

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 1472 OF 1996

Present : Hon'ble Mr. Justice S.N.Mallick, Vice-Chairman
Hon'ble Mr. S. Dasgupta, Member (A)

JIBAN KUMAR BOSE

VS

1. Union of India through the Secretary, Deptt. of Posts, Dak Bhavan, Parliament Street, New Delhi -110 001
2. Chief Post Master General, West Bengal Circle, P/36, C.R. Avenue, Calcutta-12
3. Post Master General South Bengal Region, P/36, C.R. Avenue, Calcutta-12

..... respondents

For the applicant : Mr. K.K.Moitra, Counsel
Mr. S. Dey, Counsel

For the respondents: Mr. M.S.Banerjee, Counsel
Ms. B. Ray, Counsel

Heard on : 28.11.97 & 17.2.98

Order on : 3.3.98

Q.R.D.E.R

S.Dasgupta, A.M.:

The applicant in this application filed under section 19 of the Administrative Tribunals Act, 1985, was initially appointed as a Clerk in the Deptt. of Post on 15.11.60. Through successive promotions, he reached the rank of HSG-I on 15.3.95 carrying a pay scale of Rs. 2000-3200/-. On 29.4.95 he was further promoted to a Group B post carrying pay scale of Rs. 2000-3500/-. On such promotion, his pay was fixed at Rs. 2450/-. This is also the stage at which his pay was fixed on his promotion to HSG-I. The applicant claims that his pay should have been fixed at Rs. 2600/- on his promotion to the higher post in Group B. He is further aggrieved by the fact that his junior one Shri Sumantra Mukherjee on promotion to

the Group B post on the same date as the date of promotion of the applicant, is getting pay of Rs. 2900/- in the scale of Rs. 2000-3500/- and that the applicant's representation for stepping up of his pay to the same level as drawn by his junior has been rejected by the impugned order dated 6.11.96. Hence this application praying for a direction to the respondents to fix his pay initially at Rs. 2600/- and then to step up such pay and fix it at the stage of Rs. 2900/- with effect from 29.4.95 i.e. the date on which his junior started getting that pay. He has also sought consequential arrears of pay and allowances.

2. The respondents have appeared and contested the case by filing a reply in which it has been stated that on his promotion to the Group B post, the applicant's pay was fixed at Rs. 2450/- i.e. the same pay which was drawn in the grade of HSG-I in view of the provision contained in FR 22(I)(a)(1). As regards rejection of the applicant's prayer for stepping up of pay, it has been stated that Shri Sumantra Mukherjee, though junior to the applicant, got promotion to the post of Inspector in the Railway Mail Service cadre on 1.2.77 and thereafter promoted to the cadre of Assistant Superintendent in the Railway Mail Service on 22.2.80 in the pre-revised scale of Rs. 550-900/-. The applicant on the other hand was promoted as Inspector in the cadre of Post Office on 31.3.77 and his further promotion to the rank of Assistant Superintendent of Post Offices was only on 23.12.81. Thus, it is stated, ~~that~~ Shri Mukherjee was drawing higher pay than the applicant much before his promotion to HSG-I and thereafter to Group B post. The case of the respondents is that in such a situation the pay of the applicant cannot be stepped up in view of the existing orders in this regard.

3. The applicant has filed a rejoinder reiterating his contentions in the OA and also denying the contrary averments

in the reply. He has also specifically stated that whenever a junior officer in the same cadre receives higher pay than the senior person, the senior person is entitled to claim such higher pay by stepping up of his pay.

4. We heard the learned counsel for both the parties and perused the pleadings on record. The learned counsel for the applicant, during the course of arguments, pressed the relief relating to stepping up of pay and did not advance any argument on the other relief prayed for i.e. fixation of pay of the applicant at Rs. 2600/- on his promotion from HSG-I to Group B post. We, therefore, take up the applicant's prayer regarding stepping up of pay for discussion in the light of the arguments advanced and the averments in the pleadings.

5. In order to appreciate the controversy before us, it will be useful to see how the applicant and his junior, viz. Shri Sumantra Mukherjee, progressed from the initial grade of Clerk to the present post of Group B. The respondents made available a comparative chart to indicate the correct position which is as follows :

