

R E S E R V E DCENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.Dated: Allahabad, the 20th day of March, 2001.Coram: Hon'ble Mr. Justice R.R.K. Trivedi, VC
Hon'ble Mr. S. Dayal, Member(A).ORIGINAL APPLICATION NO. 679 OF 1995K.D. Dwivedi,
s/o Late Sri Ram Adhar Dwivedi,
r/o 9, HIG Rasoolabad,
Allahabad.

. . . . Applicant

(By Advocate Sri H. S. Srivastava)

Versus

1. Union of India, through Secretary,
Department of Atomic Energy,
Anu Shakti Bhawan,
C.S. Marg, Bombay-400 039.2. Director,
Centre for Advance Technology,
Department of Atomic Energy,
Post- CAT, Indore (M.P.)-452 013.

. . . . Respondents

(By Advocate Sri V. Gulati)

O R D E R (Reserved)

(By Hon'ble Mr. S. Dayal, AM)

This Original Application has been filed for seeking a direction to the Respondents to step up pay of the applicant at par with his junior Sri J.K. Shama with effect from the date on which the pay of the junior has been fixed at higher stage and also fix his pension accordingly and pay arrears of pay and allowances with interest and all consequential benefits.

Contd..2

2. The applicant has claimed that he was appointed as Upper Division Clerk in Atomic Mineral Division, Jamshedpur on 9.9.1959. Thereafter, he was promoted as Assistant. After that he was promoted as Accountant on 30.4.1977. He proceeded on deputation in December '77 and remained on deputation till August, 1988 and joined the post of Accountant in August, 1988 in Atomic Mineral Division, Jamshedpur. He again remained on deputation from November, 1990 to January, 1993. He was promoted as Assistant Accounts Officer in December, 1992 and joined on the said post on 2nd February, 1993 and his pay was fixed at Rs.2,750/- on 1.4.1993. It is claimed that one Sri J.K. Shama, who was junior to the applicant as Assistant Accounts Officer and was drawing pay of Rs.2,750/-p.m. on 2.2.1993, while the applicant was drawing Rs.2,600/-p.m. The applicant represented on 23rd February, 1993 to the department and reminded on 30th September, 1993, but the representation was rejected by the respondents by letter dated 1st June, 1994.

3. Sri H.S. Srivastava, learned counsel for the applicant and Sri V.Gulati, learned counsel for the respondents have been heard.

4. The learned counsel for the applicant has drawn attention to the representation of the applicant dated 23rd February, 1993 (Annexure No. A-4 to the OA). It has been mentioned in the representation that in the seniority list of Accountants of October, 1983, his name appeared at Sl.No.6 and the name of Sri J.K. Shama appeared at Sl.No.8. Thereafter, both have been promoted to the post of Assistant Accounts Officer

at the same time and in the same department. Therefore, his pay should be re-fixed at par with the pay of his junior after removing anomaly.

5. The learned counsel for Respondents has contested the claim of the applicant that he is entitled to re-fixation of pay at par with his junior Sri J.K. Shama on account of anomaly.

6. We have carefully considered the rival claims. The learned counsel for the applicant placed reliance on the case of N. Malikarjun Rao Vs. General Manager South Central Railway, Secunderabad and another (1993), 24 A.T.C., 297. It has been held by the Tribunal in that case that the pay of the applicant should be stepped up at par with his junior since the latter has been given higher pay entirely on account of their having enjoyed ad hoc promotion, which the applicant therein did not have. The claim of the learned counsel for the applicant is that the applicant had also been on deputation, when his junior Sri J.K. Shama enjoyed the benefit of ad hoc promotion. Therefore, he is entitled to the stepping up of his pay on account of the anomaly.

7. In the counter filed by the Respondents, it has been mentioned that the service record showed that Sri Shama was always drawing more pay than the applicant and that the condition of stepping up of his pay was not fulfilled by the applicant. It has also been mentioned that the increase of pay was due to

ad hoc officiation/regular post rendered in the higher rank for the period earlier than his senior is not an anomaly within the meaning of the term contained in Government of India Orders. It has also been pointed out that the applicant has in his subsequent representation dated 28.10.1994 sought the removal of anomaly in fixation of pay based on higher pay drawn by Sri J.K. Sharma with effect from 1.5.1977, when Sri Sharma was drawing Basic pay of Rs.570/-p.m. as Accountant as against Rs.550/-p.m. being drawn by the applicant. It is also being mentioned that Sri J.K. Sharma took over charge of the post of Accountant in Atomic Minerals Division, Hyderabad on 2.8.1976 and his initial pay was fixed at Rs.550/-p.m., while the applicant assumed the charge of the post of Accountant in Atomic Minerals Division on 30.4.1977 and his initial pay was fixed at Rs.550/-p.m. on that day. Respondents in Para 4 (h) of the counter reply have stated that the applicant was drawing less pay than Sri J.K. Sharma in the grade of Upper Division Clerk, in which he was drawing Rs.160/-p.m. w.e.f. 15.5.63, while the applicant was drawing Rs.160/-p.m. w.e.f. 15.9.65. Sri Sharma was drawing Rs.250/-p.m. as Assistant w.e.f. 15.5.72, while the applicant was drawing Rs.260/-p.m. as Assistant w.e.f. 1.11.72. Thus, the respondents claimed that there is no anomaly in the pay fixation of the applicant as well as of Sri J.K. Sharma and the applicant was not entitled to stepping up of his pay.

8. The respondents have mentioned that Ministry of Finance O.M. No.F.2(78)-E III(A)/66 dated 4.2.66 requires the fulfilment of the following conditions

in granting stepping up from the date of promotion of junior officer:-

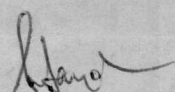
- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22(C) (Now 22 (I) (a)(1)). For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

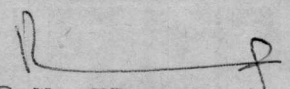
9. The Apex Court in Union of India and another Vs. R. Swaminathan, AIR 1997 Supreme Court 3554, has laid down as below:-

"The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past. Because of the proviso to Rule 22, he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping of the pay of the seniors."

10. We, therefore, do not find any merit in the claim of the applicant and the O.A. is accordingly dismissed.

There shall be no order as to costs.


(S. DAYAL)
MEMBER (A)


(R.R.K. TRIVEDI)
VICE- CHAIRMAN

Nath/