

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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HON. SHRI R.K. AHOOJA, MEMBER 'A'

OA NO.1703/91

NEW DELHI, THIS 12th DAY OF FEBRUARY, 1997.

SHRI AJMER SINGH
Retd. Joint Director
Ministry of Railways
Railway Board

r/o A-30 Cosy Apartments
Plot No.20
Sector 9, Rohini
DELHI-85

...APPLICANT

'By Advocate - SHRI B.S. MAINEE'

VERSUS

Union of India, through
Secretary
Ministry of Railways
Railway Board
Rail Bhawan, NEW DELHI

..RESPONDENTS

'By advocate - SHRI O.P. KSHATRIYA'
with SHRI P.H. RAMCHANDANI

ORDER

R.K. AHOOJA, MEMBER 'A'

The applicant who was working as Private Secretary in the Ministry of Railways was promoted as Deputy Director/Under Secretary on 31.8.1982 and was working as such at the time of implementation of Fourth Pay Commission pay scales w.e.f. 1.1.1986. S/Shri Lekh Raj Wahi and D.K. Tandon who were junior to the applicant as Private Secretary were also promoted as Deputy Director/Under Secretary w.e.f. 10/15-4-1987 respectively. On that date, ~~the applicant~~

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the applicant was drawing a pay of Rs.3500/- in the revised scale. The pay of S/Shri Wahi and D.K. Tandon was fixed at Rs.3625/- by application of FR 22C. Being aggrieved, the applicant sought stepping up of his pay at the level of his juniors and the respondents vide their order dated 30.10.1987 ('Ann.'A') allowed the stepping up of his pay on the basis of Note 7 of Rule 7 of the Revised Pay Rules 1986 and the pay of the applicant was also raised to Rs.3625/- w.e.f. 10.4.1987. The applicant states that he was on deputation outside India from 5.5.1988 to 30.6.90 and during his absence, the stepping up orders were withdrawn some time in 1989 without assigning any reason. His representations against the impugned order were also not considered. Hence he has come before the Tribunal seeking a direction to the respondents that the withdrawal of the stepping up of pay orders be set aside and since he has retired now, his retirement benefits be accordingly redetermined.

2. The respondents in the reply state that the order for stepping up of the pay of the applicant equal to that of the juniors had to be withdrawn because of the clarification given by the Finance Ministry that such stepping up is not to be allowed in case the pay of the senior in the lower post, at the time of his promotion, was less than that of the junior who got his promotion after 1.1.1986 and whose pay on such promotion again became higher than that of the senior. In other words, if the pay of the junior was more in the lower post, then it could be higher

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in the higher post also. The respondents state that the pay of S/Shri Wahi and Tandon was higher than that of the applicant on 1.9.1982 when he was promoted. At that time, Shri Wahi was drawing Rs.1160/- while the applicant was drawing Rs.1040/-.

3. The applicant in his rejoinder has submitted a comparative statement that the pay of S/Shri Wahi and Tandon was lower than his pay on the date of their promotion, i.e., 10.4.1987 and 15.4.1987. Further more, it was urged in the rejoinder that if the Fourth Pay Commission pay scales had not come into force on 1.1.1986, then s/Shri Wahi and Tandon would have continued at the maximum of Rs.1300/- in the scale of Private Secretary and even after obtaining stagnation increments, their pay under FR 22C would have been less than that of the applicant, who had in the mean time earned four increments in the higher pay scale. Thus, the higher differential in favour of S/Shri Wahi and Tandon was entirely due to the introduction of the revised pay scales and hence ~~shall~~ be treated as an anomaly to be rectified under Note 7 of Rule 7 of the Revised Pay Rules.

4. The O.A. was dismissed thereafter but the order was recalled after the R.A. was filed on various grounds, including the one that the name of the applicant's counsel had not been listed in the Cause List when the matter came up for hearing and hence the counsel could not present the case. I have now heard the ld. counsel on both sides carefully and also gone through the records.