Comparative Pay Statement

| <u>Applicant</u> | | <u>Sumantra Mukherjee</u> | |
|---|-----------|--|-----------|
| Appointed as Clerk in scale Rs. 110-240/- on 15.11.60 | | Appointed as Sorting Asst. in scale Rs.110-240/- on 22.2.68 | |
| 15.11.60 | Rs. 110/- | 22.2.68 | Rs. 110/- |
| 15.11.71 | Rs. 155/- | 22.2.71 | Rs. 122/- |
| 15.11.72 | Rs. 160/- | 22.2.72 | Rs. 126/- |
| <u>Pay scale revised to Rs. 260-480/- (3rd CPC) in both cases</u> | | | |
| 1.1.73 | Rs. 340/- | 1.1.73 | Rs. 284/- |
| 9.4.73 | Rs. 350/- | 25.2.73 | Rs. 292/- |
| 1.4.74 | Rs. 360/- | 25.2.74 | Rs. 300/- |
| 1.4.76 | Rs. 384/- | 25.2.76 | Rs. 316/- |

Promoted to IPO cadre in
scale Rs. 425-700/-

31.3.77 Rs. 455/-
1.3.78 Rs. 470/-
1.3.79 Rs. 485/-
1.3.80 Rs. 500/-

Promoted to IRM cadre in
scale Rs. 425-700/-

1.2.77 Rs. 440/-
1.2.78 Rs. 455/-
1.2.79 Rs. 470/-

Promoted in ASRM cadre in
scale Rs. 550-900/-

22.2.80 Rs. 550/-
1.3.81 Rs. 515/-
1.3.82 Rs. 530/-
1.3.83 Rs. 545/-
1.3.84 Rs. 560/-
1.3.85 Rs. 580/-

Pay scale revised to

Rs. 1400-2300/(4th CPC)

1.1.86 Rs. 1720/-
1.3.86 Rs. 1760/-
1.3.87 Rs. 1800/-
1.3.88 Rs. 1850/-

Pay scale revised to

Rs. 1640-2900/-(4th CPC)

Promoted to ASPO cadre in
scale Rs. 1640-2900/-

23.12.88 Rs. 1880/-

(Option FR22a(i))

1.3.89 Rs. 2000/-
1.3.90 Rs. 2060/-
1.3.91 Rs. 2120/-
1.3.92 Rs. 2180/-

Promotion to HSG-I in pay
scale of Rs. 2000-3200/-

1.4.92 Rs. 2525/-
1.3.93 Rs. 2240/-
1.4.93 Rs. 2600/-

| | | | |
|---|---------------------------------|--|------------|
| 1.3.94 | Rs. 2300/- | 1.4.94 | Rs. 2675/- |
| 1.3.95 | Rs. 2360/- | 1.4.95 | Rs. 2750/- |
| <u>Promoted to HSG-I on ad hoc basis in scale Rs.2000-3200/-</u> | | <u>Promotion to PSS Group B in scale Rs. 2000-3500/-</u> | |
| 15.3.95 | Rs. 2450/- (Under FR 22a(i)) | 29.4.95 | Rs. 2900/- |
| <u>Promoted to PSS group B on ad hoc basis in scale</u> <u>Rs. 2000-3500/-</u> | | 1.4.96 | Rs. 2975/- |
| 29.4.95 | Rs. 2450/- | Pay scale revised to | Rs. |
| 1.4.96 | Rs. 2525/- | 7500-12000/- w.e.f. | 1.1.96 |
| 1.4.97 | Rs. 2600/- | 1.1.96 | Rs. 8750/- |
| | | 1.4.96 | Rs. 9000/- |
| | | 1.4.97 | Rs. 9250/- |

Retired on superannuation

w.e.f. 30.4.97 (AN)

N.B. Approved in HSG-I cadre

NB: Approved in HSG-I cadre

w.e.f. 15.3.95 vide CPMG

vide CPMB WB Circle Memo No.

WB Circle Memo No. SFA/P-55/

SFA/P-94/HSGI(IRM) of 24.5.94

Select/HSGI/IPO/PT.I of 20.11.97

The aforesaid chart was annexed to the reply and since this has not been rebutted by the applicant, we have to assume that the data in the aforesaid chart are factually correct and we have proceeded accordingly. It would be seen from the aforesaid chart that the contention of the respondents that the junior to the applicant had been in receipt of higher pay by virtue of his earlier promotion both as Inspector and as Assistant Superintendent in a different cadre cannot be faulted on factual basis.

6. The learned counsel for the applicant argued that the very fact that the pay of the junior to the applicant was fixed at a higher stage than that of the applicant on

promotion to Group B post would justify stepping up of pay of the applicant to the same level as that of his junior. In other words, his argument was that the applicant is entitled to the relief on a priori considerations irrespective of the circumstances leading to the junior getting higher pay than the senior and that whatever be the circumstances, whenever junior gets higher pay than the senior, the corrective procedure of stepping up of pay must be resorted to. The other part of his argument was that even otherwise, the conditions precedent to stepping up of pay as enumerated in the relevant Govt. orders (MF., OM No. F.2(78)-E.III(A/66 dated 4.2.1966) are fulfilled in the present case and therefore, the applicant is entitled to the relief of stepping up of pay.

