

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No.1107/90

Date of decision: 10.06.1993.

Shri H.R. Saini

...Petitioner

Versus

The Administrator, Union Territory of

Delhi/Lt. Governor and Another

...Respondents

Coram: The Hon'ble Mr. I.K. Rasgotra, Member(A)

For the petitioner

Shri G.D. Gupta, Counsel.

For the respondents

Mrs. Avnish Ahlawat, Counsel.

Judgement


The petitioner Shri H.R. Saini was appointed as Assistant Education Officer (AEO) in the Municipal Corporation of Delhi (MCD) on 3.5.1961 on regular basis where he continued to work in that capacity till 1.7.1990. From that date the middle and higher secondary schools under the Corporation were transferred and taken over by the Delhi Administration. The transferred employees were placed in a separate cadre and given the nomenclature of the 'Special Cadre' as distinct from the administrative cadre. The transferred employees, including the petitioner herein were given protection of pay and allowances and benefits of continuity of service for all purposes including seniority etc. The service rendered by the employees transferred to the Corporation was treated as Government service subject to fulfilment of other conditions stipulated in the order dated 18.1.1972 issued by the President of India. The AEOs transferred from the MCD were equated with the Education Officer/Assistant

Director of Education (EO/ADE) in Delhi Administration. The promotion to the next higher post of DDE is regulated by the Delhi Administration Class-I Recruitment Rules, 1967 (Rules 1967 for short). The method of recruitment to the post of DDE as per the Rules 1967 was by promotion failing which by transfer on deputation and failing that by direct recruitment. The EOs/ADEs with 5 years' service in the grade were eligible for the benefit of such promotion. The petitioner, however, was denied promotion as his date of regular appointment was taken as 12.11.1971 instead of 3.5.1961 by the Delhi Administration. Aggrieved by the above the petitioner filed Civil Writ Petition No.714/73 in the High Court of Delhi which granted him the relief prayed by him vide its judgement dated 12.4.1985. Thereafter the petitioner was given his due promotions in accordance with the judgment of the Delhi High Court as DDE, JDE and ADE from the dates he was due such promotions. As a result of the promotion so ordered in compliance with the judgement of the Delhi High Court the petitioner's pay was fixed as J.D. Planning as ADE w.e.f. 11.6.1974 and 17.6.1975 respectively. The petitioner retired from service on 31.3.1985. The grievance of the petitioner is that on promotion to the post of J.D. Planning and A.D.E. his pay was fixed in accordance with F.R. 22(a)(1) whereas it should have been fixed under FR 22-C vide order dated 15.12.1988. It is against this backdrop that he has filed this Application under Section 19 of the Administrative Tribunals Act, 1985. By way of relief the petitioner has prayed that the impugned order dated 23.5.1989 and 27.9.1989 be quashed and the applicant declared to be entitled to fixation of pay in the post of JDE and in the post of ADE under FR 22-C with all consequential benefits. He has further prayed for

interest on arrears of payment at the rate of 28% He also claims that he is entitled to the reckoning of the special pay which he was drawing as JDE for fixing his notional pay in the post of ADE with all consequential benefits. Vide impugned order dated 23.5.1989 the petitioner was informed that "the matter has been closely scrutinised and found that in the absence of specific court orders to pay interest on the arrears, it would not be possible for us to accede to your request of payment of interest on the arrears to you." The second order impugned is dated 27.9.1989. This is the memorandum issued to the petitioner by the Delhi Administration. According to this order the petitioner's request for taking into consideration the special pay of Rs.150/- in the fixation of pay w.e.f. 11.6.1974 has not been found to be in order. It has been reiterated in the order that his pay has been correctly fixed and no further action in this behalf is required.

