

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2452 of 1993

New Delhi this the 6th day of November, 1995

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri V.P. Singh
R/o B-15 MIG Flats,
Chitrakoot Enclave,
Loni Road,
Shahdara,
Delhi.

...Applicant

By Advocate Shri U.S. Bisht

Versus

1. Union of India through
Comptroller & Auditor General of India,
New Delhi,
I.P. Estate-1100002.
2. Director General of Audit,
Defence Services,
Brassey Avenue,
L-II Block,
New Delhi.
3. Deputy Director of Audit,
Defence Services,
T-59, Tigris Road,
Delhi Cantt.

..Respondents

By Advocate Shri N.S. Mehta

ORDER (ORAL)

The applicant is aggrieved that although he was promoted to the grade of Audit Officer with effect from 15.9.1980, the respondents have not agreed to the stepping up of his basic pay with reference to the pay of his junior, one Shri A.N. Mukherjee, on his promotion as Audit Officer with effect from 1.7.1986. He has, therefore, sought the direction of this Tribunal to the respondents to step up the pay of the applicant with effect:

from the date of pay fixation of his junior Shri Mukherjee on his promotion as Audit Officer (hereinafter referred to as 'AO') and to grant all consequential benefits.

2. The facts in this case are briefly stated as under. The applicant joined the service under the respondent No.2 as Upper Division Clerk (now designated as Auditor) on 09.01.1960 whereas his junior Shri Mukherjee joined the same post as Auditor with effect from 23.5.1955. Although the applicant was junior in his service from Shri Mukherjee at that point of time, the applicant passed the Section Officers Grade Examination (SAS) in January, 1967 itself and was promoted to the post of SAS Accountant with effect from 2.5.1967 whereas the junior passed the SAS Examination only in December, 1972 and was promoted to the said post from 18.4.1973. So consequent on this promotion from an earlier date due to his passing the SAS qualifying examination on an earlier date, the applicant has been ranked senior to Shri Mukherjee in the SAS Grade. Subsequently, the applicant was promoted as Audit Officer with effect from 15.09.1980. The respondents introduced an intermediary scale with effect from 1.3.1984 as a result of restructuring of the posts in the Department. Consequent to this restructuring, the respondents introduced the intermediary post of Assistant Audit Officer (hereinafter referred to as 'AAO') with effect from that date. Soon on the date of introduction of the intermediary grade, all the Section Officers who are eligible

h

for promotion, were first promoted to the intermediary scale of AAO and were later on promoted to the grade of Audit Officer. However, in the meantime, when this intermediary scale was introduced, the applicant was already in the higher scale of Audit Officer, he having been promoted as Audit Officer with effect from 15.09.1980. The first respondent issued an order dated 26.7.85 which sought to correct anomaly arising out of pay fixation consequent to the introduction of the intermediary scale, by which, Section Officers promoted as Audit Officers/Account Officers before restructuring in the Department were drawing less pay than their juniors who were first promoted in the intermediary scale of Assistant Audit Officer and then got promotion as Audit Officers. In the said order, it has been stated that in order to remove these anomalies, it has been decided in consultation with the Ministry of Finance, Government of India, that in such cases, the pay of the senior in the higher grade (Audit Officer's grade) may be stepped up under FR 27 to make it equal to the pay of the junior person subject to the fulfilment of the following conditions:-

- (a) The scale of pay of the lower posts (before the introduction of the intermediary posts of Assistant Audit Officers) and the higher posts in which both the junior and senior are entitled to draw pay should be identical.
 - (b) The senior person should have been eligible for appointment to the intermediary post but for his working in the higher grade on or before the date on which the junior was appointed to intermediary post and
 - (c) The junior person should not have drawn more pay than the senior by virtue of fixation of pay under the normal rules or any advance increments granted to him in the lower post before the introduction of the intermediary post at the time of his promotion to higher grade.
- h

14

3. The applicant claims the benefit of refixation of his pay under these orders of the respondent No.1 consequent to the promotion of his junior as Accounts Officer and fixation of his pay with effect from 1.7.1986. It is alleged that the pay of his junior has been fixed as Rs.3,050/- on 1.7.86 when the applicant was drawing the pay of Rs.2,900/- as on 1.1.1986 with date of next increment as 1.9.1986 which will take his pay to Rs.2,975/-and, therefore, claims that he was drawing less pay than the junior. In view of this, the applicant claims that he is entitled for stepping up of pay allowed by the respondents by their letter dated 26.7.1985 as he is fulfilling the conditions for such stepping up of pay under FR 27. The respondents in their counter-reply have averred that the case of the applicant is not covered under the provisions of the respondents letter dated 26.7.1985. The respondents, however, have not given any detailed reasons why the applicant's case is not covered under the said letter dated 26.7.1985. It is, however, stated by the respondents in their reply in para 5.2. of the O.A. that the junior on promotion to A.O. started drawing more pay than the applicant and it is not due to the fixation of pay on promotion under FR 22(C), but it is due to the length of service, intermediary promotion to the posts of Selection Grade Auditor, Selection Grade Section Officer and Assistant Audit Officer, through which the applicant had not passed as the applicant happened to hold higher post when Shri Mukherjee, the junior was promoted to these intermediary posts. It is also averred by the respondents that the lower posts of Selection Grade S.O. and Selection

h

Grade Auditor carries different scales of pay and as such, the basic condition that under the rules and revised scales of pay of lower and higher posts in which they are entitled to draw pay should be identical, as laid down in the Ministry of Finance letter of 18.7.1984, is not fulfilled and, therefore, there is not anomaly in pay drawn by the applicant.

