

Central Administrative Tribunal, Calcutta Bench

O.A. No.668/1996

Calcutta this the 14 day of February, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.K. Naik, Member (A)

Shri Sunil Chandra BanerjeeApplicant

By Advocate: Shri S.K. Dutta.

Versus

U.O.I. & Others ...Respondents

By Advocate: Shri B.K. Chatterjee.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The OA is filed for a direction to the respondents to extend the benefit of the order of this Tribunal dated 2.2.1995 passed in OA 303/1993 by stepping up the pay of the applicant at par with his junior Shri S.K. Bhattacharjee from the date when his junior was given the benefit attached to the post of OS Grade-II including fixation of pay, pension and other pensionary benefits arising there-from and direct the respondents to pay arrears to the applicant consequent upon fixation of pay, as above.

2. The applicant was promoted as LDC on 1.9.1953. Thereafter, he was promoted to the post of UDC w.e.f. 1.1.1975. Special pay of Rs.35/- per month was not granted to him since no post with which special pay was attached, was available. The applicant was then promoted to the post of Office Superintendent (OS) Grade-II w.e.f. 25.11.1980. His pay was fixed at Rs.478/- per month. W.e.f. 1.1.1986 his pay was refixed at Rs.1600/-. His junior Shri Sudhangshu Kumar Bhattacharjee was given special pay of Rs.35/- per

in accordance

month on the post of UDC. He was promoted to the post of OS Grade-II w.e.f. 1.1.1981. Even his pay was fixed at Rs.500/- per month. With effect from 1.1.1986, his pay was fixed at Rs.1680/- per month. The applicant made verbal representation to the respondents for bringing his pay also at par with Shri Bhattacharjee, but to no effect. The applicant retired from service on 31.1.1991. One similarly placed employee Shri Utpalendu Das filed OA No. 303/1993 for stepping up of his pay vis-à-vis with his junior which was allowed on 30.1.1995. The applicant on coming to know of the order, filed a representation on 5.2.1996 for giving him also the benefit of the said order, but to no effect. Hence the OA.

3. The respondents resisted the OA - firstly on the ground that it is barred by time and secondly because the applicant was promoted from the post of UDC to the post of OS Grade-II before his turn for grant of special pay of Rs.35/- per month (which was revised to Rs.70/- per month) came while Shri Bhattacharjee was getting Rs.35/- per month as special pay in terms of Office Memorandum issued by the Ministry of Finance. On promotion to the post of OS Grade-II, the special pay of Rs.35/- was taken into account and that resulted in his getting pay higher than the applicant. The Fundamental Rule 22 (1)(a)(i) which embodied the principles of stepping up would not be applicable to the case of the applicant since the difference in the pay of the applicant and Shri Bhattacharjee is not as a result of an anomaly. It is prayed that the OA be dismissed.

4. We have heard the learned counsel for the parties and gone through the records of the case.

5. At the outset, the learned counsel for the respondents has submitted that the OA is hopelessly barred by limitation. It is submitted that the applicant was promoted from the

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post of UDC to the post of the Office Superintendent Grade-II in the year 1980 and his junior Shri Bhattacharjee was promoted after him in the year 1981. The applicant retired from service in the year 1991. He filed the first representation on 3.7.1992. The limitation for filing the OA is provided in Section 21 of the Central Administrative Tribunals Act, 1985. The cause of action, as such accrued to the applicant, in the year 1981, when the pay of Shri Bhattacharjee was fixed at a higher level than that of the applicant. The limitation of one year had expired long back. He has requested that the OA be dismissed as barred by time.

6. The argument of the learned counsel for the respondents, to our view, does not have force. The applicant's junior Shri Bhattacharjee was promoted in the year 1981 when his pay was fixed at Rs.500/- per month. The pay of the applicant who was promoted in the year 1980, however, was fixed at that time at Rs.478/- per month. The case of the applicant is that his pay should have been stepped up to bring it at par with Shri Bhattacharjee. It was not done. It is a continuing wrong consequently a continuing cause of action accruing to the applicant. Every month when he received pay less than his junior, a fresh cause of action arose. When his pension was fixed in the year 1991 on his retirement from service and he received his pension on the basis of the pay which he was receiving at the time of retirement, a new cause of action arose every month when he was paid less pension than it was due. Therefore, it cannot be held that the OA filed by the applicant is barred by time.

7. As regards to the stepping up of the pay of the applicant to bring it at par with Shri Bhattacharjee, the learned counsel for the respondents has strongly relied upon FR 22 (1)(a)(i) and argued that the benefit of this provision is not available to the applicant.

