

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,  
J\_O\_D\_H\_P\_U\_R.

Date of Order : 31.08.2000

O.A. No. 227/1995

Om Prakash Mahajan S/O Shri Charan Dass Mahajan retired  
Divisional Accounts Officer, I Indira Gandhi Nagar, Pari-  
yojna, 16th Division Bikaner, Resident of 1/230 Mukta Pd.  
Nagar, Bikaner. (Rajasthan)

... Applicant

Vs

1. Union of India through the Secretary Ministry  
of Personnel Public Grievances Pension Department  
Personnel and Training, New Delhi.
2. Comptroller and Auditor General of India Bahadur  
Shah Jafar Marg, New Delhi.  
Accountant General (Account and Entitlement)  
(Rajasthan) Near Secretariat Jaipur.  
Executive Engineer 16th Division, Indra Gandhi  
Nahar Pariyojna, Colony, Bikaner. (Raj).

... Respondents

Mr. Bharat Singh, Counsel for the Applicant.

Mr. Vineet Mathur, Counsel for the Respondents.

CCRAM :

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

O\_R\_D\_E\_R

( PER HON'BLE MR. GOPAL SINGH )

Applicant, Om Prakash Mahajan, has filed this  
application under Section 19 of the Administrative Tribunal  
Act, 1985, praying for a direction to the respondents to fi  
his basic pay at par with his junior Asha Ram Purohit w.e.f  
01.5.1986 with all consequential benefits.

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2. Applicant's case is that he has been all along senior to Asha Ram Purohit in State service as also in Central service. The pay of Asha Ram Purohit has been fixed at Rs.2,250/- with effect from 01.1.1986 vide order dated 25.8.1994 (Annexure A/1) while that of the applicant's pay was fixed at Rs.1,900/- w.e.f. 01.5.'86. Not getting relief from the respondents despite representations, the applicant has filed this application.

3. In the counter, it has been submitted by the respondents that the applicant before joining the respondent-department was drawing basic pay of Rs.210/- + Rs.10/- as special pay in the scale of Rs.130-300. On his appointment as Emergency Divisional Accounting (EDA for short) in the scale of Rs.425-750 with the respondent-department, his pay was fixed at Rs.425/- w.e.f. 05.5.'73. Asha Ram Purohit was drawing basic pay of Rs.925/- in the scale of Rs.640-1120 in the State Government before he was appointed as EDA with the respondent-department on 17.10.'81 and his basic pay was fixed at Rs.680/- in the scale of Rs.425-750. It has, therefore, been contended by the respondents that the applicant's <sup>case</sup> for stepping up is not covered by the rules.

4. We have heard the learned Counsel for the parties, and perused the records of the case carefully.

5. The applicant is seeking parity in pay with Asha Ram Purohit only on the basis of seniority. Basic conditions for grant of the benefits of stepping up of pay with reference to junior are that both senior and junior should have been holding the same lower scale before being promoted to the same higher scale and that the junior should

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have been drawing lower pay than the senior in the lower scale before promotion to the higher scale. Undoubtedly, Asha Ram Purohit was appointed as EDA on transfer when he was holding the scale of Rs.640-1120 while the applicant was holding the scale of Rs.130-300 before appointment as EDA on transfer. Thus, Asha Ram Purohit was holding higher scale and was drawing higher pay in the State Government before he was appointed as EDA with the respondent-department. Further, appointment on the post of EDA on transfer from State Govt. is not a promotion nor it follows the principle of seniority. The applicant was appointed EDA in 1973, while Asha Ram Purohit was appointed as such in 1981. Though the applicant is no doubt senior to Asha Ram Purohit, but the fact remains that Asha Ram Purohit came to be appointed as EDA while he was drawing higher pay in a higher scale than the applicant. Thus, in our view the applicant is not entitled to the relief prayed for.

6. Learned Counsel for the applicant has cited a few judgments in support of his contention. These judgments are being discussed in subsequent paragraphs.

7. In UOI & Ors. Vs P. Jagdish & Ors. 1997 SCC (L&S) 701 the facts of the case were that seniors were promoted as Head Clerk earlier while juniors Senior Clerks holding certain identified post and drawing a special pay of Rs.35/- p.m. were promoted later on but their pay was fixed in the higher post of Head Clerk taking into account Rs.35/- special pay for the purpose of pay fixation and thus they started drawing higher pay than their seniors promoted earlier. In that situation the seniors were held entitled to stepping up of their pay to a figure equal to the pay of their juniors from the date such juniors were promoted as Head Clerk. As

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we have discussed above the instant case is not a case of promotion. Moreover, the facts of the case in hand are entirely different than that of the cited case. Therefore, the cited judgment does not come to the rescue of the applicant. In (1994) 26 ATC 64 K. Krishna Pillai & Ors. Vs UOI & Ors., it has been held that a senior is entitled to stepping up of pay equal to the pay received by his junior due to fortuitous circumstances. But this will not apply in the present case because the junior has been drawing higher pay due to non-fortuitous circumstances. In 1994 (3) SLJ (CAT) 378 Bindynath Bandopadhyay Vs ~~UOI~~ of India & Ors. a junior was promoted on ad hoc basis as a local arrangement and thus got higher pay than the applicant by earning incremental benefits during the intervening period before he got regular promoted to the said post. In that case it was held that the senior would be entitled to stepping up benefit with reference to his junior. It was also held that Government Circular dated 4.11.1993 not allowing such stepping up cannot be effective retrospectively. Since the facts of the case in hand are entirely different in as much as it is not a case of promotion that follows seniority and as such this judgment also does not help the applicant. In (1995) 31 ATC M.R. Gupta Vs. UOI & Ors. the pay of the applicant therein was not fixed as per rules and he approached the Tribunal after eleven years for proper fixation. It was held that such application to the extent of proper pay fixation is not time-barred although the applicant's claim to consequential arrears would be subject to the law of limitation. The instant case is that of stepping up of pay ~~with~~ reference to

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junior and not of wrong fixation. Therefore, this judgment also does not help the applicant. In Government of India DOPT O.M. Dated 24.3.1994 printed as clarification No.(1) under Government of India order (12) under FR 22, the method of fixation of pay of EDA has been prescribed. This method has not been challenged by the applicant. The applicant has been demanding stepping up of his pay with reference to his junior solely on the ground of seniority forgetting the fact that the junior was drawing higher pay in higher scale in the State Government before he was appointed as EDA in the Central Government.

8. In the light of above discussion, we are of the view that the application is devoid of any merit and deserve to be dismissed.

9. The Original Application is accordingly dismissed with no order as to costs.



*Gopal Singh*

( GOPAL SINGH )  
Adm. Member

*A.K. Misra*  
31/8/2000

( A.K. MISRA )  
Judl. Member

\*J\*

For the Secretary  
To the Government of India  
Ministry of Personnel, Public Relations & P.W.D.  
New Delhi

Copy Received  
His. Gill  
for V.K. Mathur  
2-9-2007

Received Copy  
Mohan D. An 8/9

Part II and III destroyed  
in my presence on 2-9-07.  
under the supervision of  
section officer ( ) as per  
order dated 2-9-07  
Nanani  
Section officer (Records)