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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 940 of 1987

Hari Mohan Saxena Applicant.

Versus

The Comptroller & Auditor General
of India, New Delhi & others Respondents.

Hon'ble G.S. Sharma, J.M.
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

This application, under Section 19 of the Administrative Tribunals Act, 1985, has been preferred by Sri Hari Mohan Saxena, who retired as Section Officer (Audit) (SO (Audit)) from the office of the Accountant General (Audit) II, U.P. Allahabad on 31.5.1987. The respondents are the Comptroller & Auditor General of India and three Accountant Generals at Allahabad. The only relief claimed by the applicant is that his initial pay on 17.3.1986 be ordered to be fixed at Rs.2,750/- with the date of next increment on 1.8.1986 raising the pay to Rs.2,825/-.

2. The case of the applicant, in brief, is that the applicant was appointed as Upper Division Clerk (UDC) in the office of the Accountant General (AG), U.P., Allahabad on 16.2.1952 and was promoted to the post of Section Officer (SO) in the scale of Rs.500-20-700-EB-25-900 on 17.8.1979. The Audit and Accounts Department was bifurcated into two separate cadres, viz. Audit and Accounts with effect from 1.3.1984. At the time of such bifurcation the applicant was on the Accounts side. It is stated that preference, whether to remain in the Accounts Department or to go to Audit, was invited from the entire staff and the applicant preferred to go to Audit Department. The senior staff were transferred to Audit as on 1.3.1984 and the applicant remained in the Accounts Department as on 1.3.1984. His name was kept in the waiting list for

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eventual transfer to the Audit side. While thus waiting for ~~his~~ turn to be transferred to the Audit, the applicant was promoted from the grade of SO, in which grade he exercised the option to go to Audit, to the grade of Selection Grade (SG) SO in the scale of Rs.775-35-880-40-1000 on 1.3.1984 with his next date of increment with effect from 1.8.1984. Thereafter the applicant was appointed in a substantive capacity in the post of SO (Accounts) with effect from 1.3.1985. The substantive pay in the pre-revised scale of Rs.775-1000 as on 1.8.1985 was Rs.960/- with the date of next increment as on 1st August.

3. When the turn of the applicant came for being transferred from the Accounts to Audit side, he was transferred and appointed to the post of SO (Audit) in the Audit Department in the scale of Rs.500-20-700-EB-25-900 with effect from 17.3.1986 (Annexure 'A-4'). In ~~his~~ order of appointment, issued on 19.3.1986, the applicant was asked to note that the transfer to the Audit Department was final and he would have no connection with his parent office/cadre or the corresponding Accounts & Entitlement office and he will carry his lien with him on the post held by him in substantive capacity. The applicant claims that the AG fixed his initial pay on joining Audit on 17.3.1986 in the pre-revised scale at ~~Rs.900/-~~ Rs.900/- plus personal pay of Rs.60/- under F.R. 22(a)(ii) as the maximum of the scale of the new post of SO (Audit) was Rs.900/- against the substantive pay of Rs.960/- in the old post of SG SO in the Accounts Department.

4. The pay scale of SG SO in the Accounts Department and SO (Audit) were revised upward to (i) Rs.2000-60-2300-EB-75-3200 and (ii) Rs.1640-60-2600-EB-75-2900 respectively with effect from 1.1.1986 and orders to that effect were issued in October, 1986. On the representation from the applicant for refixation of his pay in the revised scale, the AG (Audit) concerned, by his letter dated 18.5.1987 to the applicant, fixed the pay of the applicant at

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Rs.2,750/- with effect from 1.1.1986 in the revised scale of SG SO (Accounts), ~~in the scale~~ of Rs.2000-3200, referred to above.

On reporting to Audit as SO on 17.3.1986, the AG fixed the pay of the applicant at Rs.2,675/- plus personal pay of Rs.75/- with the date of next increment on 1.1.1987 in the scale of SO Rs.1640-2900, referred to above, with effect from 17.3.1986. It was further ordered that the above personal pay was to be absorbed in future increment (Annexure 'A-7'). This order of fixation of pay is the main bone of contention in this case.

