

(M)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH
JODHPUR

DATE OF ORDER : 15.12.1998.

O.A.NO. 466/1995

Nanu Vijayan S/o Late Shri Kanan aged 56 years, Senior Personal Assistant, H.Qrs. South West Air Command, Air Force, Jodhpur R/o 3 Aa-34, Housing Board, Madhuban, Jodhpur.

____ APPLICANT.

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Defence, New Delhi.
2. Director, Office of Joint Directorate of Personnel, Civilians, Air Hqrs. Vayu Bhawan, New Delhi.
3. Civilian Staff Officer, Assistant Director of Personnel Civilians, Air H.Qrs. Vayu Bhawan, New Delhi.

____ RESPONDENTS.

.....

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

.....

Mr. S.K.Malik

____ For the Applicant.

Mr. Vineet Mathur

____ For the Respondents.

.....

PER MR. A.K.MISRA :

The applicant had filed this O.A. with the prayer that the orders Annex.A/1 and A/2 may be quashed. The respondents be directed to give promotion to the applicant on the post of Steno Grade I and thereafter to the post of Senior Personal Assistant and to accord due increments due to the above mentioned two promotions and make fixation of pay accordingly.

Zm

2. Notice of the O.A. was given to the respondents who have filed their reply in which it is stated by the respondents that the applicant is not entitled to stepping up of pay. The O.A. deserves to be dismissed.

3. The applicant filed rejoinder and negatived the contentions raised by the respondents in their reply.

4. We have heard the learned counsels for the parties and gone through the case file.

5. Few facts in the instant case are undisputed which are as follows :

The applicant and few of his juniors were working as Steno Grade II on 12.8.1991. Vide order Annex.A/4 dated 12.8.1991, 13 persons were promoted and posted as Senior Personal Assistant with immediate effect. Out of these 13 persons, 7 were working as Steno Grade I and rest of them were working as Steno Grade II. The order Annex.A/4 was passed promoting all the 13 persons consequent to the upgradation of post of Steno Grade I. The posts of Steno Grade I were abolished vide order dated 6.2.1989 and the post of Steno Grade I remained abolished till 19.11.1993. On that day 25% posts of Steno Grade II had been upgraded to Steno Grade I. Shri R.Thyagarajan with whom the applicant is seeking stepping up of his pay is undisputedly junior to the present applicant as is revealed in order dated 12.8.1991, Annex.A/4. The applicant was promoted to the post of Senior P.A. from the post of Steno Grade II. For the reasons not available on file Shri R.Thyagarajan continued to work as Steno Grade II and was eventually promoted to the post of Steno Grade I when the 25% posts of Grade II

204

were upgraded and thereafter he was promoted to the post of Senior Personal Assistant. Although, the dates of these two promotions in respect of Shri R.Thyagarajan, are not available on the file by any supportive document but the applicant in his additional affidavit has stated that Shri R.Thyagarajan was promoted to the post of Steno Grade I w.e.f. 31.1.1994 and thereafter was promoted to the post of Senior Personal Assistant w.e.f. 30.10.1995. On both these dates the applicant as per his promotion order dated 12.8.1991 continued to work on the post of Senior Personal Assistant.

6. The grievance of the applicant is that he being meritorious was promoted to the post of Senior Personal Assistant but is getting lesser pay than his junior Shri R.Thyagarajan who was promoted to the post of Steno Grade I and Senior Personal Assistant ^{much later than} /himHis further grievance is that for no fault of the applicant the applicant has been deprived of his first promotion to the post of Steno Grade I and was straight-way posted to the post of Senior Personal Assistant. Thus he was deprived of one set of promotional benefits by direct promotion whereas Shri Thyagarajan got two sets of promotional benefits by being first posted as Steno Grade I and thereafter Senior P.A. from the post of Steno Grade II.

7. The learned counsel for the applicant highlighting these facts had argued that a senior cannot be deprived of his dues simply because at his turn first promotional post was not available due to some administrative reasons. He has also argued that applicant being senior cannot be allowed to draw lesser pay than his junior. Consequently he prays

fixation of his pay equal to his junior first at the assumptive stage of promotion as Steno Grade I and thereafter on the post of Senior Personal Assistant. He has also cited 1995 (1) ATJ 442 - T.P. Shyamalan Vs. UOI & Ors., delivered by Bombay Bench of Central Administrative Tribunal.