7. In support of the first leg of his argument, the learned counsel for the applicant sought reliance on several reported decisions. These are -

1. Anil Ch. Das-vs-UOI ... (1988) 7 ATC 224
2. N. Lalitha -vs- UOI ... (1992) 19 ATC 569
3. K.Krishna Pillai-vs-UOI...1994(1) ATJ 36
4. UOI -vs- P.Jagadish & Ors ..1997 Lab.IC 1281

8. The first 3 of the cited cases referred to above are all decisions of various Benches of the Tribunal. The first case of this genre is that of Anil Chandra Das which was decided by the Calcutta Bench of the Tribunal. In this case, the applicant's juniors were promoted on ad hoc basis earlier than the applicant though their services were regularised after the applicant. As a result of the ad hoc promotion given locally, the juniors were getting higher pay and this was reflected in the fixation of their pay. The Calcutta Bench decided that in such circumstances, stepping up of pay should be allowed to the senior employees.

9. This decision was followed in the case of L. Lalitha

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(supra) decided by the Hyderabad Bench. In this case also the increments earned by the juniors during ad hoc promotions given locally led to their fixation of pay at a higher stage than the pay of the seniors. The decision in N. Lalitha's case was also followed in a subsequent case in K. Krishna Pillai (supra). In this case, the Ernakulam Bench of the Tribunal accepted the plea of the applicants therein that a senior drawing pay less than that of his junior is entitled to have his pay stepped up to the level of that of his junior irrespective of the reasons that led to the difference in pay.

10. The aforesaid decisions would appear to support the case of the applicant before us. We have not, however, been persuaded to follow the aforesaid decisions for two reasons. Firstly, the Full Bench of this Tribunal in the case B.L.Somayajulu & Ors -vs- The Telecom Commission & ors, reported in Kalra's Administrative Tribunal Full Bench Judgements, 1994-1996, at page 189, considered all the aforesaid decisions and inter alia held that

" if a junior gets a higher pay, that does not mean that the senior also should necessarily get it without a foundation for such a claim in law. Fortuitous events are part of life. Fixation of pay is generally with reference to an individual. Various reasons may account for the grant of a higher pay to a junior.....The law governing the subject is F.R. 22(1)(a)(i). Incidentally this rule is not challenged. It follows that only those anomalies that are directly referable to that rule, are amenable to the curative process thereunder namely stepping up and no other."

11. It is, therefore, clear that stepping up shall be considered only if the conditions precedent enumerated in the Govt. order dated 4.2.66 are fulfilled.

12. The second reason why we are not inclined to follow the aforesaid decisions of various Benches of the Tribunal is that in a recent decision given by a 3-Judges Bench of the apex court in the case Union of India -vs- R. Swaminathan, 1997(2)ATJ 529, it has been held that

" The increased pay drawn by a junior because of ad hoc, officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay."

In this case the apex court has specifically considered various conditions enumerated in the Govt. order dt. 4.2.66 and has held that only if each of the conditions specified therein is satisfied, only then stepping up of pay of the senior shall be allowed.

13. At this stage, therefore, it would be pertinent to refer to the aforesaid Govt. order and see what are the conditions specified therein for stepping up of pay of the senior with reference to the pay of the junior. The conditions are -

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will

not be invoked to step up the pay of the senior officer.

14. The second leg of the arguments of the learned counsel for the applicant was that all these conditions have been fulfilled in the case of the applicant before us. It can be seen from the chart given in para 5 above that both the applicant and his junior were promoted from HSG-I in the pay scale of Rs. 2000-3200/- to the Group B post in the pay scale of Rs. 2000-3500/- on the same date i.e. 29.4.95. There is no doubt that both the applicant and his junior belonged to the same cadre at the time of promotion to the Group B post and that the posts to which they have been promoted are identical and are also in the same cadre. Thus, the first condition has been satisfied in this case. Also the scale of pay of the lower and the higher posts i.e. HSG-I and Group B post are identical. The second condition is also, therefore, fulfilled.

15. The question now remains to see is as to whether the third condition is also fulfilled i.e. we have to see whether the anomaly has arisen directly as a result of the application of F.R. 22C (now replaced by FR (I)(a)(1) (emphasis supplied).

