

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T. A. No.

47/91

199

DATE OF DECISION 26.6.92

K.V.Balakrishnan

Applicant(s)

Mr.Jose Thettayil

Advocate for the Applicant (s)

Versus

The Accountant General(A&E),
Kerala, Trivandrum and 2 others. Respondent (s)

Mr.K.A.Cherian, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 31st December, 1990 the applicant who has been working as Accounts Officer under the Accountant General, Kerala, has challenged the impugned orders dated 3/4.10.89 at Annexure-A3 and dated 27.2.90 at Annexure-A5 refusing his representations for stepping up of his pay to that of his junior Smt. K.K.Leela Devi and has requested that his pay should be stepped up to that of Smt.K.K.Leela Devi. The brief facts of the case are as follows.

2. From the rank of U.D.C the applicant was promoted as Section Officer in the scale of Rs.270-575 on 27.4.67. He was promoted as Selection Grade Section Officer in the scale of Rs.775-1000 on 1.7.81 and thereafter directly as Accounts Officer in the scale of Rs.840-1200 on 23.11.81. It happened that after his promotion as Accounts Officer direct from Selection Grade Section Officer, the Government introduced an intermediate grade of Assistant Accounts Officer in the revised scale of Rs.2000-3200 with effect from 1.4.87. A Selection Grade Section Officer was thereafter to be promoted as Asstt.Accounts Officer and then only

as Accounts Officer instead of direct promotion from Selection Grade Section Officer to Accounts Officer which happened in case of the applicant. As a result of the introduction of the intermediate cadre of Asstt.Accounts Officer, it happened that persons junior to the applicant who were promoted first as Asstt.Accounts Officer and then as Accounts Officer got the benefit of two promotions instead of one and got more pay than the seniors who were promoted as Accounts Officer direct from the Selection Grade Section Officer. In order to remove this anomaly the Comptroller and Auditor General issued orders dated 6.2.89 at Annexure A1 allowing stepping up of the pay of such seniors subject to the satisfaction of some conditions indicated therein. On the basis of this order, the applicant has claimed stepping up of his pay to that of his junior one Smt. K.K.Leela Devi . He represented on that basis on 30.11.88 but the representation was rejected by the impugned order dated 3/4.10.89. His further representation was also rejected by the impugned order dated 27.2.1990 at Annexure-A5 on the ground that as he was drawing less pay in the lower grade of Section Officer than the junior Smt. Leela Devi, his pay cannot be stepped up. The applicant claims that he satisfies all the conditions indicated in the letter dated 6.2.89 at Annexure A1 and that he never drew less pay than Smt.Leela Devi in the cadre of Selection Grade Section Officer which is the next lower grade to that of Accounts Officer before the intermediate scale was introduced. He has argued that but for fixation of Smt.Leela Devi's pay in the intermediate cadre, she would not have drawn higher pay as Accounts Officer. The drawal of lesser pay by the applicant on account of availing of extra ordinary leave as Section Officer is not relevant for application of Annexure-A1 order.

3. In the counter affidavit the respondents have stated that as Section Officer because of availing of Extra-ordinary leave for 556 days from 25.3.79 to 30.9.80 , the applicant was drawing a pay of Rs.725/- with effect from 1.5.81 when his junior Smt.K.K.Leela Devi as Section Officer(Ordinary Grade) was drawing Rs.775/-. When the applicant was promoted as Selection Grade Section Officer on 1.7.81 his pay was fixed

at Rs.775/- when Smt. Leela Devi in the Ordinary Grade of Section Officer was also drawing Rs.775/-. They have conceded that Smt. Leela Devi was promoted to the Selection Grade Section Officer on 1.7.1983 her pay was fixed at Rs.825/- when the applicant was drawing a pay of Rs.920/- as Accounts Officer. It is also conceded that if the applicant had not been promoted as Accounts Officer, his notional pay as Selection Grade Section Officer in the scale of Rs.775-1000 on 1.7.83 would have been Rs.845/- as against the pay of Rs.825/- actually drawn by Smt. Leela Devi ^{on that day} as Selection Grade Section Officer. The applicant's representation was suitably forwarded to the second respondent by the first respondent but the second respondent decided that the applicant's pay could not be stepped up as he had been drawing less pay in the grade of Section Officer between 1.6.81 to 30.6.1981 and that there can be no comparison of the applicant's pay as Accounts Officer when Smt. Leela Devi was holding the post of Selection Grade Section Officer.