4. The learned counsel for the applicant argued on his pleadings and also cited the decision contained in the Government of India O.M. dated 15.2.1983. This order relates to the stepping up of pay in order to make the pay of the senior equal to the pay of the junior subject to the fulfilment of the conditions and this stepping up was necessitated because of the introduction of non functional selection grade. The said order was issued in order to correct anomaly where a senior Government servant promoted to a higher post because of introduction of non functional selection grade draws less pay than his junior, who is promoted to the higher post later, after having been appointed in the selection grade. In the above order, stepping up of pay of the senior was also permitted subject to the fulfilment of the following conditions:-

- (1) The scale of pay of the lower post (ordinary grade) and higher post in which both junior and senior are entitled to draw pay should be identical.
- (2) The senior employee should have been eligible for appointment to selection grade but for his working in the higher post on or before the date on which the junior was appointed to the selection grade.
- (3) The junior person should not have drawn more pay than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him in the lower post, and the anomaly should be directly as a result of the junior person holding selection grade in the higher scale at the time of his promotion to the higher grade.

h

In view of this, the learned counsel for the applicant argued that in terms of this order as well as of the order of the respondent No.1 vide his letter dated 26.7.85, the applicant is fully entitled to be get his pay stepped up to that of his junior from the date his junior was promoted to the grade of Audit Officer.

5. The learned counsel for the respondents stated on the last date of hearing that he would like to ascertain from the respondents whether they would be prepared to reconsider the matter or whether they would give any further clarifications in addition to what they have stated in the counter-reply. The learned counsel, however, stated today at the Bar that the respondents do not want to make further averments. In view of this, the learned counsel for the respondents states that he has nothing more to offer by way of arguments, than what are contained in the pleadings in the counter-reply.

6. I have heard the learned counsel for the parties and have also perused the records and the relevant orders.

7. The main controversy in this case seems to arise from the decision taken by the respondents that because the junior had gone through the stages of Selection Grade Auditor, Selection Grade Section Officer and Assistant Audit Officer through which the applicant had not passed because of his holding a higher post from an earlier date, ~~the applicant is not covered under the provisions of the order of 26.7.85,~~ Shri Mukherjee was promoted to this intermediary post after this was introduced. This, in my view, is totally an irrelevant consideration. The respondent No.1 had issued the order for stepping up in order to

h

17


rectify the anomaly in the pay fixation of the senior vis-a-vis that of his junior consequent on the introduction of intermediary grade after restructuring of the posts. One of the conditions for stepping up is that the scale of pay of lower post before introduction of the intermediary post and the higher post in which both the junior and senior are entitled to draw pay should be identical. By this, all that is meant to be satisfied is that for purposes of pay in the higher post - both the scale of pay in the higher post and that of the lower post before the introduction of intermediary post should be identical. This order is merely concerned with the stepping up of pay benefit in the grade of Audit Officer after the introduction of intermediary post of AAO and it cannot be stretched to all the lower posts. In fact, when a similar selection grade in Group 'C' and Group 'D' categories were introduced and anomalies arose, orders dated 15.2.1983 of the Department of Personnel stipulated an identical condition with the scale of pay of lower post (ordinary grade) only and the higher post in which both junior and senior are entitled to draw pay should be identical. It is only on the same analogy that the respondents have decided to give the stepping up benefit as a result of introduction of intermediary grade. Viewed from this angle, the contention of the respondents that the conditions stipulated in the respondents letter dated 26.7.1985 were not satisfied in this case, cannot be held to be tenable. Further, the

h

18

respondents have also not shown how the case of the applicant is not covered under the provisions of the letter dated 26.7.1985. It is an admitted fact that the applicant had qualified in the SAS Examination and was promoted to the grade of SO much earlier than his junior and, therefore, ranked higher in the seniority of Section Officers' Grade. The introduction of the intermediary grade was much later than the promotion of the applicant to the still higher grade of Audit Officer. When junior was promoted as Audit Officer, his pay was at higher stage than that of the applicant. The applicant, therefore, will be clearly entitled to the benefits of the respondents letter dated 26.07.1985 and, therefore, will be entitled to the stepping up of pay under FR 27 in order to make his pay equal to that of his junior with effect from 1.7.86.

8. In the light of this, the application is allowed and the respondents are directed to refix the pay of the applicant in a grade of Audit Officer with effect from 1.7.1986 at the level of pay drawn by his immediate junior and pay him the consequential ~~pay of~~ arrears of pay and allowances from time to time. No costs.


(K. MUTHUKUMAR)
MEMBER (A)

RKS