

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION No. 462 of 1990

Decided on 13.10.1992.

Maheswar Padhi	..	Applicant
Versus		
Union of India and Others	..	Respondents
Counsel for the applicant	.. .	Mr. B.K.Sahu
Counsel for the respondents	...	Mr. A.B.Mishra

CORAM:-

Hon'ble Mr. K.P.Acharya, Vice-Chairman

Hon'ble Mr. C.S.Pandey, Member (Administrative)

J U D G M E N T

Hon'ble Mr. C.S.Pandey, Member (Administrative):-

This Original Application was jointly filed by the 2 applicants; namely; Maheswar Padhi and Hemendralal Bose. However, we find from the order of the Bench dated 12.12.1991 that the application was admitted only in respect of the first applicant; namely; Shri Maheswar Padhi.

2. The applicant is working as a Senior Scientific Assistant in the Ministry of Defence. His grievance is that his juniors in the posts are drawing higher pay and his prayer is that his pay should be stepped up to be at par with the pay drawn by the 6th respondent.

3. The applicant and 5th and 6th respondents were all working as Junior Scientific Assistant Grade-I.

It is stated that the applicant was senior to the 5th &

6th respondents. The dates of promotions to the grade of Junior Scientific Assistant Grade-I given in paragraph no.4 of the application bear out the position that the applicant was senior to both 5th & 6th respondents. They were drawing the same pay. The 5th respondent was given ad-hoc promotion to the post of Senior Scientific Assistant on ad-hoc basis with effect from 24.12.1976. She continued to officiate on ad-hoc basis in higher post. A DPC was finally held in March, 1980 which prepared a panel for regular promotions to the posts of S.S.A. On the basis of the recommendation of the D.P.C., the 5th respondent was given regular promotion to the S.S.A. Grade with effect from 25.3.1980. The applicant and the 6th respondent were also included in the same panel and were promoted to the grade of S.S.A. soon thereafter. It seems that the applicant was given the scale of S.S.A. on 2.6.80 and 6th respondent on 16.8.80. After the pay fixation of the three officers, the applicant and the 6th respondent found that the pay of the 5th respondent had been fixed at a higher stage. The applicant and the 6th respondent both represented regarding this apparent irregularity. Not finding any satisfactory reply the 6th respondent filed an Original Application before the Cuttack Bench of the Tribunal which was registered as OA-125 of 1988. The Hon'ble Vice-Chairman sitting as a Single Member disposed of the application on 30.6.1989. The Hon'ble Vice-Chairman relying on the provision of the FR 22C and the Office Memorandum of the Government of India dated 4.2.1966 allowed the Original Application. In compliance with the order of the Tribunal the 6th respondent got the benefit of stepping up of his pay to be at par with that of the 5th respondent. The applicant who

8

15

3.

is senior to both of them made a prayer for similar relief. However, by an order dated 29.10.90 his prayer has been rejected. A copy of this order dated 29.10.90 is filed with the application and is marked as Annexure-9. The text of the letter is reproduced below:-

"The details of the individuals who are requesting for stepping up of pay is not available in this office. However, the pay of Sh. K.C.Jena, SSA has been stepped up at par with Smt. Lalita Gopal Krishnan in pursuance of CAT Judgment, this office is of the opinion that application of this judgment in respect of pay of SSAs senior to Shri K.C.Jena is not automatic until unless benefit is extended by the CAT in general to the similarly placed person."

Dissatisfied with the decision of the respondent the applicant has filed the Original Application.

4. The relief claimed in the application is to direct the respondents to step up the pay scale of the applicant in the post of S.S.A. with that of the respondents 5 & 6 with effect from the date of respective promotion to the post of S.S.A. and further direct to pay the arrear together with interest at the rate of 10%.

5. The respondents have filed a reply. Subsequently, a supplementary reply has also been filed. It is stated in the reply that the respondent no.5 was given ad-hoc promotion to the grade of S.S.A. with effect from 24.12.76 and her services in the grade were regularised with effect from 25.3.1980. On the other hand the applicant was promoted to the post of S.S.A. with effect from 2.6.1980. Since the applicant has not challenged the promotion of the 5th respondent, it is not open to him to claim parity in pay. The

9

16

4.

respondents have also raised the question of limitation. It is stated that the pay fixation was done on promotion to S.S.A. Grade in 1980 and the claim now made to step up the pay is barred by limitation. It is also stated in the reply that in deciding the application filed by the 6th respondent, the Hon'ble Tribunal have no occasion to examine certain instructions issued by the respondents. Had those instructions be placed before the Tribunal the decision would have been different. The respondents have enclosed a number of instructions on the subject and claimed that in view of these instructions the Office Memorandum of 1966 on which the Tribunal relied in disposing of the Original Application of the 6th respondent must be taken to have become obsolete. The Respondents particularly relied on the instructions contained in Annexures-R/1, R/2 and R/3. It is further stated that before the regular promotion to the S.S.A. grade the 5th respondent was already getting higher pay because his ad-hoc officiation in that grade. Therefore, the provision of Office Memorandum of 1966 does not apply to the fact of the case.