5. The applicant has assailed the fixation of pay as contained in Annexure 'A-7' (referred to above) on several grounds. The contention of the applicant is that he was holding the post of SG SO in substantive capacity upto 16.3.1986 and he was appointed to the new post of SO (Audit) on 17.3.1986. While his pay was correctly fixed at Rs.2,750/- with effect from 1.1.1986 in the revised scale of SG SO viz. Rs.2000-3200 upto 16.3.1986, his pay in the grade of SO (Audit) in the scale of pay of Rs.1640-2900, ought to have been fixed with effect from 17.3.1986 at the stage of Rs.2,750/- under Rule 22 (a)(ii), since he was working in ^a substantive post, both in the Accounts and Audit Departments, and the change was not to a post with higher responsibility, thus fulfilling the requirements of the F.R., cited above. According to the applicant, the fixation of his pay at Rs.2,675/- was without any justification and not supported by any rule and that the provision for special pay of Rs.75/- was without any authority. Further, the date of increment should have been 1st August and not 1st January, as indicated in the order, referred to above (Annexure 'A-7'). The applicant has questioned the competence of the Comptroller and Auditor General of India to frame rules or to issue administrative direction for regulation of pay and grant of special pay, though the application does not cite any particular direction or order of the ^{AG} Comptroller and Auditor General of India (C&AG) in this regard.

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6. In the reply filed on behalf of the respondents, the correctness of the pay fixed, vide Annexure 'A-7' to the application, is reiterated. It is stated that the fixation of the applicant's pay has been done in accordance with the instructions issued by the office of respondent no.1 under Circular No.221-NGE.II/126-84, dated 28.2.1986. Under these instructions, the pay of the applicant had to be fixed in the scale of Rs.500-900 as on 1.1.1986, i.e. in the grade of SO (Accounts) ordinary grade and the revised scale of pay applied, in regard to the pay so fixed, as on 17.3.1986. It is denied that F.R. 22(a) is applicable in the case of the applicant. It is stated that the initial pay as SO (Audit) was fixed under F.R. 22(b) read with F.R. 9(23)(b). It is stated that the applicant ought to have been aware of the C&AG's circular dated 28.2.1986, referred to above, since wide publicity was given to the same and even some office orders incorporating these instructions were issued.

In para 34 of the reply, the back-ground of the case is briefly mentioned in the context of restructuring of the cadres in the Indian Audit and Accounts Department. It is stated that it was made clear to the personnel included in the waiting list for transfer to the

Audit side, that any promotion of such personnel on or after 1.3.1984 to any functional post, would disable them for appointment to the Audit side and lead to the deletion of their names from the waiting list. The grant of non-functional selection grade, however, in such cases, did not amount to a disability for appointment in Audit. These persons, however, cannot be allowed to carry their selection grade to Audit cadre on their appointment thereto after 1.3.1984, because this would give them an unfair advantage vis-a-vis their seniors in the erstwhile parent cadre, who have denied higher scale of pay due to their earlier appointment to Audit. Such a situation would not only be anomalous but also violative of the principles of natural justice. It is pointed out that in order to avoid financial hardship, the applicant's pay, last drawn as SG SO, was protected by the grant of personal pay of Rs.75/-.

7. In the rejoinder affidavit filed by the applicant, he has contested the points urged in the reply and further questioned the competence of the C&AG to regulate the pay of officers and to sanction personal pay. The applicant has reiterated that his pay should be fixed under F.R. 22(a)(ii), after taking his selection grade pay into account. As regards the circular of 28.2.1986, the applicant states that the same was not brought to his notice. The applicant states that he had a right to get his pay fixed with reference to his pay in the selection grade SO's post, in accordance with F.R. 22 (a)(ii) and other rules and the C&AG had no authority to modify these rules and ordered the fixation of pay with reference to the presumptive pay in the ^{grde} ~~grde~~ of ordinary grade SO at the time of his actual transfer to the Audit.

8. The case was heard on 18.10.1989 when the applicant in person reiterated the points mentioned above. He had also earlier submitted his written arguments wherein the same arguments have been put forth and certain decisions have also been cited to support his case. Sri K.C. Sinha, learned counsel for the respondents, preferred to submit his arguments in writing. The respondents have also cited certain decisions in support of their arguments.

