

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.365/90

DATE OF DECISION:1.5.1992.

KRISHAN CHAND SEHGAL

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A)

FOR THE APPLICANT SHRI K.L. BHATIA, COUNSEL.

FOR THE RESPONDENTS SHRI P.H. RAMCHANDANI, SENIOR COUNSEL.

1. Whether Reporters of Local Papers may be allowed to see the Judgement? *yes*

2. To be referred to the Reporter or not? *yes.*

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

P.K. Kartha
(P.K. KARTHA)
VICE-CHAIRMAN

May 1, 1992.

(10)

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

Shri K.C. Sehgal, who retired from service as Section Officer on superannuation on 31.12.1988 from the Department of Steel, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the rejection of his representation dated 23.6.1988 for stepping up of his pay with reference to his junior Smt. Sunita, another Section Officer in the same department by a non-speaking order vide OM of the Department of Personnel and Training dated 15.2.1989 sent to the applicant by the Department of Steel under their letter dated 1.3.1989.

2. The short question at issue is whether the applicant who is a promotee Assistant is entitled to stepping up of pay on the same basis as direct recruits Assistants are, in case a direct recruit who entered service through a later examination draws more pay than a direct recruit Assistant who joined on the basis of the earlier examinations but draws lower pay.

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3. The applicant has contended that Smt. Sunita was junior to the applicant in the combined seniority list of Assistants in the Central Secretariat Service (CSS) and also in the select list of Section Officers (seniority quota) issued by the Department of Personnel & Training. The applicant has annexed the relevant seniority list of Section Officers as on 1.7.1987. While the applicant is at srl. No.22 of the list Smt. Sunita figures at srl. No.24 of the said seniority list. The pay of Smt. Sunita was stepped up by the respondents in terms of Department of Personnel & Training OM dated 13.4.1988 vide order No.13(32)/88-Estt. dated 16.6.1988. The stepping up of pay, as above in the case of Smt. Sunita to the level of Rs.2,675/- per month in the revised scale of Rs.2000-3500 w.e.f. 1.9.1987, has resulted in the applicant drawing lower pay to the extent of Rs.150/- per month. He made a representation for re-fixation of his pay at par with his junior on 23.6.1988 which was forwarded by the Department of Steel to the Department of Personnel and Training recommending stepping up the pay of the applicant at the level of Smt. Sunita w.e.f. 17.12.1984. It is the rejection of this representation which is compelled him to approach the Tribunal. He has prayed for the following reliefs:-

- i) to re-fix the applicant's pay in the grade of Section Officer at Rs.810/- w.e.f. 17.12.1984 in the pre-revised scale of Rs.650-1200 at par with his junior Smt. Sunita with consequential increments and re-fixation of pay in the revised scale of Rs.2000-3500;
- ii) to pay arrears of pay and allowances etc. consequent upon re-fixation of pay, as above;
- iii) to revise pension and pensionary benefits on account of re-fixation of pay and payment of arrears arising therefrom.

4. Before we go into the merits of the case it may be appropriate to reproduce the relevant part of the Ministry

of Personnel, Public Grievances and Pensions OM No.5/16/-80-CS-I dated 13.4.1988 which has given rise to the grievance of the applicant:-

"Subject:-Stepping up of pay of senior Assistants of CSS recruited through Assistants' Grade Examination drawing less pay in Section Officers' Grade on promotion than their juniors recruited through later examination.

The under signed is directed to say that the following demand of the Staff Side of the Departmental Council of the Department of Personnel and Training (JCM) was referred to the Board of Arbitration in CA Reference No.7 of 1984:-

'Whether the pay of Assistants of CSS who are senior by virtue of having been recruited through earlier examinations but are drawing less pay in Section Officers' Grade , on promotion than their juniors recruited through later examinations be raised to same level which their juniors are drawing.' 2. The Board of Arbitration has since given the following award on the Reference:-

'The demand of the staff side is accepted to the extent that the pay of an Assistant of the Central Secretariat Service, who is senior by virtue of having been recruited through an earlier examination but is drawing less pay on promotion in the Section Officers' grade than his junior recruited through a later examination shall not be less than the pay his junior is drawing in the same cadre. The award shall take effect on and from 1st June, 1983.'

3. The question implementation of the above Award has been under consideration of this Department in consultation with the Ministry of Finance and the President is pleased to accept the Award of the Board of Arbitration given in CA Reference NO.7 of 1984.

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Accordingly, it has been decided that pay of an Assistant of CSS, who is senior by virtue of having been recruited through an earlier examination but is drawing less pay on promotion in the Grade of Section Officer than his junior recruited through a later examination, may be stepped up to a level equal to the pay of such junior Section Officer in the same cadre.

4. The benefit of the Award will not be available in those cases, for example, where the pay of the senior Assistant on promotion in the Grade of Section Officer is less than his junior in the same cadre on account of such senior Assistant having been superseded or penalised with stopping of increments etc. in any disciplinary case, and in respect of Assistants promoted as Section Officers through Limited Departmental Competitive Examinations.

