

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. No.357/92

DATE OF DECISION : 07.08.1992

Shri Partap Rai

...Applicant

vs.

Union of India & Ors.

...Respondents

CORAM

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

For the Applicant

...Shri K.L. Bhandula

For the Respondents

...Shri M.L. verma

1. Whether Reporters of local papers may be allowed to see the Judgement? Y

2. To be referred to the Reporter or not? Y

JUDGEMENT

The applicant is working as Senior Computer in the Ministry of Water Resources and in this application has prayed for the relief that the respondents may be directed to refix the applicant's salary in the grade of Senior Computer w.e.f. 29.8.1983 at the level of the salary drawn by his junior, Smt. Anju Katyal with all the consequential benefits including increments, allowances etc. He has also claimed the interest.

2. The facts of the case are that the applicant joined as Junior Computer on 12.7.1968 in Central Water Commission. Smt. Anju Katyal also joined as Junior Computer after the

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✓ applicant on 8.10.1969 and she is also working as Senior Computer. The applicant is senior and his serial number in the seniority list of the Junior Computers as on 1.6.1986 is at 29 while that of Smt. Anju Katyal is at Sl.No.33 (Annexure II). The applicant, however, proceeded on deputation to WAPCOS in 1980 when the applicant was working as Senior Computer on purely ad hoc basis. The applicant was reverted to the post of Junior Computer w.e.f. 3.6.1980 on account of having proceeded on deputation and his deputation period was extended. The applicant on repatriation from WAPCOS, joined CWC on 29.8.1983 and he was promoted as Senior Computer. His pay at that time had to be fixed with reference to the pay notionally drawn by him during the period he was on deputation with WAPCOS with reference to his pay in the grade of Junior Computer and not with reference to his pay in the grade of Senior Computer on which post he did not work during the deputation period. Smt. Anju Katyal, junior to the applicant continued to work as Senior Computer in CWC. As a result thereof, she earned her increment in the grade of Senior Computer even though working on ad hoc basis. The applicant represented on 8.3.1991, but the respondents did not give any reply and hence the applicant has filed the present application for the aforesaid reliefs.

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3. The respondents contested the application and stated that on account of the applicant's having gone on deputation in 1980, he was reverted to the post of Junior Computer from the ad hoc post he was holding of Senior Computer and on return from deputation, he was again promoted to the post of Senior Computer w.e.f. 29.8.1983. Since Anju Katyal continued to work on ad hoc basis as Senior Computer, she earned her increments and is getting more pay than the applicant though she is junior to the applicant. In view of this, there is no anomaly in fixation of the pay of the applicant. The pay of the applicant is Rs.1480 in comparison to the pay of Smt. Anju Katyal fixed at Rs.1560.

4. I have heard the learned counsel for the parties at length and have gone through the record of the case. The learned counsel for the respondents has referred to the Ministry of Finance OM dt. 4.2.1966 which provides that in a case where senior is drawing lesser pay than the junior, the pay of the senior officer in the higher scale should be stepped up to a figure equal to the pay as fixed for the junior officer in the higher post. The stepping up should be done with effect from the date of promotion or appointment

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of the junior subject to the following conditions :-

- (a) Both the junior and senior officers should belong to the same cadre and the post in which they have been promoted or appointed, should be identical and in the same cadre.
- (b) The scale of pay of the lower and the higher post in which they are entitled to draw the pay should be identical.
- (c) The anomaly should be directly as a result of the application of FR 22(c).

The pay of the senior officers is to be refixed in accordance with the above provisions under FR 27. The next increment of the senior officer would be drawn on completion of the requisite qualifying service, i.e., with effect from the date of refixation of the pay. The condition Nos. (a) and (b) referred ^{to} above are satisfied. As regards condition No. (c), both of them were promoted as Senior Computer on ad hoc basis w.e.f. 9.10.1978 and pay of both of them was fixed in the same pay scale in the grade of Senior Computer, pay of Rs.330+Rs.4 personal pay in the old scale of Rs.330-560. However, the applicant was reverted to the post of Junior Computer and proceeded on deputation to WAPCOS w.e.f. 3.6.1980 and came back on 2.6.1983. He was again promoted as Senior Computer on ad hoc basis w.e.f. 29.8.1983 and his pay was fixed in the

