

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 387 OF 1998
Cuttack, this the 10th day of August, 2000

P.S.L.Narasimham

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN D.8.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

P.S.L.Narasimham, AGE (Tech.), O/O Garrison Engineer,
Gopalpur (On sea)
P.O-Golabandha,
District-Ganjam-761 052 Applicant

Advocate for applicant - Mr.D.P.Dhalsamant

Vrs.

1. Union of India, represented through Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Headquarters, New Delhi-110 010.
3. Garrison Engineer (I)Army, Birchgunj, PO-Junglighat, Port Blair, Andaman-744 103.
4. Garrison Engineer, Gopalpur (on sea), P.O-Golabandhu, Dist.Ganjam, State Orissa.
5. Director General Naval Project, Visakhapatnam-14, Naval Base.

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Respondents

Advocate for respondents-Mr.B.K.Nayak
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for setting aside the order dated 10.7.1997 at Annexure-2 rejecting his representation for stepping up his pay. The second prayer is for a direction to the respondents to step up the pay of the applicant at par with his junior Sashi Kumar with effect from 22.8.1985 with consequential benefits.

2. The admitted position is that the applicant was initially appointed as Superintendent

(Building & Road) Grade-I on 5.10.1964 and was promoted as Assistant Engineer on 28.4.1984 along with one T.Srikrishna. His pay was fixed as Assistant Engineer at Rs.845/- in the pay scale of Rs.650-1200/- at the same level as T.Srikrishna. After coming into effect of the Fourth Pay Commission scale of pay from 1.1.1986 his pay scale became Rs.2000-3500/- and his pay was fixed at Rs.2600/- taking into account his pre-revised pay of Rs.880/-. One Sashi Kumar was junior to the applicant and T.Srikrishna in the rank of Superintendent (Building & Road), Grade-I. He was promoted to the rank of assistant Engineer on 22.8.1985 and his pay on promotion was fixed at Rs.920/- in the pre-revised pay scale of Rs.650-1200/- and in the Fourth Pay Commission pay scale at Rs.2675/- in the scale of Rs.2000-3500/- with effect from 1.1.1986 as against the applicant's pay of Rs.2600/-. The applicant has stated that T.Srikrishna, whose pay was fixed like the applicant at a level below the pay of Sashi Kumar, his junior, filed an Original Application before the Hyderabad Bench of the Tribunal in OA No.300 of 1994 seeking stepping up of his pay at par with Sashi Kumar. While the matter was pending disposal before the Hyderabad Bench of the Tribunal, Government of India decided to step up the pay of T.Srikrishna with his junior Sashi Kumar and on that basis the Hyderabad Bench dismissed the OA as infructuous in their order dated 9.2.1995. Thereafter the applicant filed representation dated 11.3.1996 (Annexure-1) for stepping up his pay but the same was rejected in the impugned order. In the context of the above, the applicant has come up with the prayer referred to earlier.

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3. The respondents have stated that on promotion to the rank of Assistant Engineer, after the promotion of the applicant, the pay of Sashi Kumar, who is admittedly junior to the applicant, was fixed at a higher level. They have stated that just before the promotion of the applicant, the applicant and Sashi Kumar were drawing the same pay at Rs.810/- in the rank of Superintendent (Building &Road), Grade-I. Sashi Kumar was promoted later than the applicant. Before his promotion he had drawn the increment in the lower grade and this has resulted in fixation of his pay at a higher level than the applicant in the pre-revised scale. They have stated that the applicant also could have opted for fixation of his pay in the rank of Assistant Engineer in the pre-revised scale after getting his increment in the rank of Superintendent. But he had not exercised that option and therefore fixation of pay of Sashi Kumar at a level higher than the applicant in the pre-revised scale is not because of application of earlier FR 22-C, now FR 22(I)(a)(1). On the above grounds they have opposed the prayer of the applicant.

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4. The applicant in his rejoinder has stated that his case is identical to that of T.Srikrishna. He has enclosed the order dated 11.1.1995 of Chief Engineer, Delhi Zone addressed to the Director General, Naval Project stepping up the pay of T.Srikrishna to the level of Rs.920/- bringing it at par with his junior Sashi Kumar and allowing arrears to T.Srikrishna. On the above grounds, the applicant has reiterated his prayer in this rejoinder.

5. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri B.K.Nayak, the

learned Additional Standing Counsel for the respondents and have also perused the record. The learned counsel for the petitioner has referred to the following decisions:

(i) K.C.Sharma and others v. Union of India and others, 1998 SCC (L&S) 226; and

(ii) P.George Joseph v. Union of India and others, 5/99 Swamysnews 86(Mumbai), date of judgment 9.10.1998.

These decisions have also been taken note of. Before considering the submissions made by the learned counsel of both sides it has to be noted that in P.George Joseph's case (supra) Mumbai Bench of the Tribunal, going by the decision of the Hon'ble Supreme Court in the case of Union of India and another v. R.Swaminathan, 1997(2) SC SLJ 383, held that higher pay received by a junior on account of his earlier officiation because of local officiating promotion cannot be considered as an anomaly requiring stepping up of pay of the senior. In the instant case there is no question of officiation in the higher post and therefore this decision is of no application to the facts of this case. Similarly, in K.C.Sharma's case (supra) the Hon'ble Supreme Court held that where a judgment in rem has been passed then the benefit of the judgment will have to be given to persons similarly situated by condonation of delay, if necessary. As in this case the applicant is not seeking the benefit of any judgment passed by any court or tribunal, this decision has also no application to the facts of this case.

