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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1797/1991. DATE OF DECISION: March 27, 1992

Smt. Girija Sathyababu Applicant.

V/s.

Union of India Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
 Hon'ble Mr. J.P. Sharma, Member (J).

Shri Madhav Panikar, counsel for the applicant.
Shri Jog Singh, counsel for the respondents.

JUDGEMENT

(delivered by Hon'ble Mr. P.C. Jain, Member)

The applicant, in this case, was initially appointed to the post of Stenographer Grade 'D' of the Central Secretariat Stenographers Service (CSSS) in the cadre of Planning Commission on regular basis with effect from 1.12.1980. She was promoted, on ad-hoc basis, as Stenographer Grade 'C' with effect from 1.4.1987 in the Planning Commission. She went on deputation as Investigator in the Department of Economic Affairs, Ministry of Finance, with effect from 6.11.1987. She came back to the Planning Commission and joined as Stenographer Grade 'C' on ad-hoc basis with effect from 1.3.1990. During her posting on deputation in the Department of Economic Affairs, she opted for her grade pay as Stenographer Grade 'C' plus Deputation Allowance and her pay was accordingly fixed on the deputation post. Two increments in the scale of Stenographer Grade 'C' were also granted to her, i.e., one from 1.4.1988 and the other from 1.4.1989. On her reversion to her parent department, her pay was fixed after maintaining the benefit of two increments as above. In the meantime, the pay scale of the post of Stenographer Grade 'C' was revised from Rs.1400 - 2600 to Rs.1640 - 2900 with effect from 1.1.1986. While fixing her pay in the revised scale of Rs.1640 - 2900, vide Order dated 29.11.1990

(Annexure-9 to the O.A.), she was, however, denied the benefit

of service during the period of deputation for purposes of fixing her pay in Grade 'C'. This is one of the orders, which has been impugned in this case. The applicant has also impugned Office Memorandum dated 13.5.1991 (Annexure-11), by which her representations dated 22.3.1991, 3.4.1991 and 5.4.1991 regarding fixation of her pay in the revised scale of Rs.1640 - 2900 and protection of her pay in the Grade 'C' post during the period she was on deputation to the Department of Economic Affairs were rejected. Another impugned order is dated 30.5.1991 (Annexure-12) by which in partial modification of order dated 29.11.1990, her pay was refixed. She has also prayed for a direction to the respondents to appoint her as Stenographer Grade 'C' in the Planning Commission with effect from 1.4.1987 on regular basis.

2. The respondents have contested the O.A. by filing a return, to which a rejoinder has been filed by the applicant. We have carefully perused the material on record and also heard the learned counsel for the parties.

3. The appointment of the applicant to the post of Stenographer Grade 'C' on an ad-hoc basis pending replacement by a regularly selected person with effect from 1.4.1987 in her parent cadre, viz., the Planning Commission, is not in dispute. It is also not in dispute that while on deputation her pay was fixed in the pay scale of Stenographer Grade 'C' plus Deputation Allowance as per her option, and that during the deputation period, she was also allowed two annual increments in the pay scale of Stenographer Grade 'C'. On her reversion to the parent Department with effect from 1.3.1990, she was posted as Stenographer Grade 'C' and her pay was fixed in the parent Department maintaining the benefit of the two increments earned by her.

4. The controversy has arisen on account of the stand taken by the respondents that she was allowed the benefit of pay in the scale of Stenographer Grade 'C' and the

increments therein while on deputation by mistake, as during the deputation period, she was entitled, under the rules, either to pay in the grade pay of the deputation post or to her own grade pay in the pay scale of the post of Stenographer Grade 'D' in which she was appointed on regular basis plus Deputation Allowance. Accordingly, it is contended by the respondents that as her promotion in the parent cadre to the post of Stenographer Grade 'C' was purely on ad-hoc basis, the benefit of pay in that Grade could not be allowed to her during the period of deputation and on her reversion to the parent cadre, the service of the deputation post could not be counted for purposes of increments. They have relied on the instructions issued by the Ministry of Finance, Department of Expenditure, in their letter No.1(11)-E.III(B)/75, dated the 7th November, 1975. These orders provide that for purposes of drawing Deputation (duty) Allowance, the term 'deputation' will cover only appointments made by transfer on a temporary basis to other departments, State Governments, provided the transfer is outside the normal field of deployment and is in the public interest. On the facts of this case, it is not disputed by either party that the appointment in the Department of Economic Affairs was made by transfer, it was outside the normal field of deployment of the applicant, was in the public interest, and was on a temporary basis. It is also not in dispute that under the rules, an employee on deputation may elect to draw either the pay in the scale of pay of the deputation post or his Basic Pay in the cadre + Personal Pay, if any, + Deputation (duty) Allowance. In any case, the pay so fixed, cannot be less than the minimum of the ex-cadre post. Thus, the short point which falls for determination in this case is as to whether the pay which was drawn by the applicant on her promotion to the post of Stenographer Grade 'C' on ad-hoc basis was her Basic Pay or not. The term 'Basic Pay' for the purposes of these orders

