

Central Administrative Tribunal, Principal Bench

O.A. No. 1575/2004

New Delhi this the 5th day of April, 2005

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Hon'ble Mr. Justice M.A. Khan, Vice Chairman(J)

Hon'ble Mr. S.K. Naik, Member (A)

1. N.S. Adhikari
S/o Late Shri A.S. Adhikari
R/o N-517, Sector-IX,
R.K. Puram,
New Delhi-110 022.
2. Mohan Singh
S/o Late Shri Baru Ram
R/o T-23/3, Officers Quarters,
New Delhi-110 062.
3. Nachatter Singh
S/o Late Shri Neka Singh,
R/o H.No.1216-B, Sector-7B,
Chandigarh.

....Applicants

By Advocate: Shri Surinder Singh.

Versus

1. Union of India through
Defence Secretary,
South Block, New Delhi.
2. The Chief of Air Staff,
Vayu Bhawan, New Delhi.
3. The Principal Director
Pers (Civil),
Air HQ Vayu Bhawan, New Delhi.
4. Director Vigilance & P.G.,
Ministry of Defence,
Sena Bhavan, New Delhi,
DHQ-110 011.

...Respondents

By Advocate: None.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicants seek a direction to the respondents to give benefit of FR (I)(a)(1) in the matter of fixation of their salary on promotion to the post of CAO (E).

2. We have heard the learned counsel for the applicants at length. The counsel for the respondents did not attend the hearing but we have perused the relevant record.

3. Briefly, the facts, are that the applicants were working as Senior Store Superintendent (SSS) in the pay scale of Rs.1640-2900 (pre-revised) when pursuant to

perused over

the recommendations of the 5th Central Pay Commission, 20% of the posts were given Selection Grade (SG) in the pay scale of Rs.2000-32000. This Selection Grade in the higher pay scale was given strictly on seniority-cum-fitness basis with 4 years regular service in the post of SSS. SSS (SG) on promotion to the post of CGO (E) were given the benefit of pay fixation of FR 22 (I)(a)(1) since they were in the lower pay scale of Rs.2000-3200 and the post of CGO (E) carried the duties and responsibilities of higher degree. But after 5th Central Pay Commission report, pay scale of Rs.2000-3200 and Rs.2000-3500 were merged and replacement pay scale of Rs.6500-10500 was sanctioned. The SG of SSS was abolished and existing incumbents in SSS (SG) were placed in the revised scale of pay of Rs.6500-10500 and it was considered personal to them till they were wasted out/promoted. Consequent to the grant of identical pay scale with effect from 1.1.1996 to both SSS (SG) as well as CGO (E), the pay fixation benefit given earlier to CGO (E) could not be given because under FR 22 (III) the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance if it was on the same pay scale as the Government servant hold the post on regular basis, as such the benefit under FR 22(I)(a) (1) was not admissible. Representations made by the applicants were dismissed vide order dated 25.9.2000 (Annexure A-3). The applicants are aggrieved and have filed the present OA.

4. Admittedly, the post of SSS (SG) and the post of CGO (E) both were carrying the same pay scale of Rs.6500-1050. It is also ^{not} denied that the post of CGO (E) carried duties and responsibilities of greater importance and before the post of SSS (SG) was upgraded to the pay scale of Rs.6500-10500, the pay on the promotion to the post of CGO (E) was being fixed in accordance with FR 22 (I)(a)(1). It is also not disputed that the post of SSS (SG) was in Group 'C' whereas the post of CGO (E) is a Group 'B' Gazetted post.

5. In the light of the above facts, the question arises whether the pay of the applicants on their promotion from the grade of SSS, i.e., Rs.6500-10500 to the post of CGO (E) which carried pay scale of Rs.6500-10500 required to be fixed in accordance with FR 22 (I)(a)(1). Before the two scales became equal, this benefit was being granted on promotion to the post of CGO (E). The respondents on a clarification received from the DOP&T have declined to give the benefit of this FR on the premises that both the posts - the lower post and the higher post, were now in the identical pay scale, so by

virtue of FR (III) the higher post of CGO (E) would not be deemed to involve the assumption of duties and responsibilities of greater importance making FR 22(I)(a)(1) inapplicable.

6. FR 22 (I)(a)(1) and FR (III), being relevant, are reproduced here in:-

"FR 22 (I)(a)(1) where a Government servant holding a post other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower posts held by him regularly by an increment at the stage at which such pay has accrued or (rupees one hundred only) whichever is more.

(Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis or on direct recruitment basis), the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment.

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or (rupees one hundred), whichever is more.

... ..

(III) For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment on a scale of pay identical therewith".

7. It is clear from FR (III) that the higher post shall not be deemed to involve the assumption of duties and responsibilities of greater importance if both the posts, the lower post and the higher post, carried identical pay scales. It has so happened in this case. The post on which the applicants were working on regular basis was in the pay scale of Rs.6500-10500 and they had been promoted to the post of CGO (E) which also

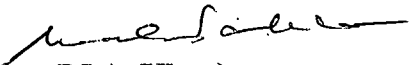
for and on behalf of

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carried the pay scale of Rs.6500-10500. Therefore, the higher post of CGO (E) shall not be deemed to carrying duties and responsibilities of greater importance than those attached to the post held by the incumbent before his promotion to the higher post. Reading the provision of clause (a) of FR 22 (I)(1) and the provision of FR 22 (III) conjointly, clearly spelt out that the benefit of clause (a) would not be available to the applicants in this case. There is no infirmity in the order of the respondents which is impugned in this OA.

8. The OA has no merit and it is dismissed but without any order as to costs.


(S.K. Naik)
Member (A)


(M.A. Khan)
Vice Chairman (J)

Rakesh