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5. The stand of the respondents, as projected in their counter-affidavit is that according to Rule 13(6) of Central Secretariat Service Rules (CSS Rules), 1962 50% of the permanent vacancies in the Assistants Grade in a cadre are filled by direct recruitment on the results of the open competitive examination. The candidates so selected through the Staff Selection Commission are allocated by the Department of Personnel & Training to various cadres of the Central Secretariat Service as per demand placed by each cadre with that Department. The cadre of the Section Officers and Assistants is decentralised and comprises one or more Ministries/Departments for the purpose of management of decentralised grades of Section Officers and Assistants. The Department of Personnel & Training, however, continues to be the nodal department for laying down the rules for recruitment, promotion and general

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policy relating to the Central Secretariat Service. Thus each cadre has to follow the Rules, instructions and guidelines prescribed by the Department of Personnel & Training in this regard. The remaining 50% of the permanent vacancies are filled by substantive appointments of persons included in the Select List for Assistants Grade in that cadre in the order of seniority in the select list, subject to the rejection of unfit.

For the purpose of making promotions in the decentralised grades of Section Officers and Assistants of each cadre zones of consideration are prescribed by the Department of Personnel & Training every year. Persons covered by the zone of consideration in each cadre are considered by respective Departmental Promotion Committee for each cadre and those found fit for promotion are included in the select list of that cadre for promotion in the order of their seniority. The Assistants who are covered by the prescribed zone but cannot be promoted in their own cadre for want of vacancies are kept on the central panel by the Department of Personnel and Training for transfer for inclusion in the select list of other cadres where the regular vacancies are available. Further adhoc promotions in each cadre in the decentralised grade of Section Officers are allowed to be made by the cadre controlling authority in the process of junior Assistants recruited on the basis of Assistant Grade Examination in one cadre may get adhoc promotion while in some other cadre senior Assistants recruited through an earlier examination may not get the opportunity at a later date than such junior Assistants. Thus a junior Assistant in one cadre who has had the benefit of earlier adhoc officiation as Section Officer on regular promotion to the Section Officer Grade may get more pay than the senior Assistants of some other cadre on regular promotion to the Section Officers Grade in the same cadre on transfer from his earlier cadre

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for want of vacancies in that cadre under the zoning scheme in the decentralised grades of the CSS. The respondents, however, submit that this issue was raised by the staff side of the Departmental Council (JCM) demanding that the pay of Assistants of the CSS who are senior by virtue of having been recruited through earlier examination who are drawing less pay in the Section Officers grade on promotion than their juniors recruited through earlier examination but are drawing less pay in the Section Officers Grade on promotion than their juniors recruited through later examinations be raised to the same level which their juniors are drawing. Consequent upon recording a disagreement in the JCM the matter was referred to the Board of Arbitration which gave the following award:-

"The demand of the Staff Side is accepted to the extent that the pay of an Assistant of the Central Secretariat Service, who is senior by virtue of having been recruited through an earlier examination but is drawing less pay on promotion in the Section Officers' Grade than his junior recruited through a later examination shall not be less than the pay his junior is drawing in the same cadre. The award shall take effect on and from 1st June 1983."

Accordingly the benefit of the award of the Board of Arbitration in regard to stepping up was extended only to the direct recruit Assistants and not to any other category of Assistants. The case of the applicant is also not covered by the Ministry of Finance's OM No.F.2(78)E-III(A)-66 dated 4.2.1966, as the benefit of stepping up according to this order is applicable in those cases where both junior and senior belonging to the same cadre and the posts to which they are promoted or appointed are identical and are in the same cadre. The scales of pay of the lower and the higher posts in which they are entitled to draw pay should also be identical and the anomaly should be arising

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directly as a result of the application of FR 22C.

6. The applicant has filed a rejoinder in which he has invoked the principle of 'equal pay for equal work' as he has performed identical duties as Smt. Sunita. The applicant further assails the memorandum dated 13.4.88 as violative of Articles 14 and 16 of the Constitution of India and in support of his contention has cited the decision of Hon'ble Supreme Court in **Randhir Singh Vs. Union of India & Others AIR 1982 SC 879** and **P. Savita & Ors. Vs. Union of India & Others AIR 1985 SC 1124**.


7. We have heard the learned counsel for both the parties and perused the record carefully. We are of the view that the applicant and Smt. Sunita are borne on a common seniority list of permanent and temporary Section Officers in the CSS cadre. Further in the grade of Assistants recruitment is from two sources viz. direct recruits and promotees. The seniority of the two streams is fused in each cadre in accordance with the relevant rules. Admittedly, Shri K.C. Sehgal the applicant is senior to Smt. Sunita in his own decentralised cadre. The applicant cannot, therefore, be drawing less pay on promotion as Section Officer than his junior merely because Smt. Sunita who is a direct recruit her pay has to be protected with reference to a direct recruit junior Assistant who got the benefit of adhoc promotion and whose pay got fixed at a higher level on regular promotion to the grade of Section Officer, ignoring the pay drawn by her senior in the same cadre, holding identical post in the identical scale of pay. Such a situation is infraction of the Articles 14 & 16 of the Constitution and militates against the provisions of equality enshrined therein.

8. In the above conspectus of the case, we order and direct the respondents to step up the pay of the applicant to the level at which Smt. Sunita his junior has been fixed

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in the grade of Section Officer w.e.f. 17.12.1984 in the pre-revised scale of Rs.650-1200 with consequential benefits of increments etc. He shall also be refixed in the revised scale of Rs.2000-3500 in accordance with the rules and be paid arrears of pay and allowances consequent to the refixation of pay from 17.12.1984 onwards. We further direct that the pension and pensionary benefits of the applicant shall be refixed and arrears on that account shall also be paid to him. The respondents shall implement the above orders most expeditiously but preferably within a period of 4 months from the date of communication of this order.

There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER(A) 1/13/92


(P.K. KARTHA)
VICE-CHAIRMAN

May 1, 1992.

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