16. We have given our anxious consideration to the aforesaid question. It is quite clear from the chart in para 5 (supra) that the differential in pay of the senior and the junior has occurred long before their promotion from HSG-I to Group B post. This was because they had chosen different routes in arriving at the same destination i.e. the post of HSG-I and their rate of progression in the two different cadres has been different inasmuch as the junior has got much quicker promotion while he was serving in the RMS cadre. The differential in pay on their promotion to the Group B post is therefore directly as a result the aforesaid difference which

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already existed and it was directly attributable to the junior having got regular promotion in a different cadre. In our view, therefore, the pay anomaly cannot be said to be directly attributable to the application of FR 22 C (FR 22(I)(a)(1)). Thus it does not appear to be a fit case for stepping up of pay.

17. In holding the aforesaid view, we are fortified by the decision of the apex court in R.Swaminathan (supra). In that case, the juniors received higher pay because of their earlier local promotions on ad hoc basis. Thus at the time of promotion to the next higher grade, they were already in receipt of higher pay than the seniors and therefore, their pay was fixed at a higher stage in the promotional post than the pay of their seniors. After analysing the provisions contained in the Govt. order dt. 4.2.66, the Hon'ble Supreme Court held inter alia that-

" the difference in the pay of a junior and a senior in the cases before us is not a result of the application of Fundamental Rule 22(I)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past."

18. In these circumstances, the apex court held that anomaly in those cases did not arise as a result of application of FR 22(I)(a)(1).

19. Before parting with this case we must also mention that the learned counsel for the applicant had relied on a decision of the Hon'ble Supreme Court in UOI -vs- P.Jagadish & Ors(supra). In that case, the juniors holding identified posts were granted special pay which got reflected in their higher fixation of pay on promotion. The seniors who did not hold the identified post and were not in receipt of special

pay, therefore, started getting lesser pay on their promotion. The Hyderabad Bench of the Tribunal held that in such a situation, the pay of the seniors should be stepped up to the level of the pay of the juniors. The apex court upheld this decision. The question, therefore, is whether the applicant in the present case can derive any support from this decision in favour of his claim for stepping up of pay. We have carefully considered this matter. We are of the view that the aforesaid case was decided on its own special facts and circumstances. The Hon'ble Supreme Court does not appear to have laid down a general principle of law that stepping up should be allowed to the seniors irrespective of the circumstances which led to the junior drawing higher pay on promotion. This decision cannot be invoked by the applicant in his case which is based on different sets of facts. In any case, the subsequent decision of the apex court which is by a larger bench appears to have laid down the law that stepping up can be allowed only if the anomaly arises directly as a result of application of FR 22(I)(a)(1).

20. Although the learned counsel for the applicant did not press for the first relief prayed for in the application, i.e. fixation of the pay of the applicant at the stage of Rs. 2600/- in the pay scale of Rs. 2000-3500/-, we consider it appropriate to adjudicate this issue also in the light of the averments. The relevant rule for fixation of pay contained in Rule 22(I)(a)(1) is quoted below :

" Where a Govt. servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and

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responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more. (emphasis supplied)

21. It is the case of the respondents that the benefit of the aforesaid rule has not been given to the applicant on his promotion to Group B post due to the fact that both the promotions to HSG-I as well as to Group B post are on ad hoc basis. If that be so, no doubt, the stand taken by the respondents is correct since the lower post must be held regularly for getting the benefit of FR 22(I)(a)(1). There is no specific averment of the applicant either in the OA or in the rejoinder that his promotion to HSG-I is on regular basis. However, we have noted from the chart (supra) that promotion of the applicant to HSG-I with effect from 15.3.95 was approved by the Chief Post Master General vide his Memo dated 20.11.97. This would give an indication that subsequent to the retirement of the applicant, his promotion to HSG-I has been regularised with retrospective effect. In the absence of definite material in this regard either in the OA or in the reply and the rejoinder, we are unable to pass any definite order directing the respondents to fix the pay of the applicant at the stage of Rs. 2600/- on his promotion to Group B post. We, however, can direct the respondents to consider the matter in the light of the actual position in this regard and in case his promotion to HSG-I was subsequently regularised with retrospective effect, to give him the benefit of fixation under FR (I)(a)(1).

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22. In view of the detailed reasons as in the foregoing paragraphs, we are unable to find any fault with the respondents in rejecting the applicant's prayer for stepping up of his pay. We, however, direct the respondents to verify the records with regard to the regularisation of promotion of the applicant in the post of HSG-I and if the said promotion was subsequently regularised with retrospective effect from 15.3.95, the applicant shall be entitled to fixation of his pay at the stage of Rs. 2600/- in the group B post. In that case he shall also be entitled to arrears of salary as well as refixation of his pension and other terminal benefits on this basis. Let this direction be complied with within a period of 3 months from the date of communication of this order.

23. The OA stands disposed of accordingly without any order as to costs.



(S. DASGUPTA)

MEMBER(A)



(S.N. MALLICK)

VICE CHAIRMAN