

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 106/90
XXXXXX 199

DATE OF DECISION 19.9.90

N.R. Kutty Applicant (s)

M/s K Ramakumar, Advocate for the Applicant (s)
VR Ramachandran Nair
Versus

Union of India rep. by Secy, Respondent (s)
Ministry of Planning, Deptt. of Statistics
New Delhi and another.

Mr. V.V. Sidharthan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member.

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

JUDGEMENT

(Shri N.V. Krishnan, Administrative Member)

The applicant is aggrieved by the Annexure-C order dated 5.12.88 by which his request for stepping up his pay on par with that of his junior, Shri P. Karthikeyan, has been rejected on the ground that the conditions (a) and (6) of Note-7 of the Ministry of Finance, Deptt. of Expenditure Notification dated 13.9.86 are not satisfied.

2. The brief facts of this case can be summarised as follows:-

2.1 By the notification dated 13.9.86 (Annexure-R1), the Central Civil Service (Revised Pay) Rules, 1986, (Rules, for short) were brought into force from 1st January, 1986.

Rule 7 deals with the fixation of initial pay in the revised

scales of pay notified by the aforesaid rules. There are several explanatory notes to Rule 7. Note No.7, to which a reference has been made in the impugned Annexure-C order, is a note under Rule 7 and reads as follows:-

"In cases, where a senior Government servant promoted to a higher post before the 1st day of January, 1986 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1986, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions, namely:-

- (a) both the junior and the senior Govt. servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical, and
- (c) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22-C or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer.

The orders relating to refixation of the pay of the senior officer in accordance with the above provisions should be issued under Fundamental Rule 27 and the senior officer will be entitled to the next increment on completion of his required qualifying service with effect from the date of refixation of pay."

2.2 However, before the aforesaid provisions were made, the Govt. of India had made certain provisions designed to remove certain anomaly adversely affecting seniors.

These are contained in the Deptt. of Personnel & Administrative Reforms OM dated 26.9.81 (Annexure R-4). The

(1)

anomaly that had crept in, was that the promotion of a junior person to the higher post and the fixation of accrual next his pay under FR 22-C after ~~account~~ of his increment in the lower post resulted in his getting more pay than a person senior to him and promoted earlier. This was sought to be ~~abviated~~ by making the following provisions:-

"The President is pleased to decide that in order to remove the aforesaid anomaly the employee may be given an option for fixation of his pay or promotion as under:-

(a) Either his initial pay may be fixed in the higher post on the basis of FR 22-C ~~straightaway~~ without any further review on accrual of the increment in the pay scale of the lower post; or

(b) His pay on promotion, may be fixed initially in the manner as provided under FR.22-(a)(i) which may be refixed on the basis of the provisions of FR-22-C on the date of accrual of next increment in the scale of pay of the lower post.

If the pay is fixed under (b) above, the next date of increment will fall due on completion of 12 months qualifying service from the date pay is refixed on the second occasion.

Option may be given within one month of the date of promotion. Option once exercised shall be final."

2.3 It is admitted that the applicant was an Asstt. I.S. (i.e., Superintendent, Industrial Statistics) in Kerala State under Respondent-2, the Director, National Sample Survey Organisation, New Delhi, in the pay scale of Rs.470-750 He was drawing the maximum of Rs.750/- on that pay scale w.e.f. 1.10.79 with also a stagnation increment of Rs.25/- before he was promoted as Supdt w.e.f.11.2.85. On promotion, his pay in the pay scale of Rs.550-900 was fixed at Rs.780/-. On the coming into force of the revised pay scale w.e.f. 1.1.86, according to the Rules,

12

the applicant opted for the corresponding revised pay scale of Rs.1640-2900 and his pay as on 1.2.86 was fixed at Rs.2360/- against the pay of Rs.810/- on the pre revised pay scale and accordingly, his pay on 1.2.88 was Rs.2480/-.

2.4 As against this, Shri P. Karthikeyan with whom the applicant compares himself, was Assistant Supdt. (i.e. Socio Economic) (S.E.) in Tamilnadu State and was also drawing the maximum of Rs.750 - on the pay scale of Rs.470-750 from 1.10.80. When the revised pay scales came into force on 13.86, his pay as Asstt. Supdt. on the revised scale of Rs.1600-2660, was fixed at Rs.2300 w.e.f. 1.1.86, against the pre-revised maximum pay of Rs.750/- plus Rs.25 as stagnation increment. He was promoted as Superintendent w.e.f. 31.8.87, in the revised pay scale Rs.1640-2900. ~~He opted under Ex. R-4 referred to in 2.2.~~ above that his pay in the higher post may be fixed under FR 22-C only after he had earned the next increment in the lower post. Accordingly, his pay as on 31.8.87 as Supdt. was fixed under FR 22(a)(i) at Rs.2420/- as against his pay of Rs.2360/- as Assistant Superintendent. Subsequently, when the next increment in the pay scale of Asstt. Supdt. became due to him on 13.88, his pay as Asstt. Supdt. was raised to Rs.2420/- ~~on 1.1.88.~~ ~~On that basis and in accordance~~ with his option, his pay as Supdt. was refixed with effect from the same date under FR 22(C) at Rs.2540/-.

