

(a)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 23.2.2000

O.A. No. 24/1998

Sriniwas Sharma son of late Pandit Bhim Sen Sharma resident of 17/676, Chopasni Housing Board, Jodhpur (presently employed on the post of Field Officer (Tele), Special Bureau, Government of India, Jodhpur (Rajasthan).

... Applicant.

v e r s u s

1. Union of India through the Secretary, Cabinet Secretariat, Room No. 7, Bikaner House, New Delhi.
2. Director of Accounts, Cabinet Secretariat (Special Wing) East Block IX, Level V, R.K. Puram, New Delhi-110 066.
3. The Additional Commissioner, Special Bureau, Government of India, Subhash Nagar, Jodhpur (Rajasthan).

... Respondents.

Mr. S.K. Nanda, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

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)

Applicant, Sriniwas Sharma, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the respondents to fix the pay of the applicants in the Central pay scale at Rs. 210/- instead of Rs. 200/- with effect from 27.11.72 in the scale of Rs. 210-320, at Rs. 425/- instead of Rs. 410/- with effect from 1.1.73 in the scale of Rs. 425-600 and at Rs. 2000/- with effect from 7.9.88 in the scale of Rs. 2000-3200.

Gopal Singh



2. Applicant's case is that he was initially appointed as literate constable in the Police Radio Organisation, Rajasthan, Jaipur on 30.12.1959 and after the training, was sent on deputation to the Intelligence Bureau, New Delhi, on 14.12.1962. While on deputation, the applicant was provisionally appointed/promoted to the rank of Assistant Sub Inspector of Police with effect from 22.4.64 and thereafter, joined the ~~xxkx~~ Cabinet Secretariat on 2.3.70 as Assistant Field Officer (equivalent to the post of Asstt. Sub Inspector) where he was further promoted to the post of DFO with effect from 27.11.72. The applicant was finally absorbed in the Cabinet Secretariat as DFO with effect from February, 1983. Consequent upon his permanent absorption in the Cabinet Secretariat, his pay was to be fixed in the Central Government pay scale Rs. 210-320 with effect from 27.11.72. The contention of the applicant is that his pay as on 27.11.72 should have been fixed at Rs. 210/- in the scale of Rs. 210-320 instead of Rs. 200/- fixed by the respondents. Further, with the changing pay scale with effect from 1.1.73, the applicant contends that his pay should have been fixed at Rs. 425/- in the scale of Rs. 425-600 instead of Rs. 410/- fixed by the respondents. The applicant contends that the wrong fixation of pay at the initial stage has resulted in financial loss to him subsequently.



3. Notices were issued to the respondents and they have filed their reply. In their reply, it has been contended by the respondents that on permanent absorption in the Cabinet Secretariat, the pay of the applicant was required to be regulated on presumptive basis with effect from 27.11.72, the date of his promotion to the post of DFO. Further, during the pay fixation in the Central pay scale of a deputationist, the benefit of 33½ % of basic pay drawn in the State Government scale can be allowed as the maximum benefit in the pay fixation. The applicant was drawing basic pay of Rs. 150/- in the parent grade as on 27.11.72 and accordingly, his pay was fixed at Rs. 200/- in the scale of Rs. 210-320 on 27.11.72 under F.R.35. Similarly, with effect from 1.1.73, the applicant's pay was fixed at Rs. 410/- in the scale of Rs. 425-600 under F.R.35 and accordingly, his pay was fixed upto Rs. 530/- as on 1.4.82 by grant of regular increments in the scale of Rs. 425-600. It is the contention of the respondents that the pay of the applicant has been correctly fixed at all stages and does not require any modification. The applicant has also pointed

(Signature)

out that one Shri D.D. Mathur, who was junior to him, was drawing on his absorption a higher pay than that of the applicant. In this connection, it has been contended by the respondents that Shri D.D. Mathur was ^{drawing} higher pay in his parent department and, therefore, the difference.

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

5. In this connection, it would be relevant to go through F.R.35, which is reproduced below:-

"F.R.35- The Central Government may fix the pay of an officiating Government servant at an amount less than that admissible under these rules."

