

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

म.प. (प्राप्ति)

नाम 22 के अन्तर्गत नियुक्त प्रवि

12

O.A. No. 293/95, 294/95, 311/1995 and 194/96
(Common Order)

DATE OF DECISION : 12.03.1999

1. Shaukat Ali & 2 Ors. (OA No. 293/95)
2. Suresh Chandra Jawa (O.A. No. 294/95)
3. Ram Ratan Balai (O.A. No. 311/95)
4. Sumer Singh Chouhan (OA No. 194/96)

Petitioners

Mr. Vijay Mehta (OA Nos. 293/95, 294/95 & 194/96)

Mr. P.K. Lohra (OA No. 311/95)

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent's.

Mr. V.D. Vyas

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. A.K. MISRA, JUDICIAL MEMBER.

The Hon'ble Mr. GOPAL SINGH, ADMINISTRATIVE MEMBER.

Copy to

✓ 1. Whether Reporters of local papers may be allowed to see the Judgement ?
✓ 2. To be referred to the Reporter or not ? Yes.
✓ 3. Whether their Lordships wish to see the fair copy of the Judgement ?
✗ 4. Whether it needs to be circulated to other Benches of the Tribunal ?

Sd/-

(Gopal Singh)
MEMBER (ADMN.)

Sd/-

(A.K. Misra)
MEMBER (JUDL.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 12.03.99

13

1. O.A. No. 293 of 1995

1. Shaukat Ali son of Shri Abdul Latif aged 35 years.
2. Rajesh Sharma son of Shri Kanhaiyalal aged 35 years.
3. Ashok Katta son of Shri Gordhandas aged 34 years.

All applicants working on the post of Accounts Assistant in the office of the Divisional Accountants, Northern Railway, Jodhpur.

2. O.A. No. 294 of 1995

Suresh Chandra Jawa son of Shri Mohan Lal aged 38 years working as Accounts Assistant, Office of the Divisional Railway Manager, Northern Railway, Jodhpur.

... Applicants

versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.

2. Divisional Accounts Officer, Northern Railway, Office of the Divisional Railway Manager, Northern Railway, Jodhpur.

... Respondents in above OAs

3. O.A. No. 311 of 1995

Ram Ratan Balai son of Shri Gulab Chandji, by caste Balai (S.C.) aged 38 years, resident of 21/766A, Chopasani Housing Board, Presently S.O. (Accounts) in the office of AO (TA), Northern Railway, Jodhpur.

... Applicant

versus

1. The Union of India through General Manager, Northern Railway, Baroda House, New Delhi.

2. The Financial Advisor and Chief Accounts Officer, Northern Railway, Baroda House, New Delhi.

3. The Divisional Accounts Officer, Northern Railway,
Jodhpur.

... Respondents

4. O.A. No. 194 of 1996

Sumer Singh Chouhan son of Shri Ram Swaroop aged 37
years, Inspector of Stores Accounts, Office of the
Divisional Accounts Officer, Northern Railway, Jodhpur.

... Applicant

versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Accounts Officer, Northern Railway, Jodhpur.
3. Workshop Accounts Officer, Northern Railway, Jodhpur.

... Respondents

Mr. Vijay Mehta, Counsel for the applicants in OA Nos. 293/95, 294/95 and 194/96.

Mr. P.K. Lohra, Counsel for the applicant in O.A. No. 311/95.

Mr. V.D. Vyas, Counsel for the official respondents in all OAs.

CORAM:

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)

The controversy involved and the reliefs sought in all these cases is the same and therefore, all these applications are disposed of by this single order.

2. The undisputed facts of the case are that one Shri Ashok Kumar Nimesh joined the respondents-department on 19.3.82 as Clerk Grade-II. He passed the Appendix II-A examination in the year 1983 and was promoted as Clerk Grade-I on 30.9.85 and was