Manohar Lal

It was contended that the applicant was promoted from the post of UDC to the post of OS Grade-II before he could occupy the identified post of UDC and receive the special pay of Rs.35/- per month. On the other hand, Shri Bhattacharjee had been granted special pay of Rs.35/- per month before he was promoted to the post of OS Grade-II. It was argued that applying FR 22 it cannot be held that there was anomaly in the fixation of the pay of the applicant and, therefore, it should be stepped up to make it equal to the pay of Shri Bhattacharjee. Learned counsel has cited the judgment of the Hon'ble Supreme Court in **Civil Appeal No.8658/1996 – Union of India and Another Vs. R. Swaminathan** decided on 12.9.1997.

8. We have carefully considered the decision of the Hon'ble Supreme Court in the cited case. The facts of the case are distinguishable. The anomaly in the pay of seniors and juniors was as a result of some of the juniors having been given ad hoc or officiating appointment on the higher post in different zonal offices. The Hon'ble Supreme Court after considering FR 22 and the Office Memoranda dated 4.2.1966 and 4.11.1993 issued by the Department of Personnel and Training, which laid down the norms for stepping up of pay etc. came to the conclusion that it was not a case of any anomaly in the pay of the senior which could be rectified by following the principles of stepping up as per FR 22.

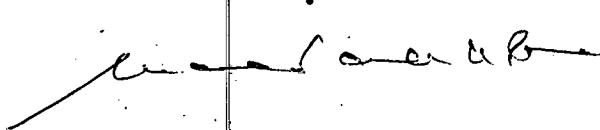
9. Conversely, in the present case both the applicant and Shri Bhattacharjee belonged to the same cadre. Both were promoted from the post of UDC to the post of Office Superintendent Grade-II. Both were in the same grade before their promotion and were placed in the same grade after their promotion. While Mr. Bhattacharjee was granted special pay of Rs.35/- per month before his promotion, the applicant was not in receipt of such special pay. The special pay received by Shri Bhattacharjee was reckoned

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for fixation of his pay in the grade of OS Grade-II. It has resulted in the fixation of his pay at Rs.500/- per month in 1981 whereas the applicant, who was promoted before him in 1980, was receiving Rs.478/- per month only. The contention of the learned counsel for the respondents that Shri Bhattacharjee was granted special pay for doing work of important, intricate and arduous nature on an identified post as per QM dated 31.3.1983, therefore, fixation of pay higher than the applicant on promotion, cannot be an anomaly for which stepping up can be resorted, in our view does not have any force. It would violated the principle of equal pay for equal work. On the promotional post, the applicant and his junior cannot be paid different pay as the nature of their job performed on the post of OS Grade-II is not different. As said above, both the applicant and Shri Bhattacharjee were working on the same post of UDC and in the same grade before their promotion to the next higher grade of OS Grade-II. The special pay which Shri Bhattacharjee received was taken into account for fixation of his pay which has resulted in an anomaly since his senior, the applicant herein, was receiving pay less than his junior.

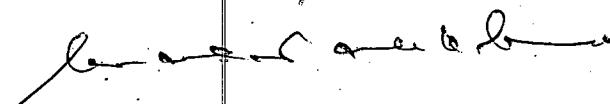
10. In equity, the applicant would be entitled to the stepping up of his pay to make at par with his junior. This view is fortified by the judgment of the Hon'ble Supreme Court in Union of India and Others Vs. P. Jagdish and Others, AIR 1997 SC 1783.

11. The facts of the case in U.O.I. & Others Vs. P. Jagdish (Supra) are identical. The respondents in that case were working as Senior Clerks and while so working, they were promoted as Head Clerks. Under the orders of the competent authority, 10% of the posts of Senior Clerks were identified to be posts involving arduous nature of work and those of the incumbents who were being posted to those identified posts were getting special



pay of Rs.35/- per month. This was the state of affairs prior to 1.1.1986. Usually on the basis of seniority amongst the Senior Clerks, postings were made to the identified posts carrying a special pay Rs.35/- per month. On account of restructuring of the cadre, a large number of vacancies occurred in the category of Head Clerks. The respondents were not working against the identified posts of Senior Clerks. They were promoted as Head Clerks w.e.f. 1.1.1984, the date from which there had been upgradation to the posts of Head Clerks and necessarily while fixing the pay in the category of Head Clerks, the pay which they were drawing as Senior Clerks was taken into account. While the respondents were thus promoted to the post of Head Clerk, their juniors who were promoted against the identified posts of Senior Clerks used to get Rs.35/- per month as special pay until they were promoted as Head Clerks. The special pay which they were drawing in the category of Senior Clerks was taken into account in fixing their pay in the promoted category of Head Clerks. Consequently, even though the respondents were promoted to the post of Head Clerks earlier, they were found to be getting less pay than their juniors who were promoted as Head Clerks later and who had been posted against the identified post of Senior Clerk prior to their promotion. Some of these persons similarly situated as the respondents who were promoted as Head Clerks before, had not been posted against any identified post of Senior Clerks and, therefore, were not getting special pay of Rs.35/- per month prior to their promotion. Two questions arose for consideration before the Hon'ble Supreme Court:-