4. In the rejoinder the applicant has argued that had he been reverted from the post of Accounts Officer to that of Selection Grade Section Officer, his pay would have been more than that of his junior.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The relevant portion of the order dated 6.2.89 at Annexure A1 on which the applicant has based his claim, reads as follows:-

" As a result of introduction of Assistant Accounts Officer's cadre with effect from 1.4.87, cases have arisen where Senior Section Officers/Selection Grade Section Officers promoted as Accounts Officers before 1.4.87, were drawing less pay than their juniors who were first promoted in the Asstt. Accounts Officers' Grade and then got their promotion as Accounts Officer.

2. In order to remove such anomalies, it has been decided in consultation with the Govt. of India Ministry of Finance (Department of Expenditure) that in such cases the pay of the senior in the higher grade (A.O.'s grade) may be stepped up under FR-27 to make it equal to the pay of the junior person subject to the fulfilment of following conditions:-

a) The scale of pay of the lower posts (before the introduction of the intermediary posts of Asstt. Accounts Officers) and the higher posts in which both the junior and the senior

are entitled to draw pay should be identical,

- b) The senior person should have been eligible for appointment to the intermediary post but for his working in the higher grade on or before the date on which the junior was appointed to intermediary posts; and
- c) The junior person should not have drawn more pay than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him in the lower post before the introduction of the intermediary post and the anomaly should be directly as a result of the junior person holding the intermediary post at the time of his promotion to the higher grade.

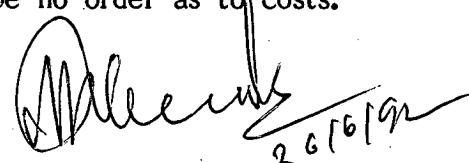
3. The orders for refixing the pay of the senior in these cases would be issued under FR-27 and the next increment of the senior employee drawn on completion of required qualifying service with effect from the date of re-fixation of pay. The stepping up of pay would be done with effect from the date of promotion of the junior to the higher grade, but the actual benefit would be available with effect from 10th January, 1989 or the date of anomaly whichever is later."

The learned counsel for the respondents stated that out of the three conditions (a), (b) and (c) indicated in para 2 above the applicant satisfies the conditions at (a) and (b) but not the condition at (c) because in the lower post of Section Officer he was drawing for some time less pay than that of Smt. Leela Devi. This, to our mind, is not acceptable. In accordance with the condition at 2(c) the junior person should not have drawn more pay under the normal rules or any advance increment "in the lower post before introduction of the intermediate post and the anomaly should be directly as a result of the junior person holding the intermediary post at the time of his promotion to the higher grade". The lower post before the introduction of the intermediate post of Assistant Accounts Officer is that of Selection Grade Section Officer (Rs.775-1000) and not Ordinary Grade Section Officer (Rs.270-575). The respondents have conceded that at no stage did the applicant draw less pay than Smt. Leela Devi in the grade of Selection Grade Section Officer. On 1.7.83 when Smt. Leela Devi was promoted to Selection Grade Section Officer, her pay was fixed at Rs.825/- when the applicant would have drawn a pay of Rs.845/- on that date had he not been promoted as A.O. on 23.11.81. It is also clear that Smt. Leela Devi got

higher pay as Accounts Officer because of the fixation of her pay in the intermediate scale of Assistant Accounts Officer.

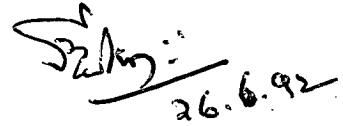
6. In the conspectus of facts and circumstances we allow the application, set aside the impugned orders at Annexures-A3 and A5 and direct that the pay of the applicant should be refixed in accordance with the order dated 6.2.89 at Annexure-A1 considering that the applicant fully satisfies all the three conditions laid down in para 2 thereof. There will

be no order as to costs.



26/6/92

(A.V.Haridasan)
Judicial Member



26.6.92

(S.P.Mukerji)
Vice Chairman

n.j.j