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grade of Senior Computer at Rs.360 after taking into account the presumptive pay in the scale of Junior Computer. Both these officers were appointed as Senior Computer on regular basis w.e.f. 24.8.1984. Thus on 1.9.1984, the applicant was drawing Rs.370 as basic pay while Smt. Anju Katyal was drawing Rs.380 on 1.8.1984. The difference in pay on that date has been due to the fact that Smt. Anju Katyal continued to officiate as Senior Computer on officiating basis without any break after being given the ad hoc promotion from 9.10.1978 until her promotion on regular basis as Senior Computer w.e.f. 24.8.1984. The applicant is drawing less pay not because of the application of FR 22(c), but because of his proceeding on deputation to WAPCOS. However, the contention of the respondents cannot be accepted in view of the OM of Ministry of Finance dt. 12.5.1982 (ID No.114/50/86-Estt.11) which lays down that, "The pay of the senior officer cannot be stepped up because the promotion of the junior officer to the higher grade has been made on ad hoc basis. After the promotion of junior officer is made regular without any break in the service in the higher grade, the pay of the senior officer may be considered for stepping up to the level of the pay drawn by his junior officer retrospectively under FR 27 in consultation with the Ministry." Thus the case

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of the applicant is that when the applicant was regularised on 29.3.1984, the respondents should have stepped up the pay irrespective of the fact that the applicant while on deputation was reverted to the post of Junior Computer. The learned counsel for the applicant has also relied on a decision of OA 365/90 (Kishan Chand Sehgal vs. Union of India) decided by the Principal Bench on 1.5.1992. In that case, the applicant prayed for stepping up of his pay with reference to his junior, Smt. Sunita and both were Section Officers in the same department. The Tribunal after considering the whole matter directed the stepping up of the pay of Shri Sengal to the level of Smt. Sunita, his junior. It has been further held that if the senior is allowed to draw the lesser pay than his junior, then in such a situation there will be infraction of the Articles 14 and 16 of the Constitution and mutilates against the provisions of equality enshrined therein. The applicant has annexed to the application the order dt. 6.10.1978 whereby the applicant was promoted on ad hoc basis as Senior Computer along with Anju Katyal. After this the applicant has again gone on deputation sometimes in 1980. While the applicant was on deputation, the deputation period of the applicant was extended. In this letter of 11.6.1981 (Annexure AIV), the

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applicant was also shown as reverted to the post of Junior Computer w.e.f. 3.6.1980. The applicant, of course, has not challenged this order, but at the same time when the applicant has been regularised after repatriation in the department on the identical post, then by virtue of the OM of Ministry of Finance dt. 12.5.1982 referred to above, the applicant's pay should have been stepped up to the level of his junior, Smt. Anju Katyal. The order dt. 24.8.84 (Annexure VI) goes to show that both Anju Katyal and the applicant were regularised as Senior Computer, junior scale with immediate effect and they were placed on a probation for a period of two years. The difference of the pay on that date has arisen because Smt. Anju Katyal continued to work on ad hoc basis as Senior Computer, while the applicant was on deputation and could not work continuously. It was not in the power of the applicant to have worked at both the places, i.e., on the deputation post in WAPCOS as well as in the cadre post in OML. The applicant is not at fault. He has proceeded on deputation to the WAPCOS in the public interest and joined there on 3.6.1980. He was not reverted at the time when he joined the deputation post in WAPCOS as Junior Computer, but he was reverted after one year while sanctioning extension of deputation in June, 1981. This act of the respondents, therefore, cannot be said to be according

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to the law. But since the applicant has not challenged his reversion as Junior Computer of which he has knowledge, so the applicant cannot claim stepping up of pay w.e.f. 29.8.1983 when he joined back from deputation. However, he cannot be denied the benefit of stepping up of the pay when he has been regularised along with his junior, Smt. Anju Katyal by the order dt. 24.8.1984.

5. In view of the above facts and circumstances, the application is partly allowed and the respondents are directed to refix the applicant's pay in the grade of Senior Computer w.e.f. 24.8.1984 at the level of his junior, Smt. Anju Katyal and the applicant should be given further benefits of this fixation and so also be entitled to the arrears of pay etc. and refixation of pay from 1.1.1986. The claim for interest is disallowed. The respondents shall comply with the above directions within a period of three months from the date of receipt of a copy of this judgement. In the circumstances, the parties shall bear their own costs.

AKS

Signature
7.8.92
(J.P. SHARMA)
MEMBER (J)