

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.487 of 1990.

Date of decision : July 8, 1991.

Subas Chandra Sethi ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.Devanand Misra,
Deepak Misra,
R.N.Naik, B.S.Tripathy,
P.Panda, Advocates.

For the respondents ... Mr.Aswini Kumar Misra,
Sr.Standing Counsel (CAT)

C O R A M:

THE HONOURABLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

...

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *No.*
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

J U D G M E N T

N.SENGUPTA, MEMBER (J), The applicant has prayed for stepping up of his pay in the grade of Upper Division Clerks to bring it at par with that of Shri R.K.Satpathy said to be his junior. The applicant has averred that he joined as an L.D.C. in the Savings Bank Control Organisation on 5.11.1977 and Shri R.K.Satpathy joined in the same cadre on 4.3.1978 and was shown junior to him (the applicant) in the gradation list. Both he and Shri Satpathy were promoted as Upper Division Clerks and his (applicant's) seniority was maintained, his name being shown at serial No.22

N. Sen Gupta
8.7.91.

whereas that of Shri R.K.Satpathy at serial No.27 of the seniority list of U.D.Cs. published in 1986. He (applicant) came to learn that the said R.K.Satpathy was drawing a salary of Rs.1440/- whereas he at the time of filing of the application was getting a salary of Rs.1380/-.

2. The respondents in their counter have not disputed the fact of the applicant to have ranked senior to Shri R.K.Satpathy but their case really is that as Shri Satpathy was given promotion under local arrangement to the cadre of U.D.Cs. on 9.2.1980 but the applicant began officiating as U.D.C. with effect from 26.10.1981, as such Shri Satpathy had put in more than one year of service as U.D.C. by the time the applicant got the promotion under local arrangement. Therefore, Shri Satpathy's pay after the coming into force of the recommendations of the 4th Central Pay Commission was fixed at a higher stage than the applicant.

3. Mr.Anil Deo, learned counsel for the applicant has sought reliance on a decision of this Tribunal in O.A. No.22 of 1988 dated 23.9.1988 to contend that this case is covered by the decision of the just mentioned original application. I have gone through the decision, though I have some reservations about the reasonings in that decision in O.A.22 of 1988, but as I agree with the ultimate result of that decision, I do not feel any necessity to refer the matter to a larger Bench. Fixation of pay on promotion is done under F.R.22-C.

Mr. Satpathy
8.7.91.

Certain anomaly arose when a senior promoted earlier got lesser pay than a junior promoted later after earning an increment in the feeder cadre. To avoid such anomalies the Government of India in the Ministry of Finance issued Office Memorandum No.F2(78) EIII(66) on 4.2.1966 for stepping up of pay of a senior on promotion drawing less pay ^{than} ~~from~~ his junior. Under that Office Memorandum if both the junior and senior Officers belong to the same cadre and their promotions are also to the same higher cadre, the pay of the senior is to be stepped up to that of the junior if in the feeder cadre they were drawing the same scale and the scales of pay of the junior and the senior in the higher promotional scale are the same, only exception being where the junior by virtue of being given advance increments in the lower grade, his pay in the promotional grade was fixed at a higher stage. On behalf of the respondents it has been urged that Shri Satpathy had been officiating earlier in the promotional grade, so by the time the applicant got ad hoc promotion, Shri Satpathy had already earned an increment, therefore, the applicant cannot claim the stepping up of pay to make it equal with that of Shri Satpathy. From the averments in the counter of the respondents it would be pretty clear that both the applicant and Shri Satpathy were promoted under the 20 % departmental quota on the basis of seniority ~~cum~~ fitness. It is not the case of the respondents that the applicant was at any time found deficient to be promoted to the next higher grade of U.D.Cs., infact he was promoted, therefore, in ordinary circumstance he should have been promoted earlier to Shri Satpathy as U.D.C. The respondents being

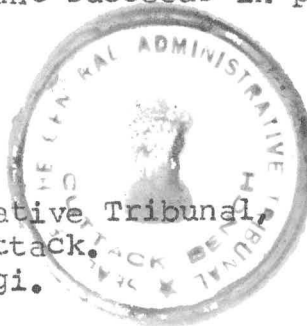
Mr. Satpathy
8/7/77

alive to this situation, had shown the applicant higher in rank than Shri Satpathy in the gradation list of U.D.Cs. The case of the respondents is that Shri Satpathy was given a temporary officiating appointment on local arrangement or as an adhoc measure. It has now come to be settled that a stop gap or ad hoc appointment will not clothe a person so promoted with a better right than his senior. A person should not be made to suffer for no fault of his. (See AIR 1991 SC 518, Rajbir Singh and others v. Union of India and others). Since the present case does not fall within the ambit of Clause (c) of the above said office memorandum of the Ministry of Finance, Government of India, the pay of the applicant is to be stepped up.

4. The applicant, whatever may be the reason, had not come and asked for stepping up of his pay when the cause of action first arose but the right to pay is recurring cause of action. Therefore, the applicant is entitled to stepping up of his pay with effect from the date he made a representation to the authorities concerned i.e. September, 1989 (Refer to Annexure-2 at page 11 of the file) to make it equal to that of his junior Shri R.K. Satpathy.

5. The applicant succeeds in part, as indicated above.
No costs.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 8, 1991/Saranghi.



Men Ecep
8/7/91
Member (Judicial)