GOVERNMENT OF INDIA'S ORDERS

(i) Scope of F.R.35 - In a case in which it was proposed to issue orders of a general nature under F.R.35, restricting the officiating pay of Government servants to an increase equal only to a certain per centage of the minimum pay of the higher post, the Government of India pointed out that reading this rule, with the rules substantively regulating the rate of officiating pay and in particular with F.R.31, it is clear that the power conferred by F.R.35 is not exercisable save by a special order passed in an individual case and on a consideration of the facts of that case. A general order purporting to oust universally the operation of F.R.31 would be ultravires of F.R.35. It was also held that although the practice of passing ostensibly special orders on every individual case would not be ultra vires of F.R.35, it would constitute the grossest possible fraud thereon.

(2) Restriction on Deputation (Duty) Allowance- See para 4.4. of G.I., M.F, O.M. No.F.1(ii)-E.III(B)/75, dated, the 7th November, 1975, available in Appex. 5 of this compilation.

(3) No restriction of officiating pay in cases of regular cadre promotions.- Under the existing orders, provisions of F.R.35 operate only in respect of appointments by transfer on deputation. Recently, a question was raised as to whether the said provisions of F.R. 35 would also apply to cases of promotions within the cadre.

The matter has been considered. It has been decided that the restrictions of officiating pay under F.R.35 should not be invoked in respect of regular cadre promotions where the employee becomes due for promotions falls within the zone of consideration and fulfils all qualifications prescribed for promotion.

Capable of



(4) Restriction of officiating pay under F.R.35 in cases of cadre promotions not on regular basis. In order (3) above, it was decided that the restrictions of officiating pay under F.R.35 should not be invoked in respect of regular cadre promotion where the employee who becomes due for promotion, falls within the zone of consideration and fulfils all the qualifications prescribed for promotion.

2. It has been decided that in cases of appointments on promotion in the normal line within the cadre but which are not on regular basis, the pay may be restricted under F.R.35 so as not to exceed the basic pay by more than the amounts shown below:-

(A) Rates applicable till pay is drawn in the scale of pay under C.C.S. (R.P) Rules, 1973:-

- (a) For employees in receipt of basic pay above Rs. 750 25% of basic pay or Rs. 225/- whichever is more.
- (b) For employees in receipt of basic pay above Rs.300/- upto Rs. 750/- 30% of basic pay or Rs. 100/- whichever is more.
- (c) For employees in receipt of basic pay of and below Rs.300/- 33 $\frac{1}{3}$ % of basic pay

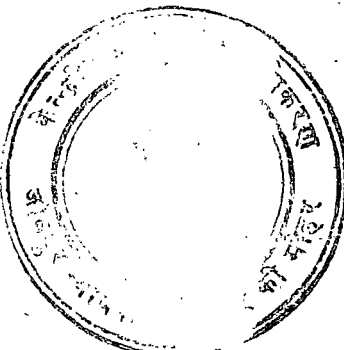
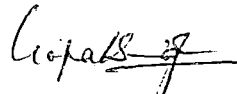
(B) Rates applicable from the date the employee draws pay in the scale of pay under C.C.S. (R.P.) Rules, 1986:-

- (a) For employees in receipt of basic pay above Rs. 2,200/- 12 $\frac{1}{2}$ % of basic pay or Rs. 330/- whichever is more.
- (b) For employees in receipt of basic pay above 1000 upto Rs. 2000/- 15% of basic pay or Rs. 200/- whichever is more.
- (c) For employees in receipt of basic pay of and below Rs.1000/- 20% of basic pay.

(3) It has also been decided that in the cases where pay in the manner indicated above comes to more than the minimum or at the minimum of the promotional posts, the employees concerned will be allowed pay at the minimum of the scale."

6. It would be seen from the above that the pay of the applicant has been correctly fixed while protecting his pay drawn in the parent department and as such, we do not find any reason to interfere with the pay fixation of the applicant. Thus, the O.A. is devoid of any merit and deserves to be dismissed.

7. The O.A. is accordingly dismissed with no order as to costs.



(GOPAL SINGH)
Adm. Member


(A.K. MISRA)
Judl. Member

cvr.

R/copy

W...
28/2

Copy sent to Counsel for Applicant
by Regd. AD Post.
vide 46 dlt. 21/3/2010
2/2/3

Part II and III destroyed
in my presence on 26.9.06
under the supervision of
section officer as per
order dated 23.1.06

Section officer (Ran...

lib copy
28/2
Honble Mr. Chaudhary
Singh copy given
2/2/2