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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No.881 of 1986

L.S. Misra

.....

Applicant.

Versus

Union of India & another ...

Respondents.

Hon'ble Ajay Johri, A.M.

The plaintiff in this suit, which has been received on transfer from the court of Judge Small Causes, Kanpur under Section 29 of the Administrative Tribunals Act, XIII of 1985, who is employed as Postal Superintendent since 20.11.1976 had a grievance regarding fixation of his pay vis-a-vis his junior B.S. Sharma. On his representations the first of which was made on 3.3.1977 his pay was stepped up on 2.2.1985 with effect from 4.7.1977 but payment of arrears of salary was refused to him. According to him the arrears amounted to Rs.1,296.20 P. He has prayed for issue of a decree for payment of this amount and any other relief admissible.

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2. The defendant's case is that the plaintiff was promoted from the grade of Rs.550-900 whereas B.S. Sharma was promoted from the grade of Rs.700-900. Thus the basic conditions laid down in FR 22-C were not fulfilled, but ~~in~~ considering that the plaintiff had suffered due to a particular anomalous situation his pay was stepped up in relaxation of rules, the officer did not become entitled to draw his arrears. His case fell under FR-27 which relates to grant of premature or advance increment to Government servants.

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3. I have heard the plaintiff, who made the submissions that once the stepping up is allowed the arrears could not be denied and it was Government's fault to delay the matter for such a long time because he had put in his first representation in 1977. He also prayed for payment of interest. The learned counsel for defendant submitted that since the stepping up was in relaxation of provisions of FR 22(c), arrears were not admissible and the stepping up has been done under FR 27.

4. In his rejoinder affidavit the plaintiff has said that the rule regarding relaxation of conditions for stepping up does not authorise imposing of further conditions arbitrarily. In his representations he has said that his date of increment was 1st July but he got promoted on November while his junior, whose date of increment was also 1st July and got promoted subsequently after 1st July, hence he got the benefit of increment in lower scale in fixation of his pay as Superintendent of Post Offices.

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5. The plaintiff has annexed a letter dated August, 1984 from PMG, U.P. to the Director General, P&T, New Delhi wherein specific recommendations for stepping up were sent. This letter included the comments of the IFA which says that the plaintiff was promoted from ASPO's cadre in the scale of Rs.550-900 whereas the junior against whom he is claiming stepping up was promoted from the cadre of HSG I in the scale of Rs.700-900. This was contrary to the essential conditions which are required to be satisfied for stepping up of pay. The letter, however, recommended stepping up because the officer has suffered in the fixation of pay due to peculiar and anomalous situation for no fault of his, and that the appointment of ASPO's to the post in HSG I

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was by way of transfer and did not involve assumption of higher responsibilities, the pay was fixed under FR 30 and FR 22 (a)(ii). In para (ii) of this letter a recommendation was also made that the plaintiff's was a fit case for stepping up and entitles to the drawal of arrears of pay and allowances thereafter.

6. The conditions for stepping up of pay in terms of 8.8.1979 OM of Ministry of Finance are -

- a) Both the senior and junior employee should belong to some cadre and the selection grade to which they are appointed should be identical.
- b) The senior employee must have drawn pay more or equal to pay of junior employee in the ordinary grade.
- c) The anomaly should have resulted from the application of the pay fixation formula laid down the OM dated 10.1.1977.

In the plaintiff's case the junior belonged to a different cadre as mentioned in this letter. Thus the case of the plaintiff does not fall within the norms.

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7. The reason advanced by the defendants for not allowing the arrears is the relaxation granted in the stepping up. Once they have considered the sufferings of the plaintiff sympathetically by giving relaxation and exercising their discretion to provide relief, the logic of denying the payment of arrears on the grounds that relaxation of rules was given will not be correct. Either the plaintiff gets the stepping up or he does not, but once it is given, for whatever reason, the denial of arrears on the grounds mentioned above becomes questionable. It was not the intention of the defendant to let the plaintiff have the stepping up without arrears or not to have it at all. The relaxation was not granted

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conditionally. Even if the stepping up was done under and FR 27/once the proforma fixation has been given from 4.7.1977 the defendants' intention is very clear that stepping up has been done because the junior happened to draw more pay and there was some force in the representations being made periodically by the plaintiff since the time this anomaly came into existence. In this case it was a direction from the defendants themselves that they stepped up the pay and from a date which was also fixed by them. The plaintiff has relied on the case of Jagjit Mohan Singh v. Union of India (1975 LAB. I.C. 197). A Full Bench of Punjab & Haryana High Court in para 12 of the judgment has observed thus :-

".....The Government may fix any salary, may increase it or even reduce it unilaterally by appropriate service rules, but once a competent authority fixes the scale of pay of a Government servant or a category of Government servants, the question of its being a bounty or a concession or a matter of grace pales into insignificance....."

31/ The Full Bench has further observed in para 13 of the judgment thus :

"Once an order fixing higher salary or a higher scale is passed by the competent authority, it confers on the persons covered a legal right to claim and recover such salary....."

I also draw support from the observations made in this case. The ratio of the above observations does help the plaintiff.

8. For the foregoing reasons I decreed the suit in favour of the plaintiff. He will be entitled to the

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arrears from the date of his proforma fixation and the same be paid to him within two months from the date of issue of these orders. The submissions made at the Bar for the payment of interest is, however, turned down. If rules were strictly enforced the plaintiff could not have been granted the stepping up.

9. The application (Suit No.476 of 1985) is allowed. Parties are left to bear their own costs.

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Member (A).

Dated: December 11th, 1987.

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