

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 05th day of February 2002

Original Application no. 1435 of 1993.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Maj Gen K.K. Srivastava, Member (A)

M.S. Verma, S/o late S. Singh,
Establishment and Accounts Officer (retd)
Surveyor General's Office, P.B. No. 37,
Hathibarkala Estate, Dehradun,
R/o 72-Chandra Nagar, Dehradun.

... Applicant

By Adv : Sri Y.K. Saxena

V E R S U S

1. Union of India through the Secretary,
Ministry of Science & Technology,
Technology Bhawan, New Mehrauli Road,
New Delhi.
2. The Surveyor General of India,
P.B. no. 37, Hathibarkala Estate,
~~Dehradun~~ Dehradun.

... Respondents

By Adv : Sri R.C. Joshi

O R D E R

Hon'ble Mr. Justice R.R.K. Trivedi, VC

By this OA under section 19 of the A.T. Act, 1985, the applicant challenged order dated 09.12.1992 (Ann 6) by which the claim of the applicant for stepping up of pay has been rejected. The reasons given in the impugned order for rejecting the claim is as under :-

"In the connection it is submitted that no

such orders regarding stepping up of pay of seniors at par with juniors, have yet been received from the Government. The judgment of the Supreme Court has been delivered in particulars cases and may not be taken as Precedent on the subject until the orders are received as Govt. O.M. Hence the request of the officers cannot be acceded to in the light of relevant rules on the subject. The concerned officials may be apprised accordingly."

The aforesaid proposal was approved by officer concern on 09.12.1992. In our opinion the view taken by the respondents for denying the claim of the applicant is wholly untenable. The legal position explained by Hon'ble Supreme Court in judgment is binding on all authority in the land irrespective, whether they are judicial or executive. The respondents have not said that there is ^{any} ~~no~~ dispute about the facts, as narrated by the applicant. We have been informed that the Govt of India issued an O.M. dated 22.10.1990 which could be used for deciding the claim of the applicant. Learned counsel for the applicant has placed reliance in case of N. Lalitha (Smt) and others Vs. U.O.I. & Ors 1992 (19) ATC 569. From this order of Hyderabad Bench an SLP was filed before Hon'ble Supreme Court which was dismissed on 28.2.1991. There are other judgments also on this question. Hon'ble Supreme Court in case of U.O.I. & Ors Vs. P Jagdish & Ors 1997 SCC (L&S) 701 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 an incumbent who occupies 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.

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 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....."

2. In view of the aforesaid legal position in our opinion the claim of the applicant has not been decided in accordance with law. The applicant is entitled for relief. The OA is accordingly allowed. The impugned order dated 09.12.1997 is quashed. The respondents are directed to decide the claim of the applicant afresh in accordance with judgment of Hon'ble Supreme Court and this Tribunal, copies of which shall be filed by the applicant alongwith representation within a month. The decision shall be taken within 4/-

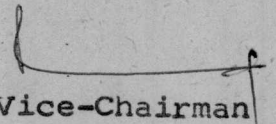
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tation within a month. The decision shall be taken within two months, thereafter.

3. There shall be no order as to costs.



Member (A)



Vice-Chairman

(pc)