

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 380 of 1996.

Present : HON'BLE MR. D. PURKAYASTHA, JUDICIAL MEMBER.

Shri Krishna Pramanick ... Applicant.

Vs.

1. Union of India,
through the Secretary,
Deptt. of Urban Development,
Govt. of India, New Delhi.
2. Director,
Directorate of Printing, B-Wing,
Nirman Bhawan,
New Delhi-11.
3. The Manager,
Govt. of India Press,
Publication Unit, Santragachi
Howrah.
4. The Asstt. Manager (Administration)
Govt. of India Press,
Publication Unit, Howrah.

... Respondents.

For Applicant : Mr. M.K. Bandopadhyaya, Counsel.

For Respondents : Mr. B. Mukherjee, Counsel.

Heard on : 6.3.97.

Ordered on : 6.3.97.

O R D E R

The applicant, one Shri Krishna Pramanick, filed this application for stepping up his pay and re-fixation of his pay at par with one Shri Purnendu Bhattacharjee, who was junior in the cadre of L.D.C. as per date of appointment. According to the applicant he was appointed in the cadre of L.D.C. on 12.6.1958 while Shri Bhattacharjee was appointed in that cadre on 20.8.1958. Thereafter, the applicant was promoted to the post of U.D.C. on 28.8.78 in the scale of Rs. 330-560/- and his pay was fixed at Rs. 404/- under F.R. 22-C in the said post. But Shri Bhattacharjee

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though was promoted to the post of U.D.C. more than 2 months after the promotion of the applicant i.e. with effect from 6.11.78 his pay was fixed at Rs. 428/-. According to him, since Shri Bhattacharjee, being junior to him in the cadre of L.D.C, has been promoted to the cadre of U.D.C. after the applicant, he is entitled to stepping up of his pay at par with his Junior Shri Bhattacharjee. He made several representations to the authorities concerned but none of his representations was disposed of by the respondent authorities. Hence, this application.

2. During hearing, Mr. Bandopadhyaya, Id. Counsel for the applicant submits that after filing of this application, the respondents have rejected his representation without assigning any reason. Thereby, he submits that he is entitled to get the pay scale at par with Shri Bhattacharjee in the cadre of L.D.C. w.e.f. 1978 and his pay should be revised accordingly.

3. This application has been resisted by the respondents by filing a written statement denying the claim of the applicant stating inter-alia that the claim of the applicant did not come within the purview of anomaly thereby, he is not entitled to get any benefit of stepping up of his pay as claimed in his application. It ~~is~~ has also been averred in the reply that Shri Bhattacharjee was promoted as Estimator in the scale of pay Rs. 330-400/- w.e.f. 5.10.1978; ^{his} ~~on~~ a basic pay ^{was fixed at} of Rs. 410/- as per rule. Shri Bhattacharjee was again been promoted to the post of U.D.C. w.e.f. 6.11.1978 in the scale of Rs. 330-560/- ^{his} ~~on~~ a basic pay ^{was fixed at} of Rs. 428/- with D.N.I. ^{on} ~~6.11.78~~ i.e. 1.11.78. Thus it is revealed that the applicant was drawing Rs. 404/- on 6.11.78 in the post of U.D.C. being senior and whereas Shri Bhattacharjee was drawing Rs. 428/- in the same post on 6.11.78 though he was junior to the applicant both in the posts of L.D.C. and U.D.C. Since the case of

the applicant does not come within the purview of anomaly, according to the respondents, the application is liable to be dismissed.

4. The Id. Counsel Mr. Mukherjee raised ^a ~~the~~ preliminary objection about the maintainability of the application on the ground of Limitation and also ^{on the ground of} ~~the~~ Jurisdiction of the Tribunal since the cause of action in this application arose in the year 1978 when he was superseded by Shri Bhattacharjee by promotion in the cadre of Estimator from the post of L.D.C. Contrarily, Mr. Bandopadhyaya submits that the question of re-fixation of pay is a continuing wrong to the applicant and cause of action arises every month when he received the salary every month, which is less than the amount what he is actually entitled to according to rules and he refers to a decision of the Hon'ble Apex Court reported in 1995 (2) SC SLJ 337 (M.R. Gupta Vs. Union of India & Ors.) in this regard. He, therefore, submits that the question of limitation ^{and lack of jurisdiction} ~~does~~ not arise in the matter of fixation of pay as has been settled down by the law by the Hon'ble Apex Court.

5. I have considered the submission of both the parties on the question of limitation. ^{as well as on lack of jurisdiction} In M.R. Gupta's case where Their Lordships opined that -

"... Pay Fixation - Cause of Action - Where the fixation of pay was not in accordance with rules, it is a continuing wrong against the concerned employee giving rise to a recurring cause of action each time he was paid salary - Under the circumstances a fresh cause of action arises every month - Where the claim is found correct on merits - incumbent entitled to be paid according to the properly fixed pay scale in future - Question of limitation would arise for recovery of arrears for the past period...."

