

In the Central Administrative Tribunal
Calcutta Bench

OA No.1273/96

Present : Hon'ble Mr.Justice G.L.Gupta, Vice Chairman
Hon'ble Mr.B.P.Singh, Member(A)

Ashoke Kumar Das, working for gain as O.S.
Gr.II/SH(PV) in Metal and Steel Factory,
Ishapore, Dist.North 24 Parganas

.... Applicant

-Vs-

1) Union of India, service through the Secretary
Ministry of Defence, Department of Defence
Production & Supplies, New Delhi-1

2) Director General, Ordnance Factories Board,
10A, Auckland Road, Calcutta-700 001

3) Ordnance Factories Board, services through
the Secretary, 10A, Auckland Road, Calcutta-700 001

4) General Manager, Metal & Steel Factory,
Ishapore, Dist. North 24 Parganas

... Respondents

For the applicant : Mr.S.K.Ghosh
For the respondent : Mr.B.K.Chatterjee

Date of Judgement : 6. 2. 02

ORDER

Per Mr.Justice G.L.Gupta :

The applicant was initially appointed as Lab.'B' on 6-5-69. He became Checker, LDC and UDC. He was promoted to the post of OS Gr.II on adhoc basis w.e.f. 30-11-84 and on regular basis w.e.f. 2-1-85. One Shri N.Mondal, who was junior to the applicant in the cadre of LDC was promoted to the post of OS Gr.II on 1-7-85. Before that promotion he was enjoying Special Pay of Rs35/- w.e.f.9-4-83 which was granted to UDCs in the Non-Secretarial Administrative Office for attending the work of a more complex and important nature vide Ministry of Defence OM dated 29-6-79. This special pay was subsequently merged in the pay of Shri Mondal on his promotion to the post of O.S. Gr.II which was



fixed at Rs455/- whereas the applicant was getting Rs425/- per month only. He therefore made a request for stepping up of his pay. Some more employees also made similar requests. The applicant filed this OA for stepping up of his pay.

2. In the reply, the case for the respondents is that the cause of action arose in July, 1985 and as the applicant never made any representation prior to January 1996, the OA should be dismissed on the ground of limitation. It has been averred that the difference of pay between the applicant and Shri N.Mondal is not as a result of any anomaly, nor it is the result of application of Fundamental Rule 22(1)(a)(i).

3. We have heard the learned counsel and perused the record of the case.

4. Mr.S.K.Ghosh, the learned counsel for the applicant submitted that the matter is identical to OA 1275 of 1996. A Division Bench of this Tribunal has passed an order directing the respondents to consider the case of the applicant in the light of the decision of the Supreme Court. He has placed a copy of the order dated 7-12-2001 in OA 1275 of 1996 (Biswanath Ghosh Dastidar & Ors V. Union of India & Ors).

5. We have given in the matter our thoughtful consideration. It may be stated that the anomaly took place in 1985, but the applicant's case was forwarded with justification by the Works Manager to the Secretary, Ordnance Factory Board in 1996 with recommendation in favour of the applicant. In the letter dated 20-2-96 (Annexure A4), the Works Manager had recommended the name of Basudev Majumder and 6 others. When the respondents have found the claim of the applicant as legitimate, the plea of limitation cannot be allowed to be raised. It is significant to point out that soon after the applicant's case was recommended by the Works Manager in 1996, this OA was filed.



6. In the said letter of 20-2-96 the case of Biswanath Ghosh was also recommended. His OA No.1275/96 has been disposed of by this Tribunal. This OA is also to be disposed of in the same manner. In that case the following observations of the Supreme Court in the case of Union of India & Ors V. P. Jagdish and Others reported in (1997) 3 SCC 176 have been relied upon :

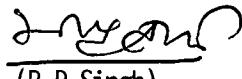
" Admittedly the respondents had been promoted earlier to the category of Head Clerks and some of their juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs35/- per month on being promoted to the post of Head Clerks later than the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to remove the anomaly of a Government Servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On refixation of the pay of the senior officer by applying the principle of stepping up, the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of refixation of the pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondentss being senior to several other senior clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slap than that of the respondents. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. In fact the Tribunal by the impugned order has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications. The principle of stepping



up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reasons that the respondents had not worked in the post to which 35% special pay was attached in the lower cadre. But by reason of promotion the promotee juniors who worked on the said posts, in fact performed the hard duties and earned special pay. Directions to pay the arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though direction to step up the pay on notional basis is consistent with Article 39(d) of the Constitution, it would be applicable only prospectively from the date of promotion and the fixation of the scale, stepping up of the scale of pay would be prospective to calculate future increments on the scale of pay in the promotional post only prospectively."

7. Keeping in view the circumstances of the case, we are of the opinion that the matter requires to be considered by these respondents in the light of the decision of the Hon'ble Apex Court.

8. Accordingly, we direct the respondents to consider the representation of the applicant, which was forwarded to the Secretary, Ordnance Factory Board vide Annexure A-4 within a period of 3 months from the date of communication of this order and intimate the applicant within 2 weeks thereafter. With the aforesaid directions, the application is disposed of. No order as to costs.


(B.P.Singh)
Member(A)


(G.L. Gupta)
Vice Chairman