

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad, this the 23rd day of MAY 2000.

ORIGINAL APPLICATION NO. 38 of 1999

CORAM : Hon'ble Mr. S. Dayal, Member (A)

Hon'ble Mr. Rafiq Uddin, Member (J)

Prabhu Nath Tripathi,

Son of Sri Ram Chandra Tripathi,

aged about 63 years.

Resident of 19-D, Tagore Town,

Allahabad.

... Applicant

C/A Shri Uma Kant

Versus

1. Union of India through Comptroller & Auditor
General of India, 10 Bahadur Shah Jafar Marg,
New Delhi.
2. Assistant Comptroller & Auditor General (N)
New Delhi.
3. Principal Accountant General (A&E) I, U.P.
1-Sarojani Naidu Marg, Allahabad.

... Respondents

C/R ~~Shri A.K. Gupta~~ ^{SP/}

O R D E R

(By Hon'ble Mr. Rafiq Uddin, Member (J))

The applicant has filed this O.A. for
issuing direction to the respondents to re-fix his
seniority with reference to executive Instructions
contained in O.M. dated 22.06.1949 in the gradation
list w.e.f. 01.03.1963 in the pay scale of Rs. 425-690/-
w.e.f. 16.05.1970 and selection grade Section Officer

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w.e.f.01.03.1984 and also for making payment of arrears of differential of salary to the applicant.

2. The applicant was appointed as U.D.C. on 12.08.1958 and was promoted Section Officer in the year 1979 and as Accounts Officer in 1987. The applicant later on was promoted as Senior Accounts Officer in the year 1992.

3. The case of the applicant is that some of his juniors were given benefit of the pay scale of selection grade Auditor on 16.05.1970 but the applicant was deprived of this benefit without assigning any reason by the respondents. The applicant was confirmed as Auditor after completing 8 years service but he was not given selection grade even after rendering more than 21 years of service. The applicant made representation on 12.12.1986 for preparation of fresh seniority list in respect of Pre-December 1959 recruits which was governed by O.M. dated 22.06.1949 and to give them all the benefits of selection and super selection grade with retrospective effect.

4. The further case of the applicant is that O.P. Khare and Sahabdeen are juniors to the applicant having been appointed as U.D.C. on 16.10.1958 and 14.10.1959 respectively but both of them were promoted in the grade of Selection Auditor w.e.f. 01.03.1984 and 16.05.1970 respectively. But the applicant has not been granted the same benefit.

5. When no decision was taken by the respondents on his representation, the applicant filed O.A. No. 780/94 before this Tribunal which was

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disposed of vide order dated 15.10.1997 and directions were issued to the respondents to dispose of the representations of the applicant within a period of four months. The respondents No. 2 vide order dated 14.01.1998 has rejected the representation of the applicant, a copy which has been annexed as Annexure No. 10 to the O.A.. The applicant also claims that he is entitled for stepping up of his pay scale under the provision of F.R. 22 and 27 and in accordance with O.M. dated 22.06.1949. The applicant also claims that O.M. dated 22.06.1949 has been issued under Article 77 of the Constitution of India and not under Article 309. Hence, the same is in the nature of administrative instruction and if any right has accrued under such instruction the power can be exercised only by the President of India and not by any other executive authority.

6. We have heard learned counsel for the applicant and perused the record. The application is being disposed of at the admission stage.

7. It is relevant to mention that the respondent No. 2 has rejected the representation of the applicant for the reasons mentioned as under:

- (i) On the basis of the orders of the Hon'ble Supreme Court, Shri O.P. Khare was promoted to the grades of Selection Grade Auditor and Selection Grade Section Officer from 16.05.1970 & 01.03.1984 respectively and his pay was also regulated accordingly.