2. Shri G.D. Gupta, the learned counsel for the petitioner in this context drew our attention to the order of the respondents dated 15.12.1988 which indicates that the pay of the petitioner was fixed as Joint Director/Additional Director under FR 22 (a)(i) and not under FR 22-C. This has been done in accordance with the decision of the Government of India, Ministry of Home Affairs, Department of Personnel vide their OM No.F.1/9/79-Estt.(Pay-1) dated the 5th October, 1981. Since the claim of the petitioner for fixation of his pay under FR 22C is based/related to this O.M. the same is reproduced below:


"A reference is invited to O.M. No.F.1(10-E.-III (a)/74 dated the 21st June, 1974 (G.I. Order (9) below F.R.22) wherein it was

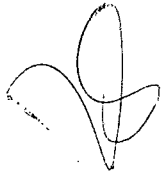


indicated that in respect of promotions/ appointments from one Group 'A' post to another Group 'A' post carrying higher duties and responsibilities, the pay of the employees would be fixed at the stage next next above the pay drawn in the scale of the lower post. It has been represented to the Government 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 'A8' posts with starting pay upto Rs.1,500- the pay of the employees will be fixed at a stage in the scale of pay of higher post next above the pay drawn in the lower post which is notionally increased by one increment (Rule since amended by Notification dated 6.10.1983).

2. The provisions of these orders will not be applicable in cases where the pay of Grade I Officers on promotion to higher posts is regulated by a separate set of orders which are more beneficial than these orders."


The principal contention raised by the learned counsel for the petitioner is that according to these orders the promotions/appointments to Group 'A' posts with starting pay upto Rs.1500/- the benefit of FR-22-C was allowed. This order, however, is only a clarification of the earlier order dated 21.6.1974 according to which the pay in respect of promotions from one Group 'A' post to another Group 'A' post carrying higher duties





and responsibilities was to be fixed at the stage next above the pay drawn in the scale of lower post. This contention is based on the ground that number of representations were pending with the Government against the order of June, 1974, as the increase in the pay that accrued to an individual was not commensurate with the increased duties and responsibilities shouldered by him in all cases. Extending this argument the learned counsel submitted that the orders of October, 1981 should be deemed to be applicable from 21.6.1974 as the decision of the Government communicated is not a new decision but clarification/-enlargement of the earlier decision. If this proposition is accepted the petitioner would be entitled to fixation of pay under FR- 22C as Deputy Director, Joint Director and Additional Director. The learned counsel assailed the cut off date 25.10.1981 fixed in the O.M. 25.10.981. He stated that the provision of cut off date 25.10.1981 for extending the benefit of FR 22C is arbitrary and discriminatory. It violates the provisions made in Article 14 of the Constitution. In support, he cited the following judicial dicta (listed below in margin*).

3. The stand of the respondents is that FR 22-C is not applicable in the case of the petitioner as he was appointed to the post of Additional Director in the pay scale of Rs.1500-1800 w.e.f. 17.6.1975. The instructions contained in OM dated 5.10.1981 are applicable in respect of officers where promotions are effected on or after 5.10.1981, the date of issue of the O.M. The respondents, therefore, repelled the contention of the petitioner that his pay should be fixed under FR-22C. They contend that the petitioner's



pay has been fixed in accordance with the Rules as applicable in his case. They further submit that the Government of India clarified the position in regard to the applicability of the OM dated 5.10.1981 when a doubt in this regard was raised to the following effect:

"The orders will be applicable in respect of promotions effected on or after 5.10.1981, the date of issue of the OM. Past cases cannot be reopened and pay cannot be refixed in the light of these orders."

4. Mrs. Avnish Ahlawat, the learned counsel for the respondents also pointed out that the petitioner has not challenged the said OM of 1981 nor the O.M. which gives the above clarification. As such, he cannot claim any relief in this behalf. In regard to the claim of the interest of the petitioner the learned counsel submitted that the matter had been adjudicated in the High Court and the Court had not granted any relief by way of interest to the petitioner on the arrears of pay etc. This issue, therefore, cannot be reagitated. Regarding reckoning of special pay attached to the post of JDE at the time of promotion as ADE w.e.f. 7.6.1985 the learned counsel submitted that the said claim is not in consonance with the relevant rules. The special pay can be reckoned for fixation of pay on promotion only when the special pay in the lower post has been drawn for a minimum period of three years.