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5. Two main grounds have been urged by Shri B.S. Mainee, Id. counsel for the applicant. Firstly, the impugned order was bad because it is now well settled that the pay of a Government servant cannot be reduced without giving him an opportunity to show cause. In the present case, this was admittedly not done. The action of the respondents thus was against the principles of natural justice. Secondly, on merits, Shri Mainee urged that the case of the applicant had to be seen in the context of the position as it would have existed with or without the intervening IV Pay Commission recommendations. If there had been no revision, then S/Shri Wahi and Tandon could not have obtained a higher pay than the applicant on their promotion in 1987. Since a higher differential occurred only due to the introduction of the revised pay scales in the case of Private Secretaries and the refixation of the pay of S/Shri Wahi and Tandon from 1.1.1986 that the anomaly has occurred. ^{Thus} Secondly, the stepping up of the applicant's pay was fully justified in terms of note 7 under rule 7 of the Revised Pay Rules. I would first take up the second ground urged by the applicant, viz., whether the applicant was entitled to stepping up of pay. ~~under~~ Note 7 reads as under:-

In cases where a Senior Railway Servant promoted to a higher post before 1.1.86 draws less pay in the revised scale than his junior who is promoted to the higher post on or after 1.1.86, the pay of the senior Railway servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done w.e.f. the date of

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promotion of the junior Railway servant subject to fulfilment of following conditions:-

- (a) both the junior and the senior Railway servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) the pre-revised and revised pay scales of the lower and higher posts in which they are entitled to draw pay should be identical; and
- (c) the anomaly should be directly as a result of the application of provisions of Rule 2018B (FR 22C) of Indian Rly. Estt. Code Volume II or any other Rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, the provisions of this Note need not be invoked to step up the pay of the senior officer.

6. It is urged that ~~after~~ the conditions (a), (b) and (c) are fulfilled in respect of the applicant. Thus, both Shri Wahi and the applicant belong to the same cadre and the posts to which they have been promoted are also identical and in the same cadre. The pre-revised and revised pay scales of the lower and higher posts are also identical. Thus, conditions (a) and (b) are fully met. The condition (c) then becomes crucial. This requires that the anomaly should be directly as a result of application of Rule 2018B corresponding to FR 22C or any other

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rule or order regulating pay fixation on such promotion in the revised pay scale. There is however a proviso that if in the lower post the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked. Shri Mainee submits that the pay of S/Shri Wahi and Tandon having been fixed by applying FR 22C, the stepping up of applicant's pay is justified. The crux lies however in the proviso, i.e., whether the junior was drawing more pay in the pre-revised scale. The applicant has not been able to rebut the contention of the respondents that the pay drawn by him was less than that of S/Shri Wahi and Tandon at the time of his promotion to the grade of Deputy Director/Under Secretary. The statements submitted by him also relate to the post-promotion comparative position between him and his juniors, which is not relevant. As regards his argument that the pay differential is the anomaly arising out of the revised pay scale and therefore liable to be set aside as such, note 7 (Supra) gives directions as to when such situations are to be treated as anomalies and how they are to be set right. I agree with the respondents that it is no anomaly when the junior was drawing more pay than the senior, for whatever reason, in the lower post, also on getting promotion to the higher post regains his comparative pay advantage over the senior. Thus, it is the senior, the applicant, who is not entitled either to the benefit of rule 7 or FR 22C.

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7. The other point raised by Shri Mainee is regarding the absence of show-cause notice. He has also cited a number of cases of both the Supreme Court and this Tribunal to support his arguments. Suffice it to say that the position is well established that cancellation of an earlier order favourable to a government servant without calling upon him before cancellation ^{to show cause} would be in violation of the principles of natural justice and would be therefore illegal and liable to be set aside. In this case, admittedly no show cause notice was given. The only explanation given by the respondents is that the position was so obvious and the condonation of the wrong stepping up of pay of the applicant would have created difficulties in pay fixation of others, that it was decided to issue the orders of cancellation of stepping up of pay without giving a show cause notice to the applicant. Ordinarily, therefore the impugned order cancelling the earlier stepping up of pay would be liable to be set aside. The ld. counsel for the respondents has urged that in any case the applicant had full opportunity to present his case and it would serve no purpose if the impugned order was to be set aside only to be reconfirmed considering the merits of the case before the Tribunal. Shri Mainee however urges that a post-decisional opportunity cannot take the place of a pre-decisional opportunity. It is for this reason that I have considered it proper to first take up the question of merit of the applicant's case. The applicant had full opportunity to present his case, before the Tribunal, for maintaining the stepping up of his pay and on merits his case has been found to be insupportable. In this view of the matter,


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setting aside of the impugned order on the ground that show cause notice was not given would now tantamount to prolonging the matter on a technicality and not in obedience to the laws of natural justice. However, considering that the applicant has since retired and in view of the initial failure of the respondents in giving him opportunity, I consider it proper to direct that the respondents will not affect any recovery on account of any alleged over payments on account of the earlier refixation of pay of the applicant.

The C.A. is disposed of with the above directions.
No costs.


'R.K. AHOOJA'
MEMBER (A)

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