2.5 The grievance of the applicant is that whereas on 1.2.88 he, who is many years senior to Shri Karthikeyan, is drawing a pay of Rs.2480/- as Supdt., Shri Karthikeyan's pay as Supdt. has been fixed at Rs.2540/-. The applicant claims that this ^{anomaly} is fully covered by the Note 7 referred to above. He has, therefore, requested for the stepping up of his pay on par with that of Shri Karthikeyan from 1.1.88, but this has been rejected by the impugned order. The two grounds on which the request has been rejected are that the applicant's case does not satisfy Clause (a) and (c) of Note-7.

3. We have perused the records and heard the counsel.

Undoubtedly, the applicant is senior to Shri Karthikeyan and he was promoted as Superintendent before 1.1.86, while Shri Karthikeyan was promoted as such only after 1.1.86. There is also no doubt that the post to which they have been promoted are also identical in the same cadre. It is also true that the applicant is drawing lesser pay as Superintendent as on 1.2.88, as compared with his junior Shri Karthikeyan. To this extent the conditions of Note 7 are satisfied. Nevertheless, the request of the applicant for stepping up of his pay was rejected because ~~as~~ two important conditions are not allegedly satisfied as stated above.

4. The first question is whether the applicant and Shri K. Karthikeyan belong to the same cadre. The appli-

cant contends that as both of them were Assistant Supdt.s under Respondent-2, it should be held that they belong to the same cadre. He also states that for the purpose of promotion to the post of Superintendent, a common seniority list was drawn up (Annexure-F) which includes both his ~~and~~ name and that of Shri Karthikeyan, which shows they were in the same cadre.

5. On the contrary, the Respondents have produced Annexure R-2 Memorandum which is the state-wise seniority list of Assistant Superintendents (I.S.)- Industrial Statistics) in the Field Operation Division of the National Sample Survey Organisation. This clearly establishes that the Assistant Superintendents, Industrial Statistics who have a common seniority list, form one separate cadre. Similarly, the respondents have also furnished Annexure R-3 which is a similar seniority list (Socio Economic) of Assistant Superintendents (S.E.) which indicates that these Assistant Superintendents (S.E.) form another cadre as they have a common seniority list. As all the posts of Assistant Superintendents are feeder posts for promotion to the post of Superintendents, the Respondents had necessarily to prepare a combined seniority-cum-eligibility list of Assistant Superintendent, Assistant Superintendent (SE), Assistant Superintendent (IS) and Assistant Superintendent (AS) under the National Sample Survey Organisation Field Operation Division which is exhibited as Annexure R-9. Such a combined seniority

list does not necessarily mean that the Assistant Superintendents form one cadre. There are different seniority lists for each category of Assistant Superintendents and hence each such category is a cadre by itself. Therefore, it is ~~claimed~~ that the applicant does not satisfy Clause (a) of Note 7 referred to above.

6. We are satisfied that the Assistant Superintendents (IS) and Assistant Superintendents (SE) are two different cadres as they have separate seniority lists. The purpose of the combined seniority Annexure R-9 is to rank all ~~six~~ Assistant Superintendents for promotion. This is not ~~the~~ same as the seniority list of a cadre.

7. Regarding the second issue, the respondents contend that the applicant's case does not satisfy clause (c) of Note 7 namely, that the anomaly in the pay ~~is~~ of ^{the} senior government servant as compared to his junior should be directly as a result of the application of the provisions of FR 22-C or any other Rule or order regulating pay fixation on promotion. It will be seen from the facts mentioned above that this anomaly has arisen primarily because of the fact that the applicant could not exercise any option under Ex.R-4 as to the fixation of his pay on

promotion as Superintendent because he was already drawing the maximum of the pay scale of the lower post any and there was no question of earning/further increment in that scale. As against this, Shri Karthikeyan could exercise such option because of certain fortuitous circumstances. This situation arose because as on 1.1.86, Shri Karthikeyan was still an Assistant Superintendent and his pay as Assistant Superintendent had to be fixed in the revised pay scale of Rs.1600/- to Rs.2600/- at the stage of Rs.2300/-. Therefore, though he was drawing the maximum of the pay scale of the Assistant Superintendent as on 31.12.85, after the fixation of his pay in the revised pay scale, this situation changed. His pay was fixed well below the maximum and there was scope for earning further increments and exercise/an option in terms of Ex. R-4, when the need, therefore, arose.

8. In accordance with ~~the~~ R-4 he exercised an option to the effect that on promotion his pay in the higher post be fixed under FR 22 (a)(i) to begin with and after he earned the next increment in the lower scale, the pay in the promotion post be fixed under FR 22 (c). Therefore, in accordance with this option, when he was promoted as Superintendent on 31.8.87, his pay was fixed at Rs.2420 against the pay of Rs.2360 ~~and~~ he was drawing as Assistant Supdt. from 1.1.87. On 1.1.88, he earned the next increment in the pay scale of Assistant Supdt. raising his pay therein from 2360

Rs.2360 to Rs.2420/-. On that basis his pay as Supdt. was fixed under FR 22(C) at Rs.2520/-, from 1.1.1988.

9. It will thus be clear that the difference in the pay drawn by these two persons is entirely due to certain fortuitous circumstances and not due to any mischief created by the application of any rule.

In this view of this matter, we are satisfied that no injustice has been done to the applicant by the respondents and Annexure-C order cannot be assailed. We, therefore, find no substance in this application and, hence, it is dismissed.

10. There will be no order as to costs.



19.9.90.

(N. Dharmadan)
Judicial Member



19.9.90

(N.V. Krishnan)
Administrative Member

19.9.1990