6. We have heard the counsel for the applicant and the Standing Counsel for the respondents and we have carefully considered the rival submissions and have examined the documents on which the two sides relied.

7. In the first place we do not understand how the 5th respondent was given promotion on ad-hoc basis in 1976. The applicant and the 6th respondent were admittedly senior to the 5th respondent in the cadre of Junior Scientific Assistant Grade-I. In

fn

10

(17)

the second place we further fail to understand how the 5th respondent was given regular promotion with effect from 25.3.1980 when the same DPC had included the names of the applicant and the 6th respondent in the same panel. The panel prepared by the DPC is on record and is at Annexure-5 to the Original Application. In this panel the name of the applicant appears at serial no.17, the name of the 6th respondent at serial no.41 and the name of the 5th respondent at serial no.66 and yet the 5th respondent was given regular promotion with effect from 25.3.1980 whereas the applicant was given promotion in June, 1980. However, the promotion of the 5th respondent is not challenged before us. Therefore, we refrain from passing judgment on the legality and otherwise of the promotion of the 5th respondent. The question, however, is whether that promotion of the 5th respondent which was a little out of way and out of turn can act to the detriment of the applicant.

8. The main contention raised on behalf of the applicant is that the 6th respondent, who is admittedly junior to the applicant has been given the benefit of stepping up of his pay to be at par with that of the 5th respondent. Therefore, the applicant must also be given the same benefit.

9. In the reply filed by the respondents and also in course of the arguments, it was contended by the counsel for the respondents that in deciding original application no.125 of 1988, the Tribunal had no occasion to examine certain documents and instructions issued by the Government of India. It is contended that had those instructions been placed before the Bench, the decision in that original application would have been different. It is contended that these

fn

instructions which have now been filed should be examined and on examination it would be found that the applicant has no case. We shall shortly deal with this issue..

10. The respondents have also raised the question of limitation. It is stated that the cause of action arose in 1980. Therefore, the grievance of the applicant is too old to be entertained now by the Tribunal. Now, factually it is correct that the grievance of the applicant arose when the pay in the promotional post was fixed sometime in 1980. However, the representation of the applicant was rejected by an order dated 29.10.1990, that is at Annexure-A and has been quoted earlier in para 3 of this order. Therefore, the cause of action for the applicant arose only when his representation was rejected by the respondents. Secondly, this is a case in which the cause of action arises every month when the applicant gets his pay in a sum smaller than the pay of the 5th and 6th respondents. Therefore, there is a recurring cause of action. In these circumstances we see no merit in the objection of the respondents regarding limitation. This objection is accordingly rejected.

11. Now, we are not sitting in review over the decision of the Tribunal in OA-125 of 1988 and it is not open now in the present application to examine the correctness or otherwise of the decision of the Tribunal in OA-125 of 1988. However, even if we examine the documents now filed before us we see no reason to take a different view in the present original application.

12. The respondents rely on Annexure-R/1, R/2, R/3, R/4 and R/6 of the reply to submit that these documents were not placed before the Tribunal earlier. Now, R/1 is not at all relevant for the present original application. It deal with
N
as directly related to the present

an entirely different situation. Instructions at R/1 were issued to deal with certain anomalies arising out of pay fixation pursuant to the recommendations of the Third Pay Commission. That has nothing to do with the issue raised in the present original application. The instructions at R/2 and R/3 are relevant only for the limited purpose, namely these instructions support and justify the pay fixation of the 5th respondent in a particular manner. The applicant does not question the correctness of the pay fixed for the 5th respondent. All that he wants is that he, being senior, his pay should be stepped up to be at par with that of the 5th respondent, particularly because the 6th respondent has been given the same benefit as a result of the decision of the Tribunal in original application no.125 of 1988. The instructions at R/4 of the reply of the respondents is a copy of FR-22 C which was examined by the Tribunal in OA-125 of 1988. There is nothing new in it. The document at R/6 is a copy of Civil Services regulations. A perusal of these regulations shows that the provisions here are the same as in the Fundamental Rules. For example, C.S.R. 156 A is the same as FR-22 C and the Government of India's decision in Office Memorandum dated 4th April, 1966. We would reiterate that the Tribunal in disposing of the original application no.125 of 1988 had examined and discussed these instructions. Therefore, in none of the five documents, filed at R/1, R/2, R/3, R/4 and R/6 any new rule or regulation have been brought to our notice.