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6. Coming to the facts of the present case it has to be noted that the admitted position is that Sashi Kumar is junior to the applicant both in the rank of

Superintendent as also in the rank of Assistant Engineer. The second admitted position is that the applicant was promoted earlier to the rank of Assistant Engineer and Sashi Kumar was promoted later as per the dates noted by us earlier. The third point to be noted is that the respondents have stated in their counter and the applicant has not denied this in his rejoinder that at the time of promotion of the applicant to the rank of Assistant Engineer, in the rank of Superintendent both he and Sashi Kumar were getting the same pay at Rs.810/- in the pay scale of Superintendent Grade-I (Building & Road). The applicant was promoted earlier and under the rules it was open to him to opt for fixing his pay in the scale of pay of Assistant Engineer, i.e., Rs.650-1200/- after he has got his increment in the lower pay scale of Superintendent Grade-I. The Rules provide for this, but the applicant did not choose to exercise this option. By the time Sashi Kumar was promoted sometime later he had already got an increment in the lower scale of pay and therefore his pay was fixed at a level higher than the applicant in the pay scale of Assistant Engineer. This is not an anomaly and is also no way attributable to application of earlier FR 22-C and now FR 22(I)(a)(1). In view of this, the applicant has no case for stepping up his pay to the level of Sashi Kumar's pay in the pre-revised scale.

7. The applicant has stated in paragraph 4.7 of his petition that the departmental authorities have stepped up the pay of T.Srikrishna in accordance with FR 22-C read with Note 7 of Rule 7 of Central Civil Services

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(Revised Pay) Rules, 1986, but no action has been taken in respect of the applicant. In course of his submissions the learned counsel for the petitioner has referred to the second proviso to Rule 8 of the CCS (Revised Pay) Rules, 1986. This has no application to the instant case because Rule 8 deals with fixation of date of next increment in the revised scale. In paragraph 4.7 of the OA the applicant has referred to Note 7 of Rule 7 of CCS (Revised Pay) Rules, 1986. This rule deals with removal of anomaly on refixation of pay from 1.1.1986 under the Revised Pay Rules, 1986. Note 7 has been printed at pages 14 and 15 of Swamy's Compilation of Revised Pay Rules, 1986. Clause (c) of this Note also provides that anomaly should be directly as a result of the application of the provisions of Fundamental rule 22-C or any other rule or order regulating pay fixation on such promotion in the revised scale. It is further provided that if even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer. This does not provide that if both the officers, senior and junior, were getting the same pay in the feeder grade before their promotion, then the pay of the senior should be stepped up on promotion of both the officers to the higher grade and after fixation of pay of the junior officer at a higher level. We have already held that in the pre-revised scale the applicant had no case for the reasons indicated above for stepping up his pay. Necessarily therefore in the revised scale of pay which came into force from 1.1.1986 he has no case for stepping up of his pay because fixation of his pay at a lower level than that of Sashi Kumar, his junior, in the revised scale of

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pay is also not due to application of FR 22-C. This ground urged by the learned counsel for the petitioner is also without any merit and fails. The applicant has stated and has enclosed orders along with his rejoinder in which the departmental authorities have stepped up the pay of T.Srikrishna to bring it at par with Sashi Kumar. The order of stepping up of pay of T.Srikrishna has been enclosed at Annexure-5 by the applicant. From this order we find that pay of T.Srikrishna has been stepped up to Rs.920/- in the pre-revised scale of Rs.650-1200/- to bring his pay at par with his junior Sashi Kumar. From this it is clear that the departmental authorities have stepped up the pay of T.Srikrishna to bring it at par with Sashi Kumar's pay in the pre-revised scale and not in the revised scale of pay of Rs.2000-3500/-. As we have held that in the pre-revised scale the applicant has no case for stepping up of pay merely on the analogy of the departmental action , it is not legally possible for us to direct similar stepping up of pay of the applicant to bring it at par with the pay of Sashi Kumar as has been done in the case of T.Srikrishna. It is not open for us to take a view as to how the departmental authorities have allowed stepping up of pay of T.Srikrishna .

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The Central Government have power to relax any rule. As the applicant has enclosed the order regarding T.Srikrishna only with his rejoinder, the respondents did not have a chance to react to the rejoinder. The applicant has no doubt mentioned the case of T.Srikrishna in his OA and the respondents have stated in their counter that T.Srikrishna has in the meantime retired in 1990 and his service records are not available with the respondents. In the context of the above,

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we hold that the application is without any merit and the same is rejected. While rejecting the application, we cannot ignore the fact which is borne out by record that in the case of another person similarly situated like the applicant, the departmental authorities have allowed the benefit which is claimed by the applicant. In view of this, we direct that the applicant should file a representation to respondent nos.1 and 2 within sixty days from the date of receipt of copy of this order giving the details of the case of T.Srikrishna. Respondent nos. 1 and 2 are directed to dispose of the representation, if filed, within a period of ninety days from the date of receipt of the representation and intimate the result to the applicant within fifteen days thereafter.

8. In the result, the OA is disposed of in terms of the observation and direction above but without any order as to costs.

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(G.NARASIMHAM)

MEMBER (JUDICIAL)

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VICE-CHAIRMAN

10.8.2000