5. I have heard the learned counsel for both the parties and perused the record carefully. The provisions of FR 22-C were initially applicable to the fixation of pay on promotion upto the Group 'A' level from 1.4.1961. This was done on the

the basis of the recommendations of the Second Central Pay Commission. The Pay Commission did not recommend this formulation for Grade 'A' officers. Thereafter the Third Central Pay Commission considered the position and did not recommend any change. The fixation of pay for Group 'A' Officers was regulated vide OM No.F.1(10)-E.III(A)/74 dated the 21st June, 1974. This order reads as under:-

"It has been decided that with effect from 1st November, 1973 in respect of all promotions/appointments from one Group 'A' post to another Group 'A' post carrying higher duties and responsibilities, the pay of the employees will be fixed at the stage next above the pay drawn in the scale of the lower post, irrespective of whether the lower post was held in a substantive, officiating or temporary capacity."

The above instructions continued to hold the field from first November, 1973 till the Department of Personnel issued instructions on 5.10.1981 when the benefit of fixation of pay under F.R. 22C was allowed in respect of all promotions/appointments to Group 'A' position which have the starting pay upto Rs.1500. The OM dated 21.6.1974 did not contemplate the benefit of FR 22C to Group 'A' posts. Under the said order the fixation of pay was to be regulated on appointment to Group 'A' posts only under FR 22(a) (i). The OM of 5.10.1981 is, therefore, a decision taken after considering the circumstances that arose later, as is apparent from the language and the subject matter of the two OMs. The argument that OM dated 5.10.1981 is a mere

clarification of OM dated 21.6.1974 is, therefore, not acceptable. The new decision was applicable only from 5.10.1981. The past cases were not to be reopened. The obvious reason is that opening of past cases would unsettle the settled cases over a long period of time. The argument of the learned counsel for the petitioner is that the date 5.10.1981 was fixed arbitrarily and, therefore, it should be held to be illegal, discriminatory as it creates a class out of the homogenous class and such classification is not permissible under the Constitution. This has been countered by the respondents that the petitioner has not challenged the OM of 1981 and, therefore, he cannot claim any relief in that behalf. Further the introduction of the provision granting benefit of fixation of pay under FR 22C where the minimum of the scale was not more than Rs.1500/- came into existence only on 15.10.1981. Since this rule was not in existence in 1974/1975 for Group 'A' officers the petitioner cannot claim the benefit of the said rule. Had he been promoted in time on the dates as due, his pay would have been fixed in accordance with FR 22(a)(i) and not under FR 22-C, as the OM of 15.10.1981 was not in existence at that time. The benefit of this OM retrospectively from 1974 cannot in the circumstances be allowed. There is also no discrimination involved, as the benefit extended vide order dated 15.10.1981 has been applied to everyone who has been promoted in Group 'A' after that date uniformly. It will be pertinent to observe here that FR 22(a)(i) and FR 22(c) are not the only methods of fixation of pay which were applicable for promotion to Group 'A' posts. There are other methods also e.g. use of concordance tables. All these methods came to be applied on promotion

to higher grade posts, ordinarily on the basis of the recommendation of one or the other Pay Commissions and each of them was/is designed to cater to different situation. The argument of discrimination and arbitrariness in this view of the situation is not valid.

6. In view of the above facts and circumstances of the case, I do not find any merit in the petition and the same is accordingly dismissed. No costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

San.

1076/1973
2

-
- *
1. AIR 1983 SC 130 D.S. Nakara v. Union of India
2. 1988(8)ATC271M. Nanjunda Swamy v. Accountant General (Accounts) (Bang).
3. 1992 (19) ATC 219 Union of India v. Deokinandan Aggarwal (SC)
4. 1984 (2) SLR 254 M.P. Tandon v. State of UP, Lucknow & Ors.
5. 1991 (2) SLR 297 (P&H) Prem Mohini Sadana v. State of Punjab & Ors.

d