8. On the other hand, the learned counsel for the respondents has argued that applicant and few of his contemporaries either as junior or senior were promoted to the post of Senior Personal Assistant because the intermediary cadre of Steno Grade I was abolished vide order dated 6.2.1989. The posts of Steno Grade I were not in existence up to 19 November 1993 when 25% posts of Steno Grade II were up-graded as Steno Grade I. Shri R. Thyagarajan was not promoted during this intervening period. Shri R. Thyagarajan was promoted when Steno Grade I post was re-created and thereafter was promoted as Senior Personal Assistant whereas the applicant was promoted as Senior Personal Assistant when the intermediary post of Steno Grade I was not in existence. Therefore, the cases of both these persons are not similar and the applicant is not entitled to get his pay stepped up. The ruling cited by the learned advocate for the applicant does not help him.

9. We have considered the rival arguments. There is no dispute in respect of Shri Thyagarajan being junior to the applicant. There is also no dispute that presently both the persons are working on the post of Senior Personal Assistant and their inter se seniority still remains as that, the applicant being senior and Shri Thyagarajan being junior. While their inter-se seniority was not in dispute in the past and

while their inter-se seniority in the present cadre is not in dispute, therefore, applicant who was all through the senior cannot be permitted to draw lesser pay than his junior Shri Thyagarajan. It makes no difference that the anomaly in the pay has arisen because of the fact that at the time of promotion of the applicant to the post of Senior Personal Assistant intermediary cadre of Senior Steno Grade I was not in existence. Thus, in our opinion the applicant has a case for getting his pay stepped-up.

10. We have also considered the arguments of learned advocate for the applicant of granting one set of pay fixation at the assumptive stage of Steno Grade I and then as Senior Personal Assistant ^{vis a vis his junior,} / In our opinion this argument is quite hypothetical and does not carry weight. When the applicant was promoted ^{to the post of Senior P.A.} / the intermediary stage of Steno Grade I already stood abolished and that post remained abolished up to November 1993, however, during all this period the applicant continued to work as Senior Personal Assistant. Therefore, at the time of promotion of Shri R. Thyagarajan in the year 1994 on the post of Steno Grade I the pay of the applicant cannot be refixed assuming that he stood promoted to the post of Steno Grade I on the date when Shri Thyagarajan was promoted. In other words, no exercise in respect of refixation of pay can be allowed to be undertaken as prayed for by the applicant but straight-way speaking the applicant is entitled for stepping up of his pay equal to that of his junior Shri R. Thyagarajan when his pay was fixed on promotion as Senior PA, therefore all what the applicant can get is stepping up of his pay equal to the ~~stepping up~~ pay of Shri R. Thyagarajan on the date of assumption of

3m

charge by Shri R.Thyagarajan on the post of Senior Personal Assistant. Rest of the prayer deserves to be rejected.

11. From the foregoing discussion, we come to the conclusion that O.A. deserves to be accepted in part. The prayer of the applicant in respect of fixation of his pay first at the stage of Steno Grade I and then Senior Personal Assistant deserves to be rejected. However, the prayer of the applicant for stepping up of his pay equal to that of his junior Shri R.Thyagarajan in the cadre of Senior P.A. deserves to be accepted.

12. The O.A. is, therefore, partly accepted. The respondents are directed to step-up the pay of the applicant equal to the stage of pay of Shri R.Thyagarajan in the cadre of Senior Personal Assistant w.e.f. the date Shri R.Thyagarajan assumed the charge on the post of Senior Personal Assistant in the grade Rs. 2000-3200 within a period of three months. All the arrears should be calculated and paid to the applicant within the aforesaid period.

13. The parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)
Admv..Member

13/11/1998
(A.K.MISRA)
Judl.Member

MEHTA

Rec
Jas
23/12/98

Received
T. J. B. B. B. B.
24/12/98

Part II and III destroyed
in my presence on 7.4.06
under the supervision of
section officer as per
order dated 28/2/06

Section officer (Records)