

OA No.1362/96

12-12

Present : Hon'ble Mr. Justice D.N.Chowdhury, Vice Chairman
Hon'ble Mr.S.Biswas, Member(A)

Lakshmi Narayan Pal

-Vs-

M/O Defence

For the applicant : Mr.P.Chatterjee
Mr.S.Bhattacharyya

For the respondent : Ms K.Banerjee

ORDER

Mr.D.N.Chowdhury, V.C. :

This application filed under Section 19 of the A.T. Act is mainly for stepping up of pay of the 83 applicants on the ground that Res.No.6 was given higher pay scale. The applicants are working as Sr.Auditors posted in the Audit and Accounts Department of Gun and Shell Factory, Cossipore and they are seniors to Smt.Ajanta Das, Respondent No.6, who was a Teacher in the Dandakaranya Project. She does not have any qualification and experience as Accountant or Auditor at any point of time. She was declared surplus in the said project. It is further stated that along with Res.No.6 several other surplus staff of Dandakaranya Project were brought to the Audit and Accounts Office of the Cossipore Gun and Shell Factory. It is further stated that Res.No.6 was given higher pay illegally than the Sr.Grade Auditors who were then enjoying the pay scale of Rs425-700/-, while Smt.Das was given the pay scale of Rs425-640 (which scale was not in existence in the Audit Deptt). Later on Smt.Das was given re-designation of Senior Auditor on promotion through DPC. It is further stated that though Respondent No.6 was not given senior grade or scale of Rs425-700 at any point of time, but she was placed in the scale of Rs425-640 even as Auditor, when she was redesignated as Senior Auditor she was placed in the scale of Rs1400-2600/- (which was the scale of Senior Auditor) but her pay was fixed at a stage higher than the stage of seniors holding the post of Senior Auditors before she was given promotion as Senior Auditor. According to the Applicants the Respondent No.6 is very much junior to them and was also academically much less qualified and did not fulfil the eligibility criteria for appointment as Auditor. She was therefore not eligible to be treated as equal to the applicants and as such was not entitled to be placed at a higher stage of the pay scale of Rs1400-2600 than that of the Applicants, which according the applicants are highly discriminatory. Applicants sought upgrading of their pay so as to equalise the same to Res.6 and also guarding their seniority position so that Res.6 who is junior to the applicants is placed below the applicants.

2. The respondents contested the claim of the applicants and stated that the Respondent No.6 was given the pay lawfully. Her pay on promotion as Senior Auditor has accordingly been fixed. It is further stated that since Respondent No.6 was in higher scale of pay prior to her re-deployment on transfer basis in the Defence Accounts Department and Ministry of Personnel and Training, A.R. PG &P, New Delhi dt.1-8-86 allowed her to carry her previous scale personal to her. It is further stated that orders for stepping up of pay have been issued under Ministry of Finance OM dated 18-7-74 incorporating Government of India's order No.22 under FR-22 Note 7 below Rule 7 of CCS (RP) Rules, 1986 and Government of India, Ministry of Finance Memo dted 16-6-89 which states that if pay of junior officials is fixed at a higher stage than the senior officials then the pay of senior has to be stepped up to the stage at which the pay of the junior has been fixed provided unrevised and revised scales of pay of the lower and higher posts are identical. It is further stated that scales of pay in the lower grade(s) are not identical and thereby the applicants are not eligible for stepping up of pay with reference to Smt Ajanta Das, Res.No.6. It is further stated by the respondent that her seniority was taken from the date of assumption of charge in the Respondent's department. She was promoted to Sr.Auditor's grade with effect from 18-10-93 and her pay was fixed at Rs2300/- in the scale of Rs1400-2600/-. It is submitted that as per Recruitment Rules, the criteria for promotion to Sr.Auditors grade is minimum 3 years in Auditor's/Senior Auditor's grade subject to fitment and availability of the vacancies. As such Smt.Das was promoted to Sr.Auditor's grade as per Recruitment Rules and she was not placed at stage in the seniority as alleged. It is further stated that Smt.Das has not been given the benefit of his previous service in the seniority in the Respondent Department. Her seniority has been counted from the date of redeployment in the Respondent's department i.e. 6-10-86. It is submitted that since there is no claim of the applicants the OA be dismissed.

