

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 1909/2004

NEW DELHI THIS 31st DAY OF JANUARY 2006

HON'BLE SHRI JUSTICE B. PANIGRAHI, CHAIRMAN
HON'BLE SHRI N D DAYAL, MEMBER (A)

Shri R B Joshi S/o Sh B R Joshi
A-252 Pandara Road,
New Delhi

.....APPLICANT

(BY Applicant in person)

VERSUS

1. Union of India through
Secretary to the Govt. of India,
Ministry of Personnel & Trg., New Delhi -1
2. Union of India through
Defence Secretary,
Ministry of Defence, New Delhi-1
3. Union of India through
Home Secretary,
Ministry of Home Affairs, New Delhi -1

.....RESPONDENTS

(BY ADVOCATE: SHRI K R SACHDEVA)

ORDER

BY HON'BLE SHRI N D DAYAL, MEMBER (A)

We have heard the applicant who has appeared in person as well as the learned counsel for the respondents and perused the pleadings. At the outset the applicant has clarified that he confines himself to the relief claimed at para 8(ii) only which is as under:

“8(ii) In the Grade of Under Secretary the respondent may be directed to grant parity of pay to the applicant with his juniors S/Shri Krishan Lal, Shri K. Abraham Yusuf and Smt. B. Nalini whichever is most beneficial to him. Arrears of pay consequent upon the parity may be allowed w.e.f. the date the juniors have received the benefit”

The respondents have opposed the prayer of the applicant by filing a counter reply to which the applicant has placed a rejoinder. Since the applicant has confined his relief to the prayer at para 8(ii) of the OA, we also propose to focus mainly on those averments which are in reference to this prayer.

2. The respondents have in their reply taken a preliminary objection with regard to limitation on the ground that the applicant's claim for stepping up of his pay was rejected in 2001 whereas he has approached the Tribunal after a lapse of over three years. However, in view of the nature of this case regarding stepping up of pay the hearing of the O A was taken up and the objection was not pressed.

3. The applicant as Under Secretary in the Ministry of Defence (MOD) belongs to Central Secretariat Services (CSS) which are controlled by the DoPT. He was recruited as Assistant in the Ministry of Finance in 1974 and later having succeeded in LDE 1980 was appointed as Section Officer in Ministry of Home Affairs from 31.7.82. Thereafter he was regularly appointed in the grade of Under Secretary w.e.f. 1.7.1994 vide DoPT OM dated 12.8.2002. It is submitted that S/Shri Kishan Lal, Abraham Yusuf and Smt. B. Nalini, who were junior to him, in terms of the combined seniority list of Section Officer of the CSS prepared on all secretariat basis because their names appear in the list at Sl. 3561, 3567 and 3619 respectively much below that of the applicant at sl. 3545, were promoted as Section Officer in 1980 on ad hoc basis but he was appointed only on 31.7.1982. The select list for that year was not operative due to administrative delay. Similarly for the post of Under Secretary in Grade - I of CSS no select list was brought out for regular appointment and instead the appointments were made on ad hoc basis and continued for long periods of time. The juniors to the applicant whose names appeared in the panel of Under Secretary at sl. 58 and 60 below the applicant who was at sl. 50, got ad hoc promotions while the applicant stagnated. He therefore, addressed the authorities citing various judgements in support of his plea for stepping up of his pay to the level of his juniors irrespective of the reasons for the anomaly in pay, including a decision of the Tribunal in OA 155/98 dated 16.2.2001 in the case of **Shri D K Goel, Under Secretary** in the same Ministry as the applicant. The applicant also relied upon a judgment of the Ernakulam Bench of the Tribunal in the case of **K. Krishna Pillai , G K Nair, C.A. Gopinathan and Others Vs UOI** dated 29.10.1993, according to which in all cases except where reduction is by way of disciplinary proceedings, a senior will be entitled to have his pay stepped up to the level of the pay received by his junior, due to fortuitous circumstances. However, the efforts of the applicant brought no result.

4. It is clarified by the applicant that he had proceeded on deputation as Senior analyst in the Ministry of Finance and while so he was offered promotion as Under Secretary on ad hoc basis. But keeping in view the short term nature of ad hoc appointments and the likelihood of the select list of grade-I being brought out at any time, he did not prefer to revert back from deputation due to the uncertainty involved. He therefore requested vide his application dated 6.12.96 that orders of his repatriation be withdrawn and accordingly the same were kept in abeyance. He was not given the benefit of proforma promotion because the offer was only on ad hoc basis. When he returned from deputation on 1.9.97 a large number of officers junior to him had already been promoted. The applicant represented to DoPT on 31.1.1997 for stepping up of his pay with respect to the three juniors but he was informed that because he had declined promotion while on deputation he was debarred for a period of one year.

5. The respondents have explained in their reply that the CSS consists of the following five grades:

S No.	Grade	Scale of pay
i.	Senior Selection Grade (Director Group 'A')	Rs.14300-18300
ii.	Selection Grade (Deputy Secretary) Group 'A'	Rs.12000-16500
iii.	Grade-I (Under Secretary) Group 'A'	Rs.10000-15200
iv.	Section Officer Group 'B' (Gazetted)	Rs.6500-10500
v.	Assistant Group 'B' (Non-gazetted)	Rs.5500-9000

The grades of Director, Deputy Secretary and Under Secretary are centralized with the DOPT while the other two grades, namely, Section Officer and Assistant are decentralized amongst 33 cadre authorities. The appointments to the decentralized grades are made cadre-wise by the 33 cadre authorities and the seniority in these two grades is also maintained cadre-wise in accordance with the extant CSS Rules and Regulations."

