of India ... Respondent

Applicant in person

Shri N.S.Mehta ... Advocate for respondents

CORAM:

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985. The applicant, Shri Brahm Avtar Aggarwal now working as Assistant Legal Advisor in the Ministry of Law and Justice, has sought relief against the order of the respondent dated 27.6.86 denying fixation of his pay at Rs. 1350 per month (in the pre-revised pay scale of Rs. 1200-50-1600) under FR 22-C with effect from 23.11.83. The facts briefly in this case are that the applicant, at the time of the said appointment, was working as Assistant Legal Advisor in the Enforcement Directorate (Foreign Exchange Regulation Act, 1973), Department of Revenue, Ministry of Finance in the pre-revised payscale of Rs. 1100-50-1600. The applicant had joined the post in the Finance Ministry on 27.10.1980 and had been drawing pay at Rs. 1250 per month with effect from 1.10.1983 in the Enforcement Directorate. The applicant was appointed as Assistant Legal Advisor (Grade IV of Indian Legal Service), in the pre-revised pay scale of Rs. 1200-50-1600 on 23.11.83 on the recommendation of the Union Public Service Commission.

The Union Public Service Commission had recommended fixation of his salary under normal rules. The Department of Legal Affairs continued the applicant's pay at Rs. 1250 per month vide their orders dated 31.1.1984 as modified by their order dated 30.10.1984, instead of fixing his salary at Rs. 1350 per month under the provisions of FR 22-C read with Department of Personnel and Administrative Reforms' OM No. F.1/9/79-Estt.(Pay)I dated 5.10.81. The letter of the Department of Personnel lays down:

"Application of F.R.22-C to promotions/appointments to Group'A' posts with starting pay upto Rs. 1,500/- A reference is invited to O.M.No.F.1(10-E.III(A)/74, dated the 21st June, 1974(Order No.(9) below F.R.22) wherein it was indicated that in respect of promotions/appointments from one Group'A' post to another Group'A' post carrying higher duties and responsibilities, the pay of the employees would be fixed at the stage next above the pay drawn in the scale of the lower post. It has been represented to the Government that under the application of these orders, the increase in pay that accrues to an individual has not in all cases been commensurate with the increased duties and responsibilities devolving on him. The matter has accordingly been examined further and it has been decided that in respect of all promotions/appointments to Group'A' posts with starting pay upto Rs.1,500, the pay of the employees will be fixed under the provisions of FR 22-C, viz., their pay will be fixed at a stage in the scale of pay of the higher post next above the pay drawn in the lower post which is notionally increased by one increment."

2. According to the applicant, as the post of the Assistant Legal Advisor in the Ministry of Law and Justice is a post carrying duties and responsibilities higher than those attached to the post of Assistant Legal Advisor in the Enforcement Directorate, the applicant is entitled to the benefit of fixation of his pay under provisions of FR 22-C according to which the pay is to be fixed at a stage in the scale of pay of the post of Assistant Legal Advisor(Grade IV of Indian Legal Service) next above the pay drawn in the post of Assistant Legal Advisor, Enforcement Directorate which is notionally increased by one increment. Applying the provisions

of F.R. 22-C, the pay of the applicant should be Rs. 1350 with effect from 23.11.83 and not Rs. 1250 per month. The applicant's representation was rejected by the department without assigning any reasons. His appeals and later a memorial to the President were also rejected likewise.

3. The respondents in their reply have stated that the post of Assistant Legal Advisor in the Ministry of Law and Justice is not a post carrying higher duties and responsibilities than those attached to the post of Assistant Legal Advisor in the Enforcement Directorate and, as such, the applicant is not entitled to the benefit of fixation of pay under provision of F.R. 22-C. It has been further stated that the pre-revised scale of pay attached to the post of Assistant Legal Advisor in the Department of Legal Affairs, viz., Rs. 1200-1600 is a segment of the scale of Rs. 1100-1600 which was the pay of the Assistant Legal Advisor in the Enforcement Directorate and, as such, pay of the applicant is to be fixed under F.R. 22(a)(ii) and the provisions of F.R. 22-C would not be invoked in such cases. It has been further pointed out that as a result of the recommendations of the IV Pay Commission, both the posts carrying earlier payscale of Rs. 1100-1600 and Rs. 1200-1600 have been merged in the scale of Rs. 3000-4500 with effect from 1.1.86. Similarly, the requisite experience at the bar etc., essential for the post of Assistant Legal Advisor in the Enforcement Directorate which was 5 years has since been raised to 7 years which is the same as for the Assistant Legal Advisor in the Department of Legal Affairs. The respondents have rejected the claim of the applicant that on his appointment as Assistant Legal Advisor in the Ministry of Law and Justice, he carried duties and responsibilities of greater importance than those attached in his previous assignment.