In view of the above decision of the Hon'ble Apex Court I am of the opinion that the contention of Mr. Mukherjee, Id. Counsel

for the respondents on the point of limitation must fail. Regarding jurisdiction as raised by Mr. Mukherjee I find no force on that score on the point of law since, admittedly, the applicant was in service till the date of retirement under the Central Govt. Therefore, the cause of action is continuing one and the applicant has a right to challenge the arbitrary or illegal action, if any, on the part of the respondents on the question of fixation of pay etc. Thereby, the jurisdiction of the Tribunal cannot be ousted.

6. Now the question comes whether the applicant is entitled to get relief ~~as~~ in this case as per claim made in this application. There is no dispute in this case that the applicant was senior to Shri Bhattacharjee in the cadre of L.D.C. as per date of their appointment. It appears from the record that Shri Bhattacharjee, with whom applicant wants stepping up of pay, was promoted to the post of Estimator which carries higher scale than that of the scale of L.D.C. Shri Bhattacharjee was promoted in the Cadre of Estimator on 5.10.1978 ignoring seniority of the applicant. Since it was a case of promotion, Shri Bhattacharjee was given the benefit of F.R. 22-C in the cadre of Estimator on the basis of the appointment on promotion in the cadre of Estimator. The applicant did not challenge the said order of promotion apparently found from the record. Admittedly, the applicant got promotion in the cadre of U.D.C. prior to Shri Bhattacharjee, who was junior in the cadre of L.D.C. In this connection, the ld. Advocate, Mr. Bandopadhyaya has drawn my attention to the Memorandum/Circular dated 3.6.1978 at page 18 (Annexure A-2) to the petition. Referring to the said Office Memo. dated 3.6.1978 (Annexure 'A-2') he submits that similar case was dealt with by the Ministry of Finance and benefit was given to one person for the purpose of removal of

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anomaly cropped in the similar circumstances.

7. I have gone through the said Memorandum carefully and found that it is very difficult to ascertain from this Memorandum under what circumstances case of one person was considered by the Finance Deptt. for the purpose of stepping up of pay in relaxation of their O.M. dated 18.7.1974. In order to remove anomaly by way of stepping of pay of senior at par with the junior, the following condition should be fulfilled -

i) Both the senior and the junior employees should belong to the same cadre and posts to which they have been promoted or appointed identical and in the same cadre.

ii) The scale of pay of lower and higher posts should be identical.

iii) The anomaly should directly arise from the application of F.R. 22-C etc.

8. The applicant must prove first that there is an anomaly in the matter of fixation as per principle laid down in the Memorandum. I find that some instances have been given at page 45 of Swamy's Handbook-1996 which do not constitute an anomaly for stepping up of pay. That instances are given below -

"(i) Extra-ordinary Leave resulting in postponement of the date of next increment with consequent drawal of less pay than the junior in the lower grade itself; pay parity cannot be claimed even if promoted earlier to the higher grade.

(ii) A senior foregoing/refusing promotion leading to the promotion of junior earlier and drawing higher pay than the senior; increased pay drawn by a junior due to ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior.

(iii) A senior joining higher post later than the junior and drawing less pay.

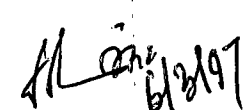
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- (iv) A senior appointed later than the junior in the lower post itself and drawing less pay than the junior, when promoted to the higher post earlier than the junior.
- (v) A senior direct recruit drawing less pay than a junior promotee whose pay has been fixed with reference to the pay drawn in the lower post.
- (vi) When a Junior gets more pay due to additional increments earned on acquiring higher qualifications.

9. Admittedly, Shri Bhattacharjee, who was junior to the applicant in the Cadre of L.D.C. was promoted in the cadre of Estimator carrying higher pay-scale than the scale of L.D.C. Due to promotion in the cadre of Estimator, the applicant was getting less pay than the junior. So, it cannot be held that before the date of promotion, ^{in the cadre of U.D.C.} ~~at~~ the applicant and Shri Bhattacharjee ~~in the cadre of U.D.C.~~ both were holding the identical post with identical pay-scale.

10. In view of the reasons given above I am led to the opinion that due to promotion of Shri Bhattacharjee in the cadre of Estimator and subsequently to the post of U.D.C. he got some benefit in the matter of fixation of pay in the cadre of U.D.C. since the post Estimator was carrying higher pay-scale (Rs. 330-400/-) than that of L.D.C. (Rs. 330-560/-) and, therefore, the question of anomaly in the pay in the cadre of U.D.C. as raised by the applicant does not arise.

11. Considering these facts I do not find any merit in this application and, accordingly, the application is dismissed without passing any order as to costs.


(D. Purkayastha)
Member (JA)