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| Date | Office Report | Orders |
|------|---------------|--|
| | | <p>6/12/94.</p> <p>ORDER pronounced today.</p> <p>1/7 Re.</p> <p>Book! twelve 4.7 P.M. SRA</p> <p><i>Bo Kirk Colby</i></p> |

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 869/91

New Delhi, this the 6th December, 1994

Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri S.R. Adige, Member (A)

Shri L.K. Chawla,
s/o late Shri G.C. Chawla,
r/o 316, DDA Flats, Basant Enclave,
New Delhi-57 and

working as Section Officer,
Ministry of Labour (W.III Section)
New Delhi, Jaisalmer House,
New Delhi-11.

... Applicant

By Advocate: Shri A. Kalia

Vs.

Union of India
through the
Secretary to Govt. of India,
Ministry of Labour, Shram Shakti Bhawan,
New Delhi.

... Respondents

By Advocate: Shri V.S.R. Krishna

ORDER

Hon'ble Shri J.P. Sharma, Member(J)

The applicant joined the Ministry of Labour as Assistant on 6.4.74. This appointment was made on the basis of qualifying in the Assistant Grade Examination conducted by U.P.S.C. in 1972. The next promotion grade for Assistant is Section Officer through select list/ Departmental Limited Competitive Examination. The applicant was included in the select list of Section Officer grade of 1983. Before inclusion in the aforesaid list the applicant was appointed on adhoc basis as Section Officer w.e.f. 1.6.79. These adhoc promotions are made in accordance with the seniority as and when regular incumbent went on leave, training etc. Reversions are

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made in the event of regular incumbents resume duty. The pay of the applicant was fixed at Rs.880/- in the Section Officer grade with the next date of annual increment on 1st November. The grievance of the applicant is that one Shri Virender Kumar also qualified in the Assistant Grade Examination of 1972 and he was appointed as Assistant on 15.4.74 in the Ministry of Labour. The said Shri Virender Kumar was included in the Select List of 1984 and prior to this he was appointed on adhoc basis as Section Officer w.e.f. 5.6.79. On the inclusion in the Select List in 1984 the pay of Shri Virender Kumar was fixed at Rs.880/- with the next date of annual increment on 1st August. As a result of this, this anomaly of the applicant made successive unsuccessful representations that date of his annual increment be brought at par with the date of drawal of increment by Shri Virender Kumar admittedly junior to him. By the order dated 28.9.89 the applicant was informed that his request for stepping up of pay with reference to Shri Virender Kumar cannot be acceded to. The applicant made another representation detailing more facts and he was informed by the Memo. dated 9.1.90 that his representation has been examined in consultation with DOP&T and his request for stepping up of his pay with reference to Shri Virender Kumar cannot be acceded to. The applicant made another representation and he was again informed by the Memo. dated 15.11.90 that DOP&T had advised that the stepping of pay/antedating of increment is not admissible in cases where a senior Section Officer is drawing less pay than his junior due to ad-hoc promotion except in cases covered by DOP&T OM No.5/16/80-CS.I dated 13.4.88. Aggrieved by the aforesaid order the applicant filed this D.A. on 10.4.91 in which he has prayed that the pay of the applicant may be

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stepped up to that of junior Shri Virender Kumar, Section Officer borne on the cadre of the Ministry of Labour by antedating his date of annual increment from November to August, 1981 and the applicant be paid the consequential relief commencing from 1.8.81.

2. After hearing the counsel for the applicant on admission, the Tribunal by the order dated 26.4.91 dismissed the application on the ground that the application is barred by limitation. The applicant filed S.L.P. No.20165/91 and by the order dated 3.2.94 the Hon'ble Supreme Court held that the Tribunal was in error in non-suting the applicant only on the ground of limitation. It is held that the appellant had a continued cause of action. It is a different matter whether he would be able to make out a case for grant of relief, as prayed for. The appeal was allowed and the order of the Tribunal was set aside and the case was remitted back to the Tribunal for decision on merits in accordance with law.

3. After the remand of the case the respondents on notice filed the reply and opposed the grant of the relief on the ground that ad-hoc appointment was given to the applicant to the post of Section Officer w.e.f. 1.6.79 and to Shri Virender Kumar his junior w.e.f. 5.6.78. The applicant, however, was reverted to the substantive post of Assistant as the incumbent in place of whom he was promoted has joined on 15.7.79. He was however again promoted on 7.1.80. Thus he did not work on the post of Section Officer for about 5 months while his junior Shri Virender Kumar continued to work on adhoc basis without break. Since Shri Virender Kumar has worked on adhoc basis for longer period than the applicant his pay was accordingly fixed with date of annual increment as 1st August. Since the adhoc period of the applicant was less than that of Shri Virender Kumar by

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about 5 months his date of next annual increment fell in the month of November and as such the pay of Shri Virender Kumar has been fixed according to rules. F.R. 20-C does not come to help to the applicant and so also the O.M. of DOPT dated 13.4.88. In view of this fact the pay of the applicant could not be stepped up.