13. From the above discussion it is clear that the respondents have not been able to make out any case to justify a view different from the one taken in the earlier OA No.125 of 1988.

W.

14. The issue raised in the present original application had earlier come up before different Benches of the Central Administrative Tribunal. A somewhat similar question was raised before Calcutta Bench of the Tribunal in Anil Chandra Das and another v. Union of India (1988) 7 ATC 224. In that case an officer was given adhoc promotion as a local arrangement in the exigencies of service on administrative grounds. He was subsequently promoted to that post on regular basis. Some officers senior to him were also promoted on regular basis. In fixing up the pay the officer who had officiated on ad hoc basis got the benefit of higher stage in the pay scale in the promotional post. His seniors found on promotion that they were getting lower pay. They claimed that their pay should be stepped up to be at par with that of his junior who was drawing a higher salary in the promotional post. This request was allowed. Subsequently, an order was passed cancelling the order stepping up the pay of the applicants. That is how the matter was taken to the Tribunal. The Tribunal examined the issue in paragraph 4 of the judgment and held that the applicants were entitled to stepping up of their pay to be at par with their juniors. In the present application an argument was advanced by the counsel for the respondents that the 5th respondent, even before regular promotion was drawing higher pay. We find that this argument was taken by the counsel for the respondents before the Calcutta Bench of the Tribunal also and was dealt and discussed in paragraph 4 of the order.

15. A similar issue arose before Hyderabad Bench of the Tribunal in N.Lalit and Others v. Union of India (1992) 19 ATC 567. In that case also an officer was given an ad hoc promotion as a local arrangement. Increment earned by him while officiating on ad hoc basis in the promotional post was counted towards fixation of his pay on regular promotion. His seniors finding

km,

14

on regular promotion that they were getting lower pay claimed that their pay should also be stepped up. The Tribunal allowed this relief. In deciding that original application the Hyderabad Bench referred to the decision of the Calcutta Bench ^{as} ~~and~~ discussed supra and further stated that against the decision of Calcutta Bench of the Tribunal the respondents had filed a Special Leave Petition which was dismissed by the Supreme Court. The Hyderabad Bench following the Calcutta decision directed the respondents to fix up the pay of the applicant to be at par with the pay of the immediate junior.

16. More recently, the same issue again came up before the Hyderabad Bench of the Tribunal in T. Atchutaramaiah v. Regional Director, Employees' State Insurance Corporation, Hyderabad (1992) 21 ATC 78. The Tribunal held that where pay of a junior is fixed on regular promotion at a higher stage than his ^{senior} ~~junior~~, on account of his having earned increment by virtue of his earlier ad hoc promotion, the pay of the senior should be stepped up while fixing his pay on regular promotion. In this decision the Hyderabad Bench of the Tribunal also referred to an earlier decision of the same Bench and said that that order of the Hyderabad Bench had been subsequently upheld by the Supreme Court by an order dated 31.1.1991. The issue has been discussed in paragraph 4 of the order at page 79 of the report.

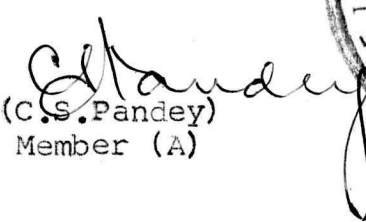
17. In view of the decisions cited above, we feel that the applicant is entitled to succeed. Even without referring to the provisions of FR-22 C or the instructions of the office memorandum of the Government of India, all the decisions cited above have taken the same view and reportedly the view has been upheld by the Supreme Court also.

Key


18. In view of the above discussion, we are satisfied that the applicant is entitled to succeed. We accordingly direct the respondents to step up the pay of the applicant in the grade of S.S.A to be at par with that of the 5th respondent with effect from the date of the applicant's promotion to that grade. Further, the applicant must also be paid the arrears of salary arising from the stepping up of the pay as ordered above. Further, we are not inclined to allow interest to the applicant.

19. The order regarding stepping up of the pay of the applicant should be passed within a period of two months from the date of receipt of a copy of the order and the arrears of salary should be paid within a further period of one month.