It is admitted that the select list of Grade I (Under Secretary) of CSS could not be prepared/issued after 1986 due to protracted litigation regarding inter-se-seniority which resulted in acute stagnation in the CSS Grade.

6. It is submitted that there was no discrimination against the applicant. Juniors drew higher salary due to their continuation in the higher post on ad hoc basis earlier than the applicant and also because such promotion was declined by the applicant. There was no vacancy to accommodate the applicant on his return from deputation on 1.12.1997 and he was promoted as Under Secretary on ad hoc basis in March 1998. But subsequently he was included in the select list for the year 1994 and got the benefit of notional fixation of his pay as Under Secretary from 1.7.1994. Thus his three juniors drew higher pay because of

their earlier ad hoc promotion in both the grades i.e. Section Officer and Under Secretary. It is pointed out that as per OM dated 4.11.1993 of the DoPT if a senior joins higher post later than the junior for whatever reason whereby he draws less pay the stepping up of pay on par with the juniors can't be granted. This has been upheld in the case of **UOI Vs R Swaminathan and Ors (1997 (7) SCC 690)** which provides that benefit of stepping up of pay shall not be admissible to senior who refuses promotion or where the juniors officiated earlier. It is argued that the case of the applicant is not similar to that of **Shri D K Goel (supra)** since in that case the applicant had not been given option to revert back to his department to avail promotion.

7. The main question that arises for our consideration is whether the applicant is entitled to the relief of stepping up of his pay with reference to his juniors if he was not made any offer of ad hoc promotion and whether in 1996 when he forgoed/declined such offer he could still claim for stepping up of pay even if the disparity in pay has arisen due to the earlier ad hoc promotion of the juniors who continued as such for an extended period of time. We find that the controversy in the present case is covered by the judgement of the Hon'ble Supreme Court in the case of **UOI and Others Vs M. Suryanarayana Rao 1999(2)AISLJ 79**. In that matter the apex court was dealing with a prayer for stepping up of pay on par with the pay of juniors who were promoted in Group 'B'. The grievance was that although the respondent before the court was senior to the other two persons his pay was fixed at lesser scale whereas the pay of the said persons was fixed at a higher scale. The Tribunal accepted his entitlement for stepping up of pay on par with the juniors. This had been assailed before the Hon'ble Supreme Court on the ground that the junior had been promoted earlier to the higher post on ad hoc basis and as such got his pay fixed at a higher scale and reliance was placed in this regard upon the judgement in **UOI Vs R. Swaminathan and others (supra)**. A Bench of three judges had considered FR 22(1) and also the OM dated 4.11.1993 which sets out various instances where stepping up of pay cannot be done. The relevant observation of the Bench was noted by the court as under:

"The memorandum makes it clear that in such instances of junior drawing more pay than his senior will not constitute an anomaly and , therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay.

The aggrieved employees have contended with some justification that local officiating promotions within a Circle have resulted in their being deprived of a chance to officiate in the higher post, if such chance of officiation arises in a different circle. They have submitted that since there is all-India seniority for regular promotions, this all-India seniority must prevail even while making local officiating appointments within any Circle. The question is basically of administrative exigency and the difficulty that the administration may face if even short-term vacancies have to be filled on the basis of all-India seniority by calling a person who may be stationed in a different circle in a region remote from the region where the vacancy arises, and that too for a short duration. This is essentially a matter of administrative policy. But only justification for local promotions is their short duration. If such vacancy is of a long duration there is no administrative reason for not following the all India seniority. Most of the grievances of the employees will be met if proper norms are laid down for making local officiating promotions. One thing however, is clear. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the proviso to Fundamental Rule 22."

8 A contention was raised that the three judges Bench had considered only a short term ad hoc promotion of the junior and not a long term ad hoc promotion and in case of the latter the seniors pay must be stepped up because the principle laid down by the Bench would apply only to cases of promotion for short term. Upon such submission the Apex court observed that :

"4. From the passage extracted above from the aforesaid judgement it is clear that the question of stepping up did not depend upon the fact that the promotion was short term ad hoc promotion or long term ad hoc promotion. The Government memorandum which has been referred to in the judgement does not make a distinction between short term ad hoc promotion and long term ad hoc promotion. The relevant part of the Government Memorandum which is extracted in the judgement itself reads as follows :

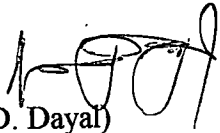
"If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, the junior draws higher pay than the senior. The senior may be on deputation while the junior avails of the ad hoc promotion in the cadre. The increased pay drawn by a junior either due to ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term."

9. When it was argued that the decision in R. Swaminathan's case requires re-consideration in the light of certain other decisions which were mentioned before the court, such plea was not accepted because in none of the cases that were cited there was any reference to the relevant Fundamental rules or the Government Memorandum. On the other hand the Bench had considered all the relevant rules and had laid down the principle clearly. It was further held :

"8. One of the reasons given by the Tribunal in support of its order is that when ad hoc promotions were made, the respondent was not

considered therefore or offered the same and it was not as if he refused to take up higher responsibility. The reasoning is highly fallacious. As pointed out by learned counsel for the appellant ad hoc promotions are made within the circles where vacancies arose and the respondent who was working in a different circle could not have been considered for such ad hoc promotion or offered the same. The fact that ad hoc promotions are made within the circles has been noticed by the Bench in R. Swaminathan's case."

10. In the light of the above judgement of the Hon'ble Supreme Court we are of the view that the ratio of that decision is applicable to the present case and therefore we do not find any sufficient ground to intervene on behalf of the applicant in this case. The application is therefore dismissed. No costs.



(N.D. Dayal)
Member(A)



(B. Panigrahi)
Chairman

Patwal/