

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

8

O.A.No. 319/92.

Date of decision 5.5.1993

Shri R. Banu ... Applicant

V/s

Union of India ... Respondents
& Others.

CORAM:

The Hon'ble Shri B.S. Hegde, Member (Judicial)

For the Applicant ... In person

For the Respondents .. Shri O.N. Trisal, counsel.

(1) Whether Reporters of local papers may be allowed to see the Judgement.

(2) To be referred to the Reporters or not ?

J_U_D_G_E_M_E_N_T

[Delivered by Hon'ble Shri B.S. Hegde, Member(J)]

This applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 against the fixation of pay as fixed by the Executive Engineer, P.W.D. Division No. XIV (D.A.) R.R. Lines, Ring Road, New Delhi vide his office order No. 9(2)/P.W.D. XIV/DA/E-I/760, dated 2.7.1991 at pp. 5-6. The main contention of the applicant^{is} that the pay in non-functional higher grade ought to be fixed at

B.S. Hegde

the same stage equal to the pay in the ordinary grade. If there is no such stage in the higher grade, then it is required to be fixed at the next stage above his pay in the ordinary grade as per F.R.22(1)(a)(2).

2. The applicant further contends that in pursuant to Fourth Pay Commission his pay needed to be fixed at Rs 1760/- w.e.f. 1-8-1986. Subsequently, his pay has been fixed at Rs 1700 w.e.f. 6-5-1986. The contention of the applicant is that he opted for fixation of pay and his date of increment is from 1-8-1986 instead of 1-1-86 as permissible under the rules. Accordingly, his pay has been fixed in the ordinary grade and it is not fixed in the said non-functional higher grade i.e. Rs 1640-2900 in spite of the fact that he opted for the fixation of pay w.e.f. his date of increment.

3. The respondents, in their reply, squarely conceded the contention of the applicant, except denying that the applicant's pay has been reduced in the new revised grade in as much as the said grade has been given effect from 1.1.1986. He further contends that in the new revised pay there is no provision for exercising of option to get the pay fixed at a date later than 1.1.86 and as such the applicant cannot be asked for exercising such an

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10

option.

4. The short point for consideration is whether it is open to the respondents to reduce his pay without giving an option or opportunity before doing so. Admittedly, as on 1.8.1986, while he was working in the scale of ¹⁴⁰⁰⁻2300/- he was drawing a basic salary of Rs. 1720/- and when he was promoted to the grade of Rs. 1640-2900, his pay had been initially fixed at the rate of Rs. 1720/- and thereafter, it was reduced to Rs. 1700 which is clear from the Office Order dated 21st July, 1991. Proviso to FR 22(i) gives protection of pay previously drawn. The basic principle behind this proviso that a Government servant appointed to a post on a second or subsequent occasion should not draw pay less than what he drew in the post in the previous occasion. The stand of the respondents is that FR 22(1) (a)(2) does not apply to the instant case and does not merit in the contention. Whenever a change in the emoluments is made, person affected should be given an option and after considering his option necessary adjustment has to be made.

5. As a matter of fact, the reply given by the respondents is vague and misleading. There are three scales in CPWD or PWD (Delhi Administration) such as Rs. 1400-2300,

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11

1640-2900, 2000-2500 based on their length of service cum fitness. The non-functional higher grade of Rs. 1640-2900 has not been given in lieu of the payscale of Rs. 1400-2300, but was given based on the length of service and the applicant's fitness has been declared by the DPC. On such cases of fixation of pay rules provides exercising of option to get the pay fixed either from the date of giving such higher grade or from the date of next increment as admissible under the rules.

6. In support of his contention, the applicant has furnished and relied upon Office Order received in favour of Shri Ajit Paul Singh, who was also a Junior Engineer and his pay has been fixed in the scale of Rs. 1640-2900 as on 1.8.1986 as Rs. 1760/-. When this was brought to the notice of the respondents' counsel, he has nothing further to say except to concede that the pay reduction in the applicant's case is not in accordance with the rules. Since, there is no serious objection on the part of the respondents in fixing the applicant's pay at Rs. 1760/- as stated in his application, keeping in view FR 22 (c), I allow the application and direct the respondents to fix his pay as per the revised scale i.e. Rs. 1760/- which

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12

was done in the case of Shri Ajit Paul Singh *who*
was similarly situated than that of the applicant.
I further direct that the respondents may refix
his pay within two months on receipt of this order
and any consequential benefits that may accrue to
him may be paid to him within the said period of
2 months.

7. Accordingly, the O.A. is disposed of with
no order as to costs.

(B.S. HEGDE)
MEMBER(J)

B.S. Hegde
5/5/93