20. The application is disposed of as above without any order as to cost.


(C.S. Pandey)
Member (A)




(K.P. Acharya)
Vice-Chairman

12/10/92

16

(29)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 462 of 1990

Date of decision: 5th September, 1991

Maheswar Padhi and anothers : Applicants

- Versus -

Union of India and others : Respondents

For the applicant : M/s.B.K.Sahoo, K.C.Sahoo,
Advocate.

For the Respondents : M/s.A.B.Misra, Tahali Dalai,
~~XXXXXX~~ Standing Counsel
(Central)

C O R A M

HON'BLE MR. K. P. ACHARYA, VICE CHAIRMAN

1. Whether the reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

J U D G M E N T

K.P. ACHARYA, VICE CHAIRMAN: This case was heard on merit at a considerable length ^{by} of hearing arguments from Mr. B.K. Sahoo learned Counsel for the Petitioner and Mr. A.B. Misra assisted by Mr. Tahali Dalai learned Senior Counsel appearing for Opposite Parties.

2. Shortly stated, the case of the petitioner is that he being admittedly senior to Opposite Party Nos. 5 and 6 while they were working as Junior Scientific Assistant (Grade-I), the Petitioner was promoted on 2nd June, 1980 and Opposite Party Nos. 5 and 6 were promoted on 24th December, 1976 and 16th August, 1980 respectively. The Pay scale of all three incumbents is Rs. 515-900/-. The Pay of the Petitioner was fixed at Rs. 600/- whereas the pay of the Opposite Party No. 5 was fixed at Rs. 650/- and the pay of Opposite Party No. 6 was fixed at Rs. 575/-. Incidentally, it may be mentioned that Opposite Party No. 6 came up before this Bench praying for stepping up his pay as according to the ~~present~~ rules he was entitled to the same. The Learned Single Judge (the then Vice-Chairman Hon'ble ^{Sr} Mr. B.R. Patel) heard the case which formed ^{ed} the subject matter of Original Application No. 125 of 1988

(25)

and relying on the Office Memorandum of the Ministry of Finance, Government of India bearing No. F.2(78)-E.III/66 dated 4th February, 1966 held that the Petitioner in Original Application No. 125 of 1988 (OP No. 6 in the present case) should get promotion to the Post of SSA, ^{with} the same pay which has been given to Opposite Party No. 5 in OA 125 of 1988. After disposal of OA 125 of 1988 the present petitioner has claimed the self same relief for stepping up his pay to bring it ~~with~~ at par with the Pay of Opposite Party Nos. 5 and 6.

3. Mr. B.K.Sahoo learned Counsel appearing for the Petitioner submitted before me that the judgment passed by the learned Single Judge of this Bench should be respected and accordingly a decree should be passed ~~separately~~ in view of the judgment passed by the Principal Bench reported in A.T.R. 1988 (2) CAT 518 (A.K. Khana and others Vs. Union of India and others) which is a case decided by the Division Bench taking the very same view as taken by the learned Single Judge in OA 125 of 1988.

4. On the other hand it was contended by Mr. A.B. Misra assisted by Mr. Tahali Dalai, learned Senior Counsel that the learned Single Judge while disposing of OA 125 of 1988 took into consideration the above Office Memorandum issued by the Ministry of Finance which has since been amended and hence has become obsolete. The learned Single Judge has not taken into consideration the amended Office Memorandum. Had he taken ^{into} the consideration the Office Memorandum, perhaps the conclusion might have been different. While making the submission Mr. Misra relied upon a judgment reported in A.T.R. 1986(2)CAT 602 of the Jodhpur Bench. Incidentally it may be mentioned that a review Application was filed after the judgment in OA 125 of 1988 was pronounced and this forms ^{ed} the subject matter of Review Application No. 24 of 1989 and that was also dismissed by the learned Single Judge. Thereafter the judgment in Original Application 125 of 1988 was implemented and admittedly Opposite Party Nos. 5 and 6 in the present case are getting the same pay. Therefore, ^a the substantial question of law arises as to whether the provision contained in Article 14 and 16 of the Constitution would be violated if different treatment is given to the present petitioner and also the fact that the aforesaid Office Memorandum having been amended

VN

20

277

5

whether the Petitioner would be entitled to the same relief as given to Opposite Party No.6 in Original Application No.125 of 1988. In my opinion since this case involved ^athe substantial question of law, in the interest of justice I would direct that this case be put up before the Division Bench for hearing and disposal.

5. This case be kept pending.



[Signature]
5/9/91
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty.