

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 20th day of May 2003.

Original Application no. 700 of 2001.

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman
Hon'ble Maj Gen KK Srivastava, Administrative Member.

K.P. Srivastava, S/o Sri Kamta Prasad Srivastava,
R/o 74A/24 Sarvodaya Nagar, Matiara Road, Allahpur,
Allahabad.

... Applicant

By Adv : Sri R R Tripathi

Versus

1. The Union of India through the Secretary to Govt. of India, Ministry of Defence, DHQ, PO, NEW DELHI.
2. The Director General of Ordnance Services, Master General of Ordnance Branch, Army Headquarters, DHQ, PO, New Delhi.
3. The Officer-in-Charge, Army Ordnance Corps Records Trimulgherry PO, Secunderabad.
4. The Controller of Defence Accounts, Central Command, Lucknow.
5. The Area Accounts Officer, 1. Ashok Nagar, ALLAHABAD.

... Respondents

By Adv : Sri M C Chaturvedi

O R D E R

Hon'ble Maj Gen K K Srivastava, Member (A).

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has prayed for quashing the impugned orders dated 26.7.2000 (Ann A1 & A2) and also order dated 20.8.1998 (Ann A19) and has sought for direction to the respondents no. 1 to 5 to consider the case of the applicant

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for stepping up his pay making it equal to the pay drawn by his juniors.

2. The facts, in short, are that the applicant was appointed as Lower Division Clerk (in short LDC) on 31.12.1962, was promoted as Upper Division Clerk (in short UDC) on 1.7.1979 and has ^{been} promoted as Office Supdt. Grade II on 1.6.1994. In pursuance ~~of~~ the order of Mumbai Bench of this Tribunal in OA no. 235 of 1994, A D Bhambukar Vs. Union of India & Ors, Director General, Ordnance Services issued direction through Signal on 11.11.1997 to AOC Records, Secunderabad to step up the pay of all individuals working as OS Grade II who are drawing less pay than their juniors in the same grade. AOC Records initiated the process, applications were called and the applicant applied on 8.1.1998. Number of letters were exchanged between OD Fort, Allahabad, CDS Central Command, Lucknow, AOC Records, Secunderabad and Director General Ordnance Services, Army Headquarters, Delhi. Since, audit report of CDS, Central Command, Lucknow was not in favour of the applicant, he was not allowed stepping up of pay to that of his juniors. Aggrieved by the same, the applicant has filed this OA which has been contested by the respondents by filing counter affidavit.

3. Sri R.R. Tripathi, learned counsel for the applicant submitted that the applicant has been subjected to double jeopardy. Firstly, the learned counsel for the applicant submitted that the number of Daily Part I orders have been issued by the applicant's unit about the complex nature of his duties (an averment to this effect has been made in para 38 of the OA), yet the applicant was denied special pay of Rs. 70/- per month as UDC and secondly, he has not been granted the benefit of stepping up of his pay.

4. Learned counsel for the applicant further submitted that the applicant has been denied equity ^{and} ~~of~~ fair play by the respondents, whose case is fully covered by the rules. Similarly placed persons have been given benefit of stepping up of pay in OD Shakurbasti. In their cases also the audit report was sought for and, therefore, the audit report of CDA, Lucknow was incorrect and illegal. Learned counsel for the applicant has placed reliance on the following cases :-

- a. 1997 SCC (L&S) 701, Union of India Vs. P Jagdish and others.
- b. 1999 SCC (L&S) 936, Union of India Vs. B Sarkar
- c. CAT Allahabad Bench in OA no. 1510/94, smt, Shanti Devi & Ors Vs. Union of India & Ors
- d. CAT Mumbai Bench in OA no. 235/94, AD Bhamburkar Vs. Union of India & Ors.

5. Learned counsel for the applicant finally submitted that in view of the judgment of Mumbai Bench of this Tribunal in case of AD Bhamburkar (supra), the applicant is entitled for stepping up of pay to that of his junior Shri Pran Nath.

6. Resisting the claim of the applicant, Sri MC Chaturvedi, learned counsel for the respondents submitted that the difference in pay of the applicant with that of Sri Pran Nath is because the applicant was not in receipt of special pay of Rs. 70/- per month as UDC, whereas Sri Pran Nath was getting Rs. 70/- per month as special pay which resulted into higher pay fixation of Shri Pran Nath in OS Grade II. Learned counsel for the respondents submitted that grant of special pay of Rs. 70/- in UDC cadre is considered on the basis of complex nature of duties for which the applicant was not considered entitled to.

Learned counsel for the respondents also submitted that the Mumbai Bench of this Tribunal dated 30.11.1994 in OA 235 of 1994

AD Bhamburkar (supra) is a judgment in personam and not a judgment in rem.

7. We have heard learned counsel for the parties, considered their submissions and perused records.

8. The applicant on one hand is praying for stepping up of pay with regard to pay of his junior Sri Prem Nath, whereas the respondents on the other hand are maintaining that since the applicant was not drawing special pay of Rs.70/- permonth as UDC, his pay could not be fixed at higher stage. The applicant has been arguing all through that he was entitled for grant of special pay of Rs.70/- permonth as he was discharging complex nature of duties. Since no relief has been sought for by the applicant in this regard, this plea of the applicant is of no relevance.

9. The respondents have been harping all the time that the applicant is not entitled for the relief on the sole ground that he was not in receipt of special pay of Rs.70/- permonth in the UDC cadre. The respondents have also taken the plea of Audit report given by CDA Central Command, Lucknow which goes against the applicant's claim. The respondents have not been able to convince us that there could be two different audit reports for similarly situated persons. The applicant in para 4.23 of the OA has specifically averred that the pay in respect of six Office Superintendents belonging to OD Shakurbasti were ordered by AOC records, Secunderabad vide order dated 27.4.1998. The applicant has filed the copy of the letter as annexure ^{b b} A29. The applicant has taken the same ground in para 5 (f) also. However, the respondents in para 10 of their counter affidavit giving reply to para 4.23 of the OA have simply stated 'No comments'. In para 20 of the counter affidavit, the respondents have not given specific

reply to para 5 (f) of the OA. Therefore, we have no doubt in our mind that the similarly placed persons have been given the benefit of stepping up in Ordnance Depot, Shakurbasti, while the same has been denied to the applicant. The legal position is well settled that two equals cannot ^{be} treated as unequal unequals. The respondents cannot have two groups of employees, one in Shakurbasti who have been granted benefit of stepping up of pay and the other that of applicant who has been denied the similar benefit. Even respondent no. 1 has not considered the above situation. We fail to understand how could there be two divergent views by the audit authorities.

10. The Hon'ble Supreme Court in case of P Jagdish (supra) has held as under :-

".....that in case the senior person had already been promoted to the higher category of Head Clerks cannot claim that special pay even on notional basis merely because their juniors in the cadre of senior clerks, were given that special pay on being posted against those identified posts carrying special pay. It is an additional pay attached to the post and only any incumbent who occupied the post can claim the same. The claim of respondents on this score, therefore, is not sustainable in law and the Tribunal has rightly rejected." (Para 6)

In para 7 however, it has been held while deciding the second question that "in case respondents had been promoted earlier to the category of Head Clerk and some of their juniors who were continuing as senior clerks against the identified posts carrying special pay of Rs. 35/- per month on being promoted to the post of Head clerks later than the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to remove the anomaly of a government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently

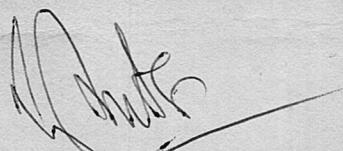
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to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer....."

In the case of B Sarkar (supra) the Hon'ble Supreme Court remitted the matter to Central Administrative Tribunal for consideration in accordance with law laid down in P Jagdish's case (supra). This Tribunal has also held a similar view by its order dated 30.1.2002 in OA 1510 of 1994. From the aforesaid observations it is clear that the applicant is legally entitled for stepping up and the equity shall be adjusted, if the benefit of stepping up is granted to the applicant.

11. In the facts and circumstances and our aforesaid discussions the OA is allowed. The respondents are directed to step up and refix the pay of the applicant equal to that of his junior Sri Pran Nath. The pay of the applicant shall be refixed on proforma basis. However, he shall be entitled for arrears w.e.f. 1.6.2001, as he has filed this OA on 31.5.2001. The respondents are directed to comply this order within a period of three months from the date of communication of this order. The OA is decided accordingly.

12. There shall be no order as to costs.



Member (A)



Vice-Chairman

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