9. As has been indicated above, the principle ^{al} ~~al~~ plea of the applicant in this case is that his initial pay in the grade of SO (Audit) on transfer, should be fixed on Rs.2,750/-, with reference to ^{or} ~~or~~ starting from his pay as on 16.3.1986 in the grade of SO (Accounts) SG. A further limb of this argument is that after so fixing his pay in the new post, the next date of increment should be 1.8.1986, under F.R. 22(a)(ii). The contention of the respondents, on the other hand, is that for fixing his pay in the grade of SO (Audit) as on 17.3.1986, his ^{presumptive} ~~presentive~~ pay in the grade of ordinary grade SO (Accounts) as on 16.3.1986, only, should be taken, even though the applicant had after 1.3.1986 been promoted to the non-functional SG SO (Accounts). In order to appreciate the controversy

properly, it seems necessary to note the back-ground of the posting of the applicant in the Audit side of the AG's office. It is admitted on all sides that a decision was taken to reorganise the Indian Audit and Accounts Department. The details of the scheme and the administrative arrangements are given in the Manual of Instructions for Restructuring of Cadres in IAAD, issued by the Comptroller & Auditor General of India, as a supplement to the Manual of Standing Orders. The scheme was notified in 1983-84. A copy of the notice issued to the staff is printed on pages 51 to 64 of the booklet. According to this scheme, the combined Audit and Accounts office was converted into two separate cadres - (i) Accounts & Entitlement Offices, and (ii) Audit Offices, under AGs, with cadres of their own. Under the scheme, the various levels of staff had been enunciated and the staff strength also fixed along with the pay scales applicable. Amongst other levels, the Audit Department ^{Auditors}, had Junior Auditors, SOs (Audit), Assistant Audit Officer and Audit Officers. The ^{Accounts} side had Accountant, SG Accountant, Supervisor, SO (Accounts), SG SO (Accounts) and Accounts Officer. All the members of the staff were required to indicate their preference either to remain in the Accounts Department or to go to the Audit Department, with effect from 1.3.1984. One significant fact to be noted here is that both in the Accounts side and Audit side, there is a level of post known as SO. Thus SO ordinary grade on the Accounts side has a corresponding post of SO (Audit). As regards the post of SG SO, it is seen that there is no SG SO corresponding to the post on the Accounts side, in the restructured Audit Department. There is, however, a grade known as Assistant Audit Officer, with a scale of pay somewhat different from the scale of pay of SG SO (Accounts).

10. A very significant ^{provision} ~~revision~~ incorporated in the Manual of Instructions for Restructuring of Cadres in IAAD is seen as para 3.2.3 on page 13 of the Book-let. It reads as follows :-

"3.2.3 Applications should be made by staff and officers in combined Audit and Accounts Office only for the corresponding post as held by the applicant on 31.12.83."

The corresponding posts are also mentioned in that para and have been indicated above. At the time when the applicant in the present case gave his option for transfer to the Audit, he was a SO ordinary grade. Therefore, he could have exercised his option only for the corresponding post, viz. SO (Audit). He could not have given his preference for any post other than SO (Audit) on the basis of his pay in any other post to which he could be promoted after exercising his option. The instructions issued by the C&AG for the reorganisation, clearly provided for movement from one Department to the other at the same level or grade of post.

11. The above instructions regarding restructuring and reorganisation have been issued by the C&AG. The Government of India have apparently agreed with the restructuring proposed by the C&AG, since it is stated that the ~~post~~ ^{pay-scales} required for the reorganisation have been sanctioned by the Government of India. The applicant, along with others, has submitted, and subjected himself, to the various instructions issued by the C&AG in regard to the exercise of preference etc. for transfer to the Audit side under the scheme drawn up by the C&AG. Having availed of the provisions of the scheme, the applicant cannot be allowed to question the power of the C&AG to regulate the matters arising out of such reorganisation, such as regulation of pay etc. The numerous contentions made by the applicant questioning the powers of the C&AG have, therefore to be rejected. In this connection we may refer to the decision of the Principal Bench, New Delhi, of this Tribunal in Brij Kishore Dubey & others v. Union of India & others (1989 (2) (CAT) SLJ 577). In that case it was held that the applicant having appeared in the examination and failed, it was not open to him to challenge the validity of the very rules under which the examination was

held. In this context, the decision of the Madras High Court in O.A.O.K. Lakshmanan Chattiya v. Corporation of Madras and of the Hon'ble Supreme Court in M/s. Panna Lal Binjraj v. Union of India was also cited by the Principal Bench of this Tribunal in the above judgment.