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is defined in these orders to mean the pay drawn in the scale of pay of the substantive appointment held, or the pay in the scale of pay of the officiating appointment in an employee's parent cadre, provided that the officiating appointment so held was not in a tenure post and it is certified by the appointing authority that but for the deputation the employee would have continued to hold the officiating appointment indefinitely. It is not in dispute that the deputation post held by the applicant was not a tenure post. It is further not in dispute that the applicant was not holding the post of Stenographer Grade 'C' in substantive appointment. Thus, the dispute narrows down to the issue whether the applicant's appointment to Grade 'C' with effect from 1.4.1987 was an officiating appointment or not, and but for the deputation, she would have continued to hold the officiating appointment or not.

5. The applicant has stated in her application that her ad-hoc appointment to the post of Stenographer Grade 'C' with effect from 1.4.1987 was extended regularly upto 30.6.1991 as is clear from entry at Sl. No.20 at which place her name is shown in the order dated 6.11.1990 (Annexure-3). It has also been emphasised that the Planning Commission, her parent Department, had certified that but for her deputation to the Department of Economic Affairs, she would have continued to work as Stenographer Grade 'C' on ad-hoc basis. It has also come on record that all her juniors in her regular cadre of Grade 'D' continued to officiate in the post of Stenographer Grade 'C' in the parent Department during the period she remained on deputation and that they continued to draw increments in the pay scale of the post of Stenographer Grade 'C' during this entire period. There is nothing in the reply of the respondents to rebut these three basic factors and what they have emphasised is that the applicant was appointed to the post of Grade 'C' Stenographer on an ad-hoc basis, for

limited periods and with short technical breaks. The fact that the appointment was ad-hoc may have relevance to the right of the applicant to continue to work on the post of Stenographer Grade 'C' on a regular basis; it does not, in our considered view, have any adverse effect on the right of the applicant to draw pay in the post of Stenographer Grade 'C' on the now well accepted doctrine of 'Equal pay for equal work'. Even persons appointed to a post on ad-hoc basis are entitled to draw pay in the pay scale of the post as also to draw increments in the time scale of pay. If the applicant had not gone on deputation, she would have continued to work in the post of Stenographer Grade 'C', though on ad-hoc basis, in view of the fact that her juniors in the lower cadre of Stenographer Grade 'D' continued to work on the higher post of Stenographer Grade 'C' and also in view of the fact that the parent Department had certified that but for her going on-deputation, she would have continued to work as Stenographer Grade 'C'. The Central Administrative Tribunal as also the Supreme Court, have repeatedly deprecated the practice of giving short technical breaks of a day or a few days in the matter of appointment of persons to posts on ad-hoc basis. The so-called technical break in the case of the applicant is shown to be only of three days on one occasion and that too is a matter of continuing in the post of Stenographer Grade 'C' in the parent Department. She continued uninterruptedly on the deputation post.

6. In the light of the foregoing discussion, we are of the considered view that on the facts and in the circumstances of this case and on the basis of the definition of the term 'Basic Pay' in the Finance Ministry's Order dated 7.11.1975 (supra), the pay of the applicant in the grade of Stenographer Grade 'C' will be treated as Basic Pay and she would be entitled to increments in the scale of Stenographer Grade 'C' for the period she worked in her parent Department, as also for the period she remained on deputation. Learned counsel

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for the applicant did not press the other relief prayed for, i.e., a direction to the respondents for appointing the applicant as Grade 'C' Stenographer with effect from 1.4.1987 on regular basis. Even otherwise, in our view, she is not entitled to be granted such a relief as her appointment to the post of Stenographer Grade 'C' was purely on an ad-hoc basis pending replacement by a regularly selected person. Accordingly, we partly allow this O.A. and quash the three impugned orders as stated above, in so far as they relate to the applicant. The respondents are directed to refix her pay in the scale of Rs.1640 - 2900, i.e., the scale of pay of the post of Stenographer Grade 'C' with effect from 1.4.1987 in accordance with the relevant rules for fixation of pay on revision of the scale. Her date of increment in that scale will be regulated in accordance with the relevant instructions, or the date of option as may have been given by the applicant, as the case may be, and she is held entitled to draw annual increments in the pay scale of the post of Stenographer Grade 'C'. No recovery will be made on account of her refixation, as assailed in this O.A., and she would be entitled to arrears of pay and allowances admissible thereon in accordance with these directions. Her pay should accordingly be refixed and the arrears found due to her be paid within a period of three months from the date of receipt of a copy of this order by the respondents. No costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)

27.3.92

P. C. Jain
(P.C. JAIN)
MEMBER (A)