- (i) Whether the respondents who had not been posted against the identified posts carrying a special pay of Rs.35/- per month can even claim fixation of their pay with Rs.35/- per month in the cadre of Senior Clerk even on notional basis; and



(ii) whether the respondents can claim for stepping up of their pay in the promoted cadre of Head Clerks when their juniors who were later promoted were fixed up at a higher slab in the cadre of Head Clerks taking into account the special pay which they were drawing in the lower category of Senior Clerks.

12. The Hon'ble Supreme Court answered the first question in negative. It was held that the special pay of Rs.35/- per month was attached to certain identified posts in the category of Senior Clerks, therefore, only those who would be posted against those identified posts, can claim the said special pay. On the second question the Hon'ble Supreme Court allowed stepping up of the pay of the Head Clerks to remove the inequality and make it at par with juniors who were promoted later than the respondents. It was held that the principles of stepping up should be made applicable to the respondents "from the date their juniors in the erstwhile cadre of the Senior Clerks gets promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondents". In the case before Hon'ble Supreme Court the respondents were not in receipt of special pay as Senior Clerks when promoted to the post of Head Clerks. Applying the principles of law laid down by the Hon'ble Supreme Court in the above cited case, the applicant is undoubtedly entitled to get his pay stepped up to make it equal to the pay of his junior who is promoted from the cadre of Senior Clerk to the cadre of Head Clerk later than the applicant.

13. As held by the Hon'ble Supreme Court in the above cited case, the applicant would not be entitled to the special pay on the post of Senior Clerk even notionally since he was not working on the identified post as Senior Clerk. In fact, the applicant is praying for stepping up of his pay as Senior Clerk.



14. As would appear from the above discussion the facts of the case in hand and the one relied upon by the applicant, are identical. In the present case also the applicant was not receiving special pay of Rs.35/- per month before he was promoted to the post of OS Grade-II whereas his junior, Shri Bhattacharjee was granted special pay on the post of UDC before he was promoted to the post of OS Grade-II. Since special pay was taken into consideration while fixing the pay of Shri Bhattacharjee, he was in receipt of more pay than his senior, the applicant, herein. This is an anomaly. In equity, the principles of stepping up of pay is, therefore, to be applied to remove this inequity in the pay of the senior. The pay of the applicant in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior official in higher post. The stepping up is to be done from the date on which the pay of official was fixed at a higher figure.

13. As a result, the applicant is entitled to the stepping up of his salary to make it equal to the salary of Shri Bhattacharjee from the date on which the pay of Shri Bhattacharjee was fixed on being promoted to the post of OS Grade-II at a higher sum. Neither the applicant has pleaded nor prayed that he be granted even notionally special pay of Rs.35/- on the post of UDC at par with Shri Bhattacharjee.

14. The applicant has prayed for granting him parity with one Utpalendu Das, who was applicant in OA 303/1993 and who had prayed for stepping up of his pay making it at par with his junior which was accepted by the Tribunal vide order dated 2.2.1995. It is argued that the pay of Shri Utpalendu Das was stepped up in almost similar circumstances, therefore, the applicant should also be given the benefit of this order. But the order of the Hon'ble Supreme Court in U.O.I. & Others Vs. P. Jagdish and Others

Leave granted

(Supra) squarely covers this case, therefore, we need not discuss the case of Utpalendu Das any further.

15. Result of the above discussion is that the OA is allowed. It is directed that the pay of the applicant shall be stepped up to make it at par with the pay of Shri Bhattacharjee which was fixed when Shri Bhattacharjee was promoted from the post of UDC to the post of OS Grade-II and the special pay of Rs.35/- was taken into account in fixing his pay. The applicant shall also get all consequential benefits. The applicant's emolument for calculating his pension and other pensionary benefits shall also be accordingly re-fixed on the date of his retirement. The difference of the arrears of salary and the difference of the pension and other pensionary benefits shall be worked out by the respondents and shall be paid to the applicant within four months from the date of receipt of the order.

16. The OA stands disposed of with the above directions but without any order as to costs.

Naik
(S.K. Naik)
Member (A)

M.A. Khan
(M.A. Khan)
Vice Chairman(J)

Rakesh