

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 429 of 1992

Date of Decision: 16.9.1993

Dukhishyam Kar Applicant (s)

Versus

Union of India & Others Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? N.
2. Whether it be circulated to all the Benches of No. the Central Administrative Tribunals or not ?

KM 16/9/93
VICE-CHAIRMAN

T. S. J. S. L.
MEMBER (ADMINISTRATIVE)
16 SEP 93

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-Versus-

Union of India and others Respondents

For the Applicant ... M/s. L.Mohapatra,
B.K.Nayak,
S.C.Mohanty
Advocates

For the Respondents ... Mr.U.B.Mohapatra,
Additional St.Counsel(Central)

C O R A M:

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN
AND
THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN.)

JUDGMENT

H.RAJENDRA PRASAD, MEMBER (A) : In this application the petitioner Shri Dukhishyam Kar, retired superintendent in the office of the National Sample Survey Organisation, Field Operations Division, Orissa East Region, Bhubaneswar, has challenged the fixation of pay by the respondents at the time of his promotion to the post of Superintendent. The main ground of his contention is that a higher pay than what was given to him was fixed in the case of a colleague who was junior to him in the post of Assistant Superintendent, and promoted later than him to the post of Superintendent.

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2. Shortly stated, the petitioner entered service as Investigator in December, 1952, ^{was} promoted to the post of Assistant Superintendent in November, 1969, and again to the post of Superintendent in March, 1985. He eventually retired from service on attaining the age of superannuation on 31st January, 1992.

3. At the time of his promotion to the post of Superintendent on 25th March, 1985, the petitioner was drawing a pay of Rs. 775/- as Assistant Superintendent. This included a stagnation increment of Rs. 25/-.

4. For some time, since about the middle of May, 1978, the staff side in the Departmental Council in the Planning Commission had been pressing for an upward revision of the pay scale of Assistant Superintendents from Rs. 470/- to Rs. 550-900/- ^{with effect} from 1st January, 1977. This demand being not agreed to by the Planning Commission, the question was referred for arbitration under the provisions of JCM Scheme. The Board of Arbitration, in its award on 5th January, 1989, decided that the Assistant Superintendents should be given a special pay of Rs. 75/- per month from 1st May, 1982. It was also decided that this special pay shall count as pay for all purposes as per rules. In accepting this award, the Department decided that the special pay recommended by the Board of Arbitration shall count as pay for all purposes until 31st December, 1985, and shall not be available to the revised pay scale.

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recommended by the IV Pay Commission from 1st January, 1986. (It needs to be mentioned that the said Pay Commission recommended a revised Pay scale of Rs. 1600/- to 2660/- for this class of employees). It was also stipulated that the revised pay scale ^{shall} be fixed in accordance with the provisions of Rule (1) (B) of the Central Civil Services (Revised Pay) Rules, 1986.

5. Accordingly, the pay of the applicant was re-fixed by taking into consideration the Pay (Rs. 750/-), Special Pay (Rs. 75/-) and stagnation pay (Rs. 25/-) in the Pay scale of Rs. 470-750/- in compliance with the award of the Board of Arbitration. When he was promoted to the post of Supdt. his pay was fixed at Rs. 780/- plus Special Pay of Rs. 75/- in the then existing pay-scale of Rs. 550-990/-. On implementation of the recommendations of the 4th Pay Commission, his pay was ^{finally} fixed at Rs. 2300/- plus Rs. 28/- from 1st January, 1986, ignoring the element of special pay.

6. The grievance of the petitioner is mainly on account of a higher pay fixed in case of one Shri B. Mishra, who was junior to him as Assistant Superintendent, and was promoted to the post of Superintendent ^{and} nearly two years later than him; that, whereas his own pay was fixed at Rs. 2300/- at the time of his promotion, the pay of Shri Mishra was fixed at Rs. 24080/- at an identical juncture, viz., promotion. The petitioner regards this action as arbitrary. According to him,

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if his pay had been fixed by giving him the advantage of Rs.75/- drawn by him as special pay while he was posted as Asst. Supdt., this 'anomaly' could not have taken place. He finally bases his claim on the provision in C.C.S. (Revised Pay) Rules, that " if any anomaly in the scale of pay occurs in a particular grade ^a & junior is allowed a higher scale of pay than that of a senior, the scale of the senior has to be stepped up " (Para 4.7 of the application P.5).

7. The issues involved in this case are fairly simple and fall within a narrow compass of governmental decisions.

It is not disputed by the applicant that his pay was correctly fixed in the scale of Rs.470/- to Rs.750/- at the time of his promotion. His real objection has arisen from a later development of the higher fixation in the case of Shri B. Mishra who was admittedly junior to him and promoted at a later date. The petitioner's argument is that, ^{he} had been given due credit of Rs.75/- drawn by him as a special pay awarded by the Board of Arbitration, the iniquity of a junior drawing a higher pay than a senior, i.e. the petitioner, could have been avoided.

8. The only question which arises, therefore, is : how and why was Shri B. Mishra given a higher pay on promotion, and whether there was any basis or authority for this seemingly iniquitous decision?