12. Having exercised the option when he was only a S.O. ordinary grade on the Accounts side and keeping in view para 3.2.3 of Chapter III of the Manual of Instructions, it is obvious that the applicant could have only hoped to be fitted in a post corresponding to the ordinary grade SO in the Audit Department. In para 11 ~~on~~^{on} page 59, of the notice contained in the Manual of Instructions, referred to above, it is clearly provided that if any one in the waiting list was promoted to a functional grade on or after 1.3.1984, he would not be considered for transfer and that his name would be deleted from the waiting list. This also confirms the position that what counts for the purpose of fitting in the Audit Department ~~immediately~~^{immediately} is the level of post held by the transferee before 1.3.1984. The same para in the Manual no-doubt further says that promotion to a non-functional selection grade will not be a disability. In other words, just because the applicant got a non-functional selection grade on or after 1.3.1984, his name will not be deleted from the waiting list; but this is far from saying that the applicant will be fitted on a level corresponding to the pay in the SG. At any rate, the applicant, if he wanted to be very careful, should have taken up with the Department the question of fixation of pay on the basis of the SG pay at that time before exercising his option, if he felt that his pay in the SG should be taken as the basis for fixing ~~his~~^{his} pay in the post in the Audit Department. The circular dated 28.2.86 of the C&AG (Annexure 'CA-3') is merely a ^{general} clarificatory letter and, as a matter of fact, seems to arise from the scheme, as briefly mentioned above. This letter merely further provides that notwithstanding the fixation of pay with reference to the pay of SO

(Accounts) ordinary grade, the transferee should not be allowed to suffer financially and his last pay drawn on the Accounts side should be protected by the grant of personal pay to be absorbed in future increments.

13. The rationale for taking the ~~present~~^{presumptive} pay of SO (Accounts) ordinary grade, for fixation of pay as SO (Audit), as given by the respondents, is that a number of senior ordinary grade SOs (Accounts) had opted for the Audit side and transferred to that Department with effect from 1.3.1984 and their pay have been correctly fixed with reference to their pay in the ordinary grade in the Accounts Department. Junior officers like the applicant were waitlisted and could not be transferred on 1.3.1984. Such persons got the benefit of SG as a result of stagnation etc. after 1.3.1984. Had their seniors continued in the Accounts side, they would have also presumably got promotion in the normal course. If the pay of the ~~post 1.3.1984~~^{post-1-3-84} transferees like the applicant is fixed with reference to their SG pay, this would be a windfall for them vis-a-vis the seniors, who had been earlier transferred before they got the SG by virtue of their seniority. It would also be rather unfair to the seniors since their pay would be fixed at a lower level when compared to the pay of their juniors. It cannot be, therefore, said that the circular dated 28.2.1986 is unreasonable or inequitable in any way, in the back-ground of the scheme of reorganisation, briefly discussed above. As pointed out already, even if the benefit of the SG scale of pay is not given, the last pay drawn in that scale has been very reasonably protected, so that there is no immediate drop in the pay of persons like the applicant on their transfer.

14. As regards the question whether F.R. 22(a)(ii) is applicable or not, the contention of the respondents is that the wording of this rule are such that they are not applicable to a

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situation like the present one, since there is only a transfer of lien in this case from the Accounts side to the Audit side and the rule actually envisages the presence of a lien in a post, its termination and the simultaneous inception of another lien in the new post, in accordance with the F.R. in question. There is some force in the argument of the respondents in this respect. However, in the view we are taking, it does not appear necessary to make a final pronouncement on this matter in this case, since the principal relief claimed is ^{regarding} ~~regarding~~ the scale of pay to be adopted. As discussed above, we find that the applicant has not made out a case for changing the order of fixation of pay with reference to his presumptive pay as ordinary grade SO (Accounts), on his transfer as SO (Audit) after 1.3.1984.

15. In the circumstances, the application fails and is dismissed with no order as to costs.

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MEMBER (A).

Indrajeet

MEMBER (J).

Dated: October 27, 1989.

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