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further promoted as Accounts Assistant on 12.8.86. All the applicants were directly recruited as Clerk Grade-I and they joined the respondents-department during December, 1984 and January, 1985. Thus, all these applicants were senior to Shri Ashok Kumar Nimesh in the cadre of Clerk Grade-I. It may be mentioned that these applicants were required to pass Appendix II-A examination in two chances within a period of three years of their joining the post. In case they do not pass in that examination, their services were likely to be terminated. All these applicants passed Appendix II-A examination during 1985-87. On passing the said examination and on completion of three years service as Clerk Grade-I, these applicants were promoted as Accounts Assistant and were given the benefit of stepping up of pay with reference to Shri Ashok Kumar Nimesh and the date of their next increment was advanced to that of Shri Ashok Kumar Nimesh vide respondents' orders dated 11.11.91, 16.12.91, 30.12.91 and 21.7.92. On reexamination of the case, it was noticed by the respondents that the stepping up benefits given to the applicants was not in consonance with the rules and the same was withdrawn by the respondents. The order withdrawing the stepping up benefits was challenged in this Tribunal by some of the applicants and the Tribunal set aside the impugned order and directed the respondents to give show cause notice to the respective applicants and action be taken on their representations. Accordingly, the respondents issued show cause notice to all those applicants and the representations submitted by them to the show cause notice were rejected by the respondents and the overpaid amount by way of giving the benefit of stepping up was ordered to be recovered. Not satisfied with the action of the respondents, the applicants have approached this Tribunal through the present OAs praying for setting aside the respective impugned orders rejecting representations of the applicants and ordering recovery of overpayment. They have further prayed that the respondents may be restrained from effecting recovery from the salary of the applicants. By way of interim relief, the applicants have prayed for staying the operation of orders rejecting the representations of the applicants and ordering recovery of overpayment. -

3. The recovery of overpayment envisaged in the orders was stayed by this Tribunal. It was also directed by the Tribunal

that the respondents are not precluded from refixing the pay of the applicants as per rules.

4. Notices were issued to the respondents and they have filed the reply.

5. We have heard the learned counsel for the parties and have perused the records of the case carefully.

6. The controversy involved in all these applications is regarding extending the benefit of stepping up of pay of seniors who were promoted later with respect to their junior, who was promoted earlier to the higher post.

7. It would be appropriate to go through the rules regarding removal of anomaly by stepping up of pay of seniors on promotion. In this connection, Government of India decision No.8 below F.R.22-C dealing with the subject is extracted below:-

"Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior.- (a) As a result of application of F.R.22-C.- In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1.4.1961, drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such case the pay of the senior officer in the higher post should be stepped up to figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- (a) Both the junior and senior officers should belong to the same cadre and the post 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 the higher post in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of F.R.22-C. 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 officers.

The orders refixing the pay of the senior officers

in accordance with the above provisions shall be issued under F.R.27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay. (G.I., M.F., O.M. No. F.2(78)-E.III(A)/66, dated the 4th February, 1966)."

8. It would be seen from the above that as a pre-requisite for availing the benefit of stepping up, the senior should have got his promotion earlier than the junior. In normal circumstances also, when a senior is promoted earlier and is fixed at a particular stage in the promoted scale of pay and the junior is promoted after a lapse of time, the junior earns increment in the intervening period in the lower scale and when his pay is fixed on promotion in the higher scale, his pay may get fixed at a stage higher than the stage on which the senior is drawing his salary. It is only in these circumstances that the pay of the senior would be stepped up with reference to the pay of the junior fixed on his promotion to the higher scale. The facts of the case in hand are entirely different. Shri Ashok Kumar Nimesh was promoted as Accounts Assistant scale Rs. 1400-2600 on 12.8.96 while the applicants were promoted in December, 1987 and January, 1988. Shri Ashok Kumar Nimesh though junior to the applicants could be promoted earlier to the applicants because he had passed the Appendix II-A examination much earlier than the applicants. Moreover, the promotion of Shri Ashok Kumar Nimesh was never challenged by the present applicants though Shri Ashok Kumar Nimesh was junior to them as Clerk Grade-I. It is thus seen that the anomaly that Shri Ashok Kumar Nimesh was drawing higher pay as Accounts Assistant while the applicants though senior to him were fixed at lower scale of pay on their promotion as Accounts Assistant was not the result of direct application of F.R.22-C. It is also seen that Shri Ashok Kumar Nimesh was promoted as Accounts Assistant against the reserved point and, therefore, general candidates had no claim for promotion to that post. Reserved category candidates amongst the applicants had not passed Appendix II-A examination by the time Shri Ashok Kumar was promoted as Accounts Assistant and as such, the reserved category applicants were not eligible for promotion as Accounts Assistant on that date.