9. The answer to this question has been

provided by the respondents in their counter and by the learned additional standing counsel, during the hearing of this case. It is based squarely on the decisions contained in two circular communications from Respondent No.1. The first of these, No.B-12014/4/85-NSS-I dated 15th September, 1989, makes it clear that the special pay of Rs. 75/- awarded by the Board of Arbitration shall count as pay for all purposes ^e _{but shall} be given only upto 31st December, 1985. It is made clear that this advantage will not be available after the adoption of the revised pay-scales after 1st January, 1986. The second communication, No.B-12014/2/86 dated 15th February, 1990, conveys the clarification of the concerned Ministry thus:

" the special pay of Rs. 75/- P.M. given to Asst. Supdt. of Field Operation of NSSO from 1.5.82 may be treated as in lie of a separate higher scale of pay. It can be taken into account for pay fixation on promotion as Supdt. in respect of those so promoted from 1.5.82 to 31.12.85, provided this special pay has been drawn by them continuously for a period of three years in the lower post of Asst. Superintendent. In other cases where the special pay has been drawn for a period of less than three years, the pay in the time scale of the higher post will be fixed, under the normal rules, with reference to the basic pay drawn in the lower post (excluding the special pay) and where this results in drop in emoluments the difference between the pay fixed and the pay plus special pay

drawn in the lower pay will be allowed in the form of personal Pay to be absorbed in future increases of pay".

10. The facts ,scrutinised in the light of the above two communications, reveal that the petitioner, who was promoted as Asst.Superintendent on 20th November, 1969, began drawing the special pay awarded by the Board of Arbitration from 1st May,1982, as was the case with all Asst.Superintendents. He was promoted to the post of Superintendent on 25th March,1985. Thus he was drawing the special pay of Rs.75/- in his capacity as Asst.Superintendent for a period which fell short of the stipulated three years, although he was promoted within the stipulated period between 1.5.82 and 31.12.85.

11. As for Shri B.Mishra, it needs to be noted in this context that he was given the benefit of two increments for having stagnated at the maximum of the pre-revised payscale of Asst.Superintendent (Rs.470/- to 700/-) when his pay was fixed in the revised pay scale of Asst.Superintendent on 1.1.86.Also , Shri Misra got the benefit of fixation in the revised pay-scale of Asst. Superintendent as recommended by the 4th Pay Commission. The petitioner did not enjoy either of those benefits since he had (i) not stagnated at the maximum of the pre-revised scale of Asst.Superintendent for as long a period, and (ii) was not available in the post of Asst.

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Superintendent to be given the revised Pay Commission-recommended scale on the crucial date of 1st January, 1986, having already been promoted, in the meanwhile, from that post. Added to these indisputable facts is the additional factor of Shri B.Mishra having drawn the special pay of Rs.75/- from 1st May, 1982, to the date of his next promotion, i.e. 6.8.1987,- a period which is much more than the stipulated three years for this purpose.

12. One question which might well arise is the validity of three-year-rule invoked in this case. Does this three year stipulation have any sanction in rules or is it an arbitrary norm arrived at as an administrative expedient in a specific situation ? In answer to this question, the Sr. Standing counsel drew our attention to note 11 under F.R.22-C which amplifies this position in clearest terms.

13. Regarding the petitioner's contention that the scale of a senior should be stepped up automatically once an anomaly is discovered by way of a junior drawing a higher scale, it was submitted by Shri U.B. Mohapatra, Additional Standing Counsel, that such assertion would amount to oversimplification of the issue. The scope for stepping up a senior's pay in all such situations is hemmed in and qualified by other, ^{equally} valid considerations and calculations, and should be in accordance with established rules and procedures. He drew pointed attention to note 7(b) below Rule 7 of the C.C.S. (R.P.) Rules, 1986, which lays down that the question of stepping up or enhanced

fixation of pay of two officials is admissible ^{only} where the pre-revised pay of both the concerned officials had been be exactly identical. He pointed out that in this case this was not so, since Shri B.Mishra was in receipt of higher pay in pre-revised pay-scales when compared to the petitioner.

14. From the preceding discussion, it is amply clear that -

1. The pay of the petitioner was correctly fixed in the cadre of Asst. Superintendent, after taking due note of all his valid entitlements on the date of refixation.
2. He was not entitled to the additional benefit of the special pay reckonable for re-fixation after 1.1.1986, and
3. The case of Shri B.Mishra, admittedly junior to, and promoted later than the petitioner, is clearly distinguishable on atleast two valid grounds.
4. In as much as the petitioner was in receipt of the Special pay for less than three years as Asst. Superintendent, the same cannot be reckoned for pay refixation.

15. At the conclusion of arguments, Shri Ashok Misra filed a copy of orders passed by the Chandigarh Bench of this Tribunal in O.A. 18/HP/92(G.S.Amluwalia Vs. UOI) in which the basic facts and prayers are exactly akin to the case under discussion. In that case the Bench turned down the application of the petitioner on the ground that he had

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been drawing the special pay of Rs.75/- for less than six months, as against the required minimum of three years. This merely supports our own finding on this score in the instant case.

12. We hold that the petitioner is not entitled to any of the reliefs claimed and, therefore, are constrained to disallow his application. There shall be no order as to costs.

K.P. Acharya
(K.P. ACHARYA)
VICE-CHAIRMAN.

H.Rajendra Prasad
(H.RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal,
Cuttack Bench, Cuttack/Hossain.
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