3. We have heard Mr.Chatterjee assisted by Mr.S.Bhattacharyya, learned counsel for the applicants. They contended that the applicants who were senior to the respondent was denied the pay scale with equal terms. It is further stated that admittedly there was anomaly in fixation of pay to the applicants in relation to Res.No.6 in the Department. The learned counsel further stated that when a junior official belonging to same category was given higher pay, naturally it is incumbent on the part of the authority to step up the pay of the applicants on the basis of the policy laid down in the rule. The learned counsel in support of his contention also referred to a decision of the Supreme Court in Union of India & Others -Vs- P.Jagdish and others reported in 1997 Supreme Court Cases (185) 701 and also a

decision of Ernakulam Bench of Tribunal in OA 342, 337 & 1134 of 93 dated 29-10-93 reported in 1994(1) ATJ 36.

4. We have also heard Mrs K.Banerjee, the learned counsel appearing for the respondents. It is submitted by the learned counsel that the respondent No.6 was given higher scale long back in 1986 and the applicants have approached the Tribunal in 1995. She further contended that this application cannot be entertained on the ground of limitation. But we have seen that correspondence were going on in between applicants and official respondents and finally respondent turned down their claim by a communication dated 29-3-96. In this context the learned counsel for the respondent relied on 1998 SC SLJ 168 and 1992 21 ATC 675. But we are not inclined to dismiss the application on the ground of limitation. Further, she submits that on merit there is no justification for claiming the benefit by the applicant since there is no anomaly in stepping up of pay. Referring to FR 22-C, the learned counsel for the respondent states that stepping up is permissible if the anomaly has arisen as a result of the application of the provisions of FR 22-C or any other rules or order regulating pay fixation on such promotion in the revised scale vis-a-vis the fulfilment of other conditions mentioned therein. The anomaly can be said to exist only if a senior employee, drawing equal or more pay than his junior in the lower post and promoted earlier, starts drawing less pay than such junior promoted later on regular basis. She further contended that Res.6 was an Asstt. Teacher in the scale of Rs425-640 in the Dandakaranya Project and on being declared surplus she came on the strength of surplus staff cell of the Home Ministry and therefore redeployed in the Respondent;s Deptt. as Auditor in the scale of Rs330-560/- but she was allowed to retain her previous scale of Rs425-640/- as the same was not existing in the Respondent Deptt. in terms of para II(V)(e) to Government of India's decision under Appendix 34 to CSR Vol.II,Part II. As regards the fixation of pay she contended that since Res.No.6 was deployed in the respondent's Department as UDC/Auditor in the scale of Rs330-560/- and allowed to carry the previous service pay scale of Rs425-640/- as per Government of India's Order her pay would naturally be fixed at higher stage as compared to Auditor in the scale of Rs330-560/-.

5. When one pay scale is prescribed in a cadre, the Constitutional mandate of equal pay for equal work is fulfilled. Accordingly grant of higher pay to a junior would ex facie be arbitrary. But then if there are justifiable grounds for so doing, the senior cannot take aid of the doctrine of equality. In the instant case, the higher pay drawn by the Respondent No.6 was on account of the fact that she was in higher scale of pay prior to her deployment on transfer basis as per the

communication dated 1-8-86. She was allowed to carry her previous scale. The scale of pay of the applicant vis-a-vis the Respondent No.6 was not identical. There is therefore good and valid reason for drawing higher pay by the Respondent No.6

6. In the circumstances stated above, we do not find any infirmity in the posting and redeployment of the respondent No.6 and which was never challenged save and except by this application. The main grievance of the applicants are that they should be given higher scale and seniority position above Res.6. But we have seen that Das's (respondent No.6) promotion is based on All India Seniority Roster of Defence Accounts Department. Further, stepping up is permissible if it fulfills the conditions as laid down in FR 22-C. Thus, we do not find any merit in the OA and thus liable to be dismissed. Accordingly, the OA is dismissed. No costs.



(S.Biswas)
Member(A)



(D.N.Chowdhury)
V.C.