

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.**

Original Application No.1332 of 2000.

ALLAHABAD THIS THE 5th DAY OF OCTOBER. 2005.

**Hon'ble Mr.K. B.S. Rajan, Member-J.
Hon'ble Mr. A.K. Singh, Member-A**

A.K. Roy, Aged about 59 years, S/o late Sri S.K. Roy, R/o 944/181, Sohbatibagh, Allahabad.

.....Applicant.

(By Advocate : Sri A. Chatterjee)

Versus.

1. The Accountant General (Audit) I, U.P., Allahabad.
2. Union of India through the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
3. Sri Ram Babu Gupta (P.N. 01/649) aged about 58 years, Sr. Audit Officer I.C. (S) Co-ordination Office of the Accountant General (Audit) I, U.P., Allahabad.

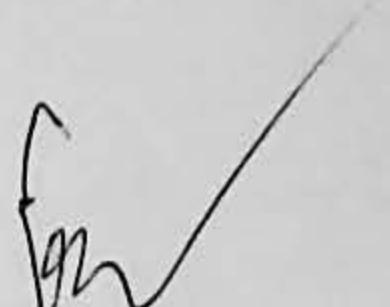
.....Respondents.

(By Advocate : Mr. S. Chaturvedi.)

ORDER

BY K.B.S. RAJAN, MEMBER-J

The applicant is aggrieved by non stepping up of his pay at par with his juniors and hence this petition.



2. The period during which the junior was stated to have been drawing more pay dates back to 1972-73, i.e. thirty three years old from today and twenty eight from the date the OA has been filed. Limitation is staring at the face of the very O.A. However, if the applicant succeeds, at least in respect of pension element from the date of filing of the OA would be within time and hence this OA is considered on merit.

3. The following table, comparing the pay of the applicant and that of his juniors would be sufficient to stuff this order with facts of the case as narrated by the applicant.

In respect of Applicant In respect of junior

Date	Pay drawn	Date	Pay drawn
14.9.72	Rs.200/-	14.9.72	Rs. 224/-
15.9.72	Rs.224/-	DNI 15.9.72	Rs. 224 DNI
		30.11.72	22.5.73
19.11.72	Rs. 231/ (Rs. 224+7 Spl. Pay for passing SAS)	19.11.72	Rs. 231/p (Rs. 224+7 Spl. Pay for passing SAS)
30.11.72	Rs. 246 (Rs.231 +8)	30.11.72	Rs. 231/-
date of annual incr.	(normal increment)+7		
	Spl. Pay		
1.1.73	Rs. 464+6 Spl. pay (remaining bal. of Spl. pay of Rs. 20/- 20/-)	1.1.73	Rs.452+13 Spl. pay (remaining balance of spl. pay of Rs.20/-)
Revision of Pay		Revision of Pay	
22.5.73	Rs. 464+6 Spl. Pay	22.5.73	Rs.464+ 13 Spl. Pay date of pay = Rs. 477

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	=470/-	annual increment	
28.7.75	Rs. 515+6 Spl. Pay + 521	28.7.75	Rs. 500+13 Spl Pay = Rs.513/- (His pay was fixed at Rs. 500/- w.e.f. 27.2.75 in DA's Scale).
9.1.76	Rs.540/- 515+15 (notional increment)+ 6 Spl pay next stage Rs.540)	9.1.76	Rs. 513 (in DA's scale)
1.2.76	Rs.540/-	1.2.76	Rs. 515 with normal increment + 13 spl pay.
3.2.76	Rs. 540/-	3.2.76 (Promotion as SO)	Rs. 560/- (Rs. 515+15 (Notional increment +13 Spl. Pay next stage Rs. 560/-

4. Now the version of the respondent.

(a) The applicant joined the service as UDC (Rs 130 - 300) on 06-09-1962 and qualified the confirmation test on 30th November, 1963, consequent to which his date of next increment was 30th November, each year as per the then existing rules.

(b) The junior one Shri Ram Babu Gupta joined as UDC (Rs 130 - 300) on 26-12-1962 and qualified the confirmation test on 22nd May 1964, consequent to which his date of next



increment was twenty second May each year as per the then existing rules.

(c) The applicant qualified in the Revenue Audit Exam on 15-09-1972 and his pay was fixed at Rs 224/- while the junior qualified in the Revenue Audit I on 21-12-1971 and his pay was fixed at Rs 216.

(d) On 15th September, 1972, both the individuals qualified in SAS examination, which made them entitled to special pay of Rs 20/- drawable in three installments of Rs 7, Rs 7 and Rs 6/- annually. Accordingly, the pay of the applicant on that day was fixed at Rs 231/- (Rs 224 + 7) and that of the junior at Rs 223/- (Rs 216 + 7).

(e) On 30-11-1972, the applicant's pay was fixed at Rs 246 (Rs 231 + normal inc. of Rs 8 + Rs 7 being the 2nd installment of the special pay). The pay of the junior as on 30-11-1972 remained at Rs 223/-

(f) With the introduction of the Third Pay Commission Recommendation pay scale, the payoff the applicant was revised and fixed at Rs 470 (Rs 464 + 6, being the spl. Pay) while that of

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(f) With the introduction of the Third Pay Commission Recommendation pay scale, the payoff the applicant was revised and fixed at Rs 470 (Rs 464 + 6, being the spl. Pay) while that of

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the junior was revised at Rs 465/- (Rs 452 + 13 being the second and third installment of the special pay).