4. F.R. 22-C lays down that where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him, his initial pay in the timescale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued. There is also a provision that where a Government servant is, immediately before his promotion or appointment to a higher post, drawing pay at the maximum of the timescale of the lower post, his initial pay in the timescale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by an amount equal to the last increment in the timescale of the lower post.

5. F.R. 22(a) deals with cases of permanent or temporary post on the same timescale. Obviously, posts in the timescale of 1100-1600 and 1200-1600 cannot be considered as the same timescale. F.R. 22-C deals with cases of promotion or appointment to a higher post. The crucial point therefore is to decide whether the post of the Assistant Legal Advisor ^{Law and} in the Ministry of Justice is of a higher position or ^{has} greater responsibilities than the post of the Assistant Legal Advisor in the Enforcement Directorate. If the judgement is that the post in the Ministry of Law and Justice carries higher responsibilities and higher scale of pay, F.R. 22-C will apply and in that case, the pay of the applicant must be fixed at Rs. 1350 on his appointment in the Ministry of Law and Justice. If it is held that both the posts are of equal responsibility, then F.R. 22-A will apply.

6. Normally, posts carrying equal responsibilities and equal status should have similar minimum and maximum in the timescale and the annual increment should also be the same.

This is evidently not the case. The minimum of the scale in the post of Assistant Legal Advisor in the Enforcement Directorate is Rs. 100 less than of the post in the Ministry of Law and Justice. There are other points for consideration. Even though both the grades have now been merged as a result of the recommendations of the IV Pay Commission and that the experience at the bar etc., for the post of Assistant Legal Advisor in the Enforcement Directorate which was 5 years earlier has also been raised to 7 years now, the fact remains that at the appropriate time there were different grades and different experience for the two posts. It has been brought out by the applicant that the Assistant Legal Advisor in the Enforcement Directorate advises the Directorate only, while an Assistant Legal Advisor in the Ministry of Law and Justice tenders legal advice on all matters referred to by various administrative ministries allotted to him for advice. While the advice of the Assistant Legal Advisor in the Enforcement Directorate is not binding on the department, the legal opinion of the Assistant Legal Advisor in the Ministry of Law and Justice is binding on other departments. It has also been stated by the applicant that the payscale of Junior Law Officer in the Law Commission was Rs. 1100-50-1600 and the post of Assistant Legal Advisor(Grade IV of the Indian Legal Service) in the payscale of Rs. 1200-1600 was a post of promotion for Junior Law Officers implying thereby that the duties and responsibilities of Assistant Legal Advisor were higher than those attached to the post of Junior Law Officers in the Law Commission and that such Junior Law Officers were given the benefit of provisions of F.R. 22-C. There appears to be no doubt that the Assistant Legal Advisor in the Ministry of Law and Justice would be considered a post of higher responsibility not only because of higher scale of pay at the concerned time but also because the chances of promotion and of occupying positions of higher responsibilities are greater for a person joining as an Assistant Legal Advisor in the



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Ministry of Law and Justice. An Assistant Legal Advisor with 3 years' experience could be promoted as Deputy Legal Advisor in the Ministry of Law and Justice in the pre-revised scale of Rs. 1500-2000 whereas in the case of the Enforcement Directorate, the Deputy Legal Advisor's scale was Rs. 1300-1700.

7. In an advice given by the Attorney General of India on 5.12.79, Shri Lal Narain Sinha had opined that according to the OM No. F14(1)/72-O&M dated 18.9.72 issued by the Ministry of Law and Justice (Department of Legal Affairs), the advice given by the Law Ministry on a question of law is to bind other departments. From this it is clear that the authority and responsibility of an Assistant Legal Advisor in the Ministry of Law and Justice would be higher than those of his counterpart in the Department of Revenue, Directorate of Enforcement. Once it is accepted that the post of Assistant Legal Advisor in the Ministry of Law and Justice carries higher responsibilities, it follows that the pay of the applicant has to be decided according to FR 22-C. In view of the above, the application is allowed. The respondents are directed to fix the pay of the applicant at Rs. 1350 in the pre-revised payscale of Rs. 1200-50-1600 with effect from 23.11.83 under the provisions of FR 22-C read with Government of India's order issued in Department of Personnel and Administrative Reforms' O.M. No. F.1/9/79-Estt.(Pay-I) dated 5.10.1981. He will be entitled to all arrears of salary and to refixation of his salary at the appropriate stage with effect from 1.1.86 in the revised payscale of Rs. 3000-100-3500-125-4500. The applicant should be paid all the arrears within a period of 3 months from the date of receipt of this order by the respondents. The respondents are not required to pay interest on the arrears which must be paid within a period of 3 months as ordered above. In the circumstances, there will be no order as to costs.

B.C. Mathur
(B.C. Mathur) 20.8.87
Vice Chairman