4. We heard the learned counsel for the parties at length and perused the records. The applicant has prayed for stepping up of pay to the level of his admitted junior Shri Virender Kumar inasmuch as the date of annual increment of Shri Virender Kumar on regular promotion to the grade of Section Officer is 1st August while the date of next increment of the applicant is 1st November and this anomaly has arisen because Shri Virender Kumar officiated on adhoc basis for longer duration. The DOPT has issued a circular dated 13.4.88 and on the basis the Board of Arbitration has given the award as follows:-

"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."

The respondents in their reply as well as the learned counsel for the respondents argued that the benefit of this award cannot be given to the applicant as the applicant as well as his junior Shri Virender Kumar were recruited through the same examination. While the benefit is applicable in the case of those senior Assistants who

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are recruited through earlier examination but drawing less pay in Section Officer grade on promotion than his junior recruited through later examination. A comparative chart in respect of the applicant and his junior Shri Virender Kumar has been filed by the learned counsel for the applicant as Annexure IA to the application. The same is reproduced below:-

| Yr. of Asstt. Grade Exam. | Rank in Asstt. Grade | Yr. of Exam. | Yr. of S.O.'s select list | Date of promotion revers- on ad- hoc | Date of ion, if any. | Date of again pro- motion as S.O. | Present date of incre- ment |
|----------------------------|----------------------|--------------|---------------------------|--|----------------------|--------------------------------------|--------------------------------|
| Sh. L.K. Chawla | 1972 | 124 | 1983 | 1.6.79 to 15.7.79 | 16.7.79 | 7.1.80 | November of every year |
| Sh. Vir- ender Kumar | 1972 | 296 | 1984 | 30.6.79 | Never | Continued to officiate as S.O. | August of every year |

The above chart will show that the applicant has come in the earlier select list of Section Officer in the year 1983 while his junior Shri Virender Kumar came in the select list in the year 1984 through seniority and not through Departmental Limited Competitive Examination. The learned counsel for the applicant argued that since the applicant for all purposes senior to Shri Virender Kumar his date of next increment is to be antedated as 1st August instead of November of the year. He has relied on a decision of the C.A.T., Hyderabad Bench T. Atchuta-ramaiah V. Regional Director, Employees' State Insurance Corporation, Hyderabad reported in(1992) 21 ATC 78. The petitioner of that case was promoted as U.D.C. on regular basis on 18.7.81. His

junior Shri P.K.R. Murthy having been earlier promoted on adhoc basis as U.D.C. from the grade of L.D.C. but was regularly promoted w.e.f. 18.7.81 i.e. on the same date when the applicant was promoted. But while fixing the pay in the higher grade of U.D.C., the pay of the petitioner of that case was fixed at a lower stage than the said Shri P.K.R. Murthy. This discrepancy was reflected revised again when the pay rules came into being on the recommendation of the IV Pay Commission. The Tribunal directed the respondents to step up the pay of the applicant notionally on par with his junior with effect from 1.1.1986 with actual monetary benefits from 1.1.1990 onwards (i.e. one year prior to filing of the O.A.) and to pay all arrears from 1.1.1990 onwards. The Regional Director, ESIC, Hyderabad filed a S.LP. against the aforesaid judgement of the CAT, Hyderabad Bench before Hon'ble Supreme Court and the Hon'ble Supreme Court by the judgement dated 9.3.94 in SLP No.3408/94 upheld the judgement of the Hyderabad Bench CAT referred to above by the following order:-

"Since in the present case the Respondent was superceded at the time of the adhoc appointment of his junior and it is not the case of the petitioner that the adhoc appointment was offered to him and he had refused it, we are not inclined to interfere with the impugned order."

In view of the above facts and circumstances we find that the applicant when regularised on the post of Section Officer has to be paid not less than his junior and this is also interpretation of the DOPT O.M. No.5/16/80-CS.I dated 13.4.88.

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5. The present application was filed by the applicant in April, 1991 while the grievance arose to him earlier. But adopting the ratio of the case of T. Atchutaramaiah(supra) the applicant's pay has to be fixed notionally from 1.1.86 but he will get the actual monetary benefits one year prior to the filing of the application i.e. from 1.4.90.

6. The application therefore is partly allowed with direction to the respondents to step up the pay of the applicant to the level of Shri Virender Kumar notionally w.e.f. 1.1.86, may be, by antedating his date of increment from the month of November to the month of August and he shall get actual monetary benefits with arrears from April, 1990. The respondents to comply with the direction within a period of 3 months from the date of receipt of this order. No costs.

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(S.R. ADIGE)
Member(A)

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(J.P. SHARMA)
Member(J)

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