(g) The date of next increment of the applicant was November, 1973, while that of the junior was 22nd May, 1973. Thus, in the revised pay scale, the junior got an increment and his pay was enhanced to Rs 477/- while the pay of the applicant remained at Rs 470/- on that day.

(h) The respondents contend that since the applicant qualified in the Revenue Audit exam and Divisional Accountant Exam at later than the junior, the junior was drawing more pay during 22-12-1971 to 14-09-1972 and therefore the applicant is not equally circumstanced with the respondent No. 3

5. Arguments from the side of the applicant were heard. None represented the respondents and hence, provisions of Rule 16 of the CAT (Procedure) Rules, 1987 invoked.

6. The fallacy of the respondent is two fold. First, they had stated that the junior was drawing more pay during the period 22-12-1971 to 14-09-1972 vide para 12 of the counter affidavit. This is

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incorrect. For prior to 1973, at no point of time was the applicant drawing less pay than his junior. In fact even if there be any difference, as per their own version, vide para 7 of the counter, the pay of the junior and the applicant on their passing on 19-11-1972 was fixed at Rs 231/-. Secondly, delay in the passing of the revenue Audit exam or the Divisional Accountants Exam cannot be the factor to deny the benefit of stepping up of pay. The rules relating to stepping up is given as under:-

7. Government Order bearing No. F.2(78)-E.III(A)/66 dated 4-2-1966 has been issued for removal of anomaly by stepping up of pay of a senior on promotion drawing less pay than his junior. It provides as follows:

"10. Removal of anomaly by stepping up of pay of senior on promotion drawing less pay than his junior.-(a) As a result of application of FR 22-C.-In order to remove the anomaly of a government servant promoted or appointed to a higher post on or after 1-4-1961 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 another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:

(a) Both the junior and senior officers should belong to the same cadre and the

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posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) the scale 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. 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.

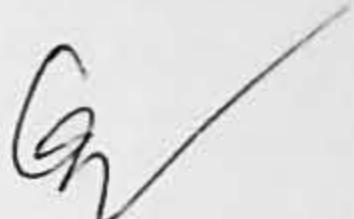
8. The orders re-fixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay."

9. As the Order itself states, the stepping up is subject to three conditions: (1) Both the junior and the senior officers should belong to the same cadre and the posts in which they have been promoted should be identical and in the same cadre; (2) the scales of pay of the lower and higher posts should be identical; and (3) anomaly should be directly as a result of the application of Fundamental Rule 22-C which is now Fundamental Rule 22(I)(a)(1).

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10. There is no doubt that the junior and the applicant belong to the same cadre and the posts in which they have been promoted are identical and in the same cadre. The scales of pay are identical and as a sequel to the acceptance of the Third Pay Commission Recommendation and in this case the anomaly is also as a result of application of F.R. 22 C inasmuch as while fixing the pay of the junior, the increment as of May 1973 had to be given to him and the applicant had thus started getting less pay from May 1973. Hence, the submissions of the applicant are to be accepted. His pay should be increased from Rs 470/- to Rs 477/- w.e.f. May 1973, which was the pay of his junior, i.e. Respondent No. 3.

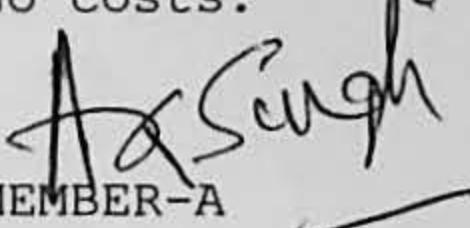
11. However, the applicant having approached the Court too late, all that he would get is the benefit out of notional fixation of pay. The notional fixation could be either calculating the pay for each year and applying the replacement scale w.e.f. 01-01-1986 and 01-01-1996 and arrive at the pay as on the date of retirement of the applicant or as an alternative, if subsequently both the applicant and his junior were granted promotions to the same post and almost simultaneously, the pay drawn by the junior as of November, 2000 could well be taken as the pay admissible to the applicant and likewise,

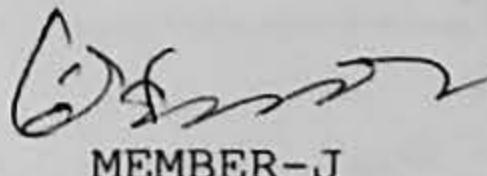
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the last pay drawn by junior could well be taken as the last pay drawn by the applicant and pension, gratuity and other terminal benefits could be worked out.

12. In the result, the OA is allowed to the extent that the respondents are directed to fix the pay of the applicant as of May 1973 at Rs 477/- which was the pay of the junior Shri Ram Babu Gupta and correspondingly fix the pay of the applicant from that year till the date of retirement of the applicant and this fixation shall be purely on notional basis till the date of filing of the OA i.e. November, 2000. The applicant be paid the arrears of pay and allowance due on account of the above fixation of pay from November, 2000 till the date of retirement. The last ten months' average pay be also worked out to fix the pension applicable to the applicant and the pension be revised accordingly. Difference in the leave encashment as well as the gratuity on the basis of the last pay should also be paid to the applicant.

13. The above exercise shall be completed within a period of six months from the date of communication of this order. No costs.


MEMBER-A


MEMBER-J

GIRISH/-