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- (ii) The benefit of Supreme Court order was confined to Shri O.P. Khare only and was not to be extended to other similarly placed officers.
- (iii) During the period from 16.05.1970 to 06.10.1979 and from 01.03.1984 to 31.03.1987, Shri O.P. Khare was holding the posts of Selection Grade Auditor and Selection Grade Section Officer respectively whereas the applicant was working as Auditor & Section Officer (Ordinary Grade) only. Hence the plea for pay parity with the Junior during the above mentioned periods is not acceptable.
- (iv) One of the conditions for stepping up of pay Under FR 27 is that the Senior should have drawn equal or more pay than the junior in the lower cadre or at least, the senior should be eligible to draw equal or more pay than the junior in the lower cadre. In this case, the applicant was not eligible to draw equal pay during the periods from 16.05.1970 to 06.10.1979 and from 01.03.1984 to 31.03.1987 and hence the plea for pay parity in the cadres of Section Officer and Asst. Accounts Officer is not acceptable.
- (v) The pay of the two officers in the cadres of Accounts Officer and Senior Accounts Officer were fixed under normal rules and the drawal of less pay by the senior is due to the fact that he was drawing less pay in the feeder

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cadre of Asst. Accounts Officer. In other words, the drawal of less pay by the senior in natural andis a consequence of the Hon.Supreme Court order dated 24.02.1994.

8. It is obvious that the applicant has not disclosed full facts in his O.A. regarding the relief granted to his junior O.P. Khare by the Apex Court. We have also occassion to go through the earlier O.A. being 780/94 filed by the applicant before this Tribunal. It transpires from the perusal of the aforesaid O.A. that one O.P. Khare had filed O.A. No. 117/88 for the same relief to which the present O.A. has been filed by the applicant. The O.A. was allowed by this Tribunal vide order dated 13.09.1991 and it was held that the seniority of the applicant was to be governed by the O.M. of 1949 and consequently it was directed that the seniority of O.P. Khare will be re-fixed and he was also entitled for the same pay scale which juniors were getting . However, respondents filed S.L.P. against aforesaid order which was disposed of by the Apex Court vide order dated 24.02.1994. The relevant part of that order is extractive as under :-

"...The selection grade to which the respondent (O.P. Khare) was found due was effective till 31.12.1985 because after 01.01.1986 the pays were revised as per the recommendation of the Fourth Pay Commission. The respondent is otherwise retired on 31.03.1994 as stated by counsel. In the appeal questions of law do arise and have

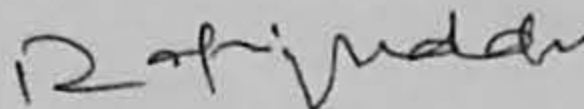
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rightly been urged by learned counsel for the appellant. But keeping in regard the short duration of the subsistence of the selection grade for the respondent, as also his impending retirement we confirm the relief as granted by the Central Administrative Tribunal, Allahabad Bench to the respondent alone, without pronouncing on the questions of law as raised."

9. It is evident from the perusal of the order of the Apex Court that the relief granted was confined to the respondent namely O.P. Khare only and the order was not treated to be as a precedent to grant relief to others. The respondents have, therefore, rightly rejected the representation of the applicant that he is not entitled to get any benefit on the basis of order of the Apex Court. As regards the benefit of Rule 22 and 27 of F.R., it is suffice to state that since the promotion of O.P. Khare and others was made on the basis of direction of the Apex Court, hence, the applicant is obviously cannot claim the benefit of rule 22 or 27 treating Shri O.P. Khare as junior to the applicant. The respondents have rightly stated in the order dated 14.01.1998 that O.P. Khare was promoted to the grade of selection grade Auditor and Selection grade Section Officer from 16.05.1970 and 01.03.1984 respectively on the basis of Supreme Court order cited above which was confined to him only and was not to extended to other similarly placed officers. Therefore, the question of extending the benefit of Apex Court

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order to the applicant does not arise. Since it is not established that the applicant was eligible to draw same pay granted to O.P. Khare during the period from 16.05.1970 to 06.10.1979 and from 01.03.1984 to 31.03.1987 his plea for grant of benefit of Rule 22 & 27 is without any basis. The O.A. being devoid of any merit is dismissed at admission stage.


Member (J)


Member (A)

/S.P./