9. In regard to waiving the recovery of the amount overpaid on account of extending stepping up benefit to the applicant, the learned counsel for the applicant has cited various

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judgements, which are discussed in subsequent paragraphs:

1. (1994) 2 Supreme Court Cases 521 - Shyam Babu Verma & Ors. vs. Union of India & Ors.:

In this case, the Third Pay Commission had recommended two scales of pay for the post of Pharmacist and accordingly, the petitioners were allowed the higher scale with effect from 1.1.73 though they were entitled to the lower scale. The pay scale of the applicants was reduced in 1984. It was held that the petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them.

2. 1995 Supp (1) Supreme Court Cases 18 - Sahib Ram vs. State of Haryana & Ors.:

In this case, upgraded pay scale was given to the appellant due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee and the Government was restrained from recovering the overpayment already made.

3. (1995) 2 Supreme Court Cases 98 - Collector of Madras and Another vs. K. Rajamanickam:

In this case, the respondent was continued in service beyond the date of superannuation under a wrong decision of the Court. It was held that the period of service beyond the date of superannuation should not be counted. However, recovery of any amount paid during that period was prohibited.

4. (1996) 4 Supreme Court Cases 416 - Union of India & Ors. vs. M. Bhaskar and Ors.:

In this case, while setting aside the judgements of various Tribunals in regard to scale of pay of pre-1997 Traffic/Commercial Apprentices making them entitled to the pay scale of Rs. 1600-2660, it was held that the recovery of the amount already paid because of the judgements of various Tribunals would cause hardship to the respondents/appellants concerned and, therefore, the respondents (Union of India) were directed not to recover the amount already paid.

5. (1998) 2 Supreme Court Cases 589 - Union of India and Ors. Ram Gopal Agarwal and Ors.:

In this case, ration money allowance was paid to non-gazetted combatised staff of Central Reserve Police Force (CRPF) at par with combatised staff under Court's order. While setting aside the various orders of the Tribunals, appeals filed by the Government were allowed and it was held that the recovery would result in great hardship and the

amount already paid to them in terms of the order of this Court or by the order of the Tribunals as aforesaid would not be recovered.

6. (1998) 8 Supreme Court Cases 733 - State of Haryana vs. Om Prakash and Another:

In this case, by virtue of interim order of the Hon'ble Supreme Court, ex-workman was paid back wages but finally found to be not entitled to the same. Taking note of his economic condition, the Hon'ble Supreme Court directed that in case he had withdrawn that amount, the same should not be recovered from him.

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It may be mentioned that the judgements cited above by the learned counsel for the applicants do not come to their rescue as the facts of those cases and the cases in hand are quite distinguishable. In the present case, the respondents-Government had fixed the pay of the applicants correctly on their promotion to the post of Accounts Assistant. It was only on their representations that they were allowed the stepping up benefit with reference to Shri Ashok Kumar Nimesh. It has already been discussed above that in the circumstances of the present case, stepping up benefit is not at all permissible and when the mistake came to the notice of the respondents, recovery of overpaid amount was ordered. This is not a case where the respondents-Government had fixed the salary of the applicants *suo moto* at the higher scale of pay and, thereafter, it was sought to be reduced. As a matter of fact, it was a misrepresentation on the part of the applicants on the basis of which the respondents-Government committed a mistake in extending them the benefit of stepping up of pay. Moreover, the amount so overpaid though not spelt out in the applications is not much and the respondents have proposed the recovery @ Rs.200/- per month, we do not consider that the recovery of overpaid amount @ Rs. 200/- per month would cause any hardship to the applicants. In the circumstances, we do not find any justification for waiving the recovery in this regard.

10. In the light of the above discussion, we do not find any merit in these applications and the same deserve to be dismissed.

11. The present applications are accordingly dismissed. The stay granted earlier in these OAs stand vacated.

12. Parties are left to bear their own costs.

Sd/-

(Gopal Singh)
MEMBER (ADMN.)

Sd/-

(A. K. Misra)
MEMBER (JUDL.)

प्रमाणित

सत्य प्रतिलिपि

(6/3/95)

अनुभाग विभागी (व्याधिक)

केन्द्रीय प्रशासनिक अधिकरण

बोधपुर व्याधीठ, जोधपुर

Parsons
Green
Vidya
R.C. (M)
17/3/95

Part II and III destroyed
In my presence on 30-5-95
under the supervision of
Section Officer () as per
order dated 16/3/95

Section Officer (Record)