

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 489/89
~~XXXX No.~~

DATE OF DECISION 21.8.90

V. Vasumathy Applicant (s)

Shri M.Girijavallabhan Advocate for the Applicant (s)

Versus

Union of India (Secretary, Min. of Respondent (s)
Defence) & another.

Shri N.N.Sugunapalan, SCGSC 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? Yes
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)


In this application dated 9.8.89, filed under section 19 of the Administrative Tribunals Act, the applicant who has been working as UDC in the Naval Stores Depot, Naval Base, Cochin, under the Flag Officer Commanding-in-Chief, Southern Naval Command, has prayed that the impugned order dated 6th July 1989 at Annexure-E, rejecting her representation for stepping up of her pay, should be set aside and she should be declared as similarly situated as applicants in OAK 96/88 and given the same benefit of stepping up of pay as has been allowed to them in accordance with the order of this Tribunal dated 16.12.88 at Annexure-B read with the Review Order at Annexure-C. The brief facts of the case are as follows:

2. The applicant before us and the applicants in OAK 96/88 were promoted from the grade of LDC to that of UDC with effect

from the common date of 27.2.1981. The applicants 2 to 5 in OAK 96/88 were junior to the applicant before us. The 2nd respondent in that case, Kum. Mary, was junior even to the applicants 2 to 5 in that case. She was also promoted as UDC with effect from 27.2.81, but as she had earlier officiated as UDC for a period of ^{about} six months before her promotion, she earned her next increment as UDC with effect from 21.7.81 whereas her seniors, that is, the applicants 2 to 5 in OAK 96/88, who had not officiated as UDC prior to their promotion, drew their next increment on 27.2.82 after putting in service as UDC for a period of 12 months. When they found that their pay thus became less than the pay of their junior Kum. Mary, they moved this Tribunal in OAK 96/88. The Tribunal in its judgement dated 16.12.88 allowed the application and directed that the pay of the applicants therein should be stepped up to that of Kum. Mary with arrears of pay and allowances. In implementation of the order of the Tribunal, when the 5th applicant Smt. T.K.Padmam was given higher pay, the applicant before us came to know of it in June 1989 and moved ^a representation dated 26.6.89. Her grievance is that whereas the 5th applicant in the other case, Smt. Padmam, got the next increment as UDC with effect from 21.7.81 at par with that of Kum. Mary, the applicant got her next increment only on 21.11.81. Since her case is at par with all the applicants in OAK 96/88, she has claimed the stepping up of the pay on similar lines.

3. The respondents have argued that the representation of the applicant was belated and time-barred and since she was not a party in OAK 96/88, she cannot claim the benefit given to the applicants in that case. They have further argued that since the applicant in this case and the applicants in the other case and Kum. Mary were promoted as UDC from the same date, the benefit of stepping up of pay under instructions below FR 22C was not admissible, but because of the direction of the Tribunal, it was given to the applicants in OAK 96/88 but cannot be extended to the applicant.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. the

respondents cannot now challenge the legality of the order of this Tribunal in OAK 96/88 unless the same is set aside in review or in appeal. They have, therefore, rightly implemented the direction of this Tribunal in respect of the applicants in OAK 96/88. Since the applicant before us and the applicants in OAK 96/88 were promoted from LDC to UDC grade with effect from the same date and were similarly circumstanced, and as a matter of fact, since the applicant before us is even senior to the applicants in the other case, she is entitled to the stepping up of the pay in the same manner as in the case of applicants in the other case. We are not convinced by the arguments of the respondents that since the applicant and her juniors were promoted from the same date, the stepping up of pay is not applicable to the seniors. The anomaly to which the stepping up of pay principle was applied is that normally the pay of the senior should not be less than the pay of the junior who is promoted later than the senior. It is true that, in the instant case, the seniors and juniors were promoted from the same date and their actual pay was the same, i.e. Rs. 392/- per month, but Kum. Mary who had officiated for about six months prior to her regular promotion as UDC, on the date of her regular promotion was  actually drawing higher pay because six months' increment for her earlier adhoc officiation was latent in the pay that she was getting on the date of her regular promotion on 27th February 1981. It is because of this latent element of increment of pay that she was allowed the next increment and got her pay increased to Rs. 404/- on 21st July 1981, whereas her seniors who were also promoted from the same date got that pay only on 27th February 1982. Accordingly, on the date of her promotion the applicant who was senior to Kum. Mary can be said to be drawing notionally lesser pay than Kum. Mary. The principle of stepping up of pay would, therefore, apply even though the actual pay drawn by the applicant and Kum. Mary was the same on the date of their promotion.

62

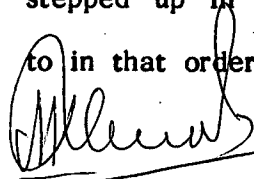
5. We are further fortified in our assumption that even if the pay on the date of promotion of the senior and junior is the same, and the junior's pay is increased in the normal course later on, the senior also would get the stepping up of pay, by the Government of India's decision No. 17 below FR 22C. In accordance with Department of Personnel O.M.No. 4/7/83-Estt.(P-I) dated 31st March 1984, if the pay of junior is stepped up because a person till junior to him got higher pay, then the pay of the senior has to be stepped up for the second time for removing the anomaly between the senior and his immediate junior. The following extracts from the O.M. will be relevant:

"The situation is that the pay of senior 'A' is first stepped up with reference to the pay of his first junior 'B' and at a later date pay of 'B' is stepped up with reference to another junior 'C'. Then the pay of 'A' may be stepped up for a second time at par with 'B' provided all the conditions under the general orders of stepping up of pay of 'A' vis-a-vis 'C' are fully satisfied."

(Page 110, Swamy's Compilation of FR&SR, Part-I, 9th Edn.)

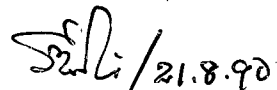
Accordingly, in the instance case also, even if on the date of actual promotion as UDC the pay of the applicant and Smt. Mary was the same, the applicant should be entitled to stepping up the pay on 21st July 1981 when Smt. Mary got the next increment with pay raised to Rs. 404/- per month. The argument of the respondents that equality of pay between the applicant and her juniors on the date of promotion debars further stepping up of pay is thus not convincing.

6. In the facts and circumstances, we allow the application, (Annexure-E) set aside the impugned order dated 6th July 1989 in so far as the applicant is concerned and direct that the pay of the applicant should be stepped up in the same manner as that of Smt. T.K.Padmam referred to in that order. There will be no order as to costs.



(A.V. Haridasan)
Judicial Member

21.8.90



(S.P. Mukerji)
Vice Chairman