

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.319/96

Wednesday, this the 28th day of May, 1997.

C O R A M

HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE SHRI AM SIVADAS, JUDICIAL MEMBER

....

CK Unni, residing at
Cherote House, (PO) CN. Puram,
Palakkad-678 005 working
as Section Officer, Central
Administrative Tribunal,
Ernakulam.

....Applicant

By Advocate Shri TC Govinda Swamy.

vs

1. The Registrar,
Central Administrative Tribunal,
Principal Bench, Faridkot House,
Copernicus Marg, New Delhi--110 001.
2. The Deputy Registrar,
Central Administrative Tribunal,
Ernakulam Bench, Ernakulam.
3. Union of India represented by the
Secretary, Ministry of Personnel,
Public Grievances and Pensions,
North Block, New Delhi.

....Respondents

By Shri TPM Ibrahim Khan, Sr Central Govt Standing Counsel.

The application having been heard on 30th April, 1997,
the Tribunal delivered the following on 28th May, 97:

O R D E R

HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

While serving as Superintendent in the scale of Rs.550-900
in the Atomic Minerals Division of the Department of Atomic Energy,
applicant was deputed as Senior Personal Assistant (SPA for short)
in the scale of Rs.2000-3200 in the Ministry of Urban Development.
Thereafter, he was deputed as SPA in the Central Administrative

contd.

Tribunal (CAT for short) in the same scale. On 6.10.88, he was appointed as Private Secretary (PS for short) on ad hoc basis on "continued deputation basis" in the scale of Rs.2000-3500 by R.2(A) dated 11.5.89. R.2(A) also gave an option to the applicant to draw either his grade pay in his parent department or to have his pay fixed in the pay scale of PS with reference to the pay drawn by him in his parent department. Applicant did not furnish his option. Applicant was then appointed as Section Officer (SO for short) on the same scale on an ad hoc basis on 14.2.90. Subsequently, applicant was absorbed in the CAT as Section Officer with effect from 1.11.89 by A.4 order dated 19.6.95 and applicant gave an undertaking A.2 that he will not claim any seniority, pay fixation or any other benefits for the service rendered by him on deputation as SPA/PS in the Tribunal prior to 1.11.89. By A.3 order issued on the same date 19.6.95, the pay of applicant was fixed on 6.10.88 at Rs.2825/- with date of next increment as 1.10.89. From 1.1.89, the date on which he was to draw an increment in the lower scale of Rs.2000-3200, to 30.9.89, the pay of the applicant in the scale of Rs.2000-3200 was also protected by allowing Rs.75.00 as personal pay. Based on the fixation, a recovery of Rs.651.00 per month was also made. Aggrieved by the pay fixation, applicant submitted a representation A.5 dated 7.7.95, which was disposed of by A.1 dated 5.12.95, rejecting the request of the applicant on the ground that applicant was appointed as PS on "continued deputation basis". Applicant prays that A.1 be quashed and that respondents be directed to fix the pay as PS in the scale of Rs.2000-3500 granting him the benefit of fixation under FR 22-C by allowing one increment in the lower scale of Rs.2000-3200 and fixing the pay at the next stage in the higher scale with effect from 6.10.88. In the alternative, applicant prays that he be allowed to continue in the lower scale

contd.

of SPA till 31.10.89 and that his pay be fixed with effect from 1.11.89 on which date he was absorbed as SO. There is also a prayer that the date of next increment be fixed as 1st January with consequential benefits and for a declaration that the recovery of over-payments is illegal and for a direction to refund the amount recovered already.

2. Respondents submit that the appointment of the applicant as PS is a second deputation and that the order R.2(A) itself clearly states that he was appointed on a continued deputation basis. R.2(A) also states that the fixation of pay in the scale of PS, if opted for, would be with reference to the pay drawn in the parent department. This was further made clear in R.2(C) where it was stated that the fixation of pay with reference to his pay in the deputation post of SPA is not permissible. Applicant did not exercise his option for either grade pay plus deputation allowance or pay fixation under FR 22-C before 10.8.93 as called for in R.2(D) dated 3.8.93. Respondents submit that according to OM dated 1.6.70, the pay in the second ex-cadre post is to be fixed only with reference to the pay in the cadre post. The post of SPA was the first ex-cadre post and his pay in that post was fixed under FR 22-C. The post of PS was the second ex-cadre post and so pay fixation has to be done in accordance with the OM dated 1.6.70. Respondents state that the intention of this rule was to limit any undue advantage to a Government servant while on deputation.

3. Applicant contends that OM dated 1.6.70 cannot take away a benefit due to him under FR 22-C. In support of his contention, learned counsel for applicant cited a decision of the Tribunal reported in Bahadur Chand Bhatia vs Union of India and Others, 1987 (2) SLJ (CAT) 29. There the Tribunal held that a different

OM dated 3.4.72 "taking away the benefit given by a statutory provision of FR 22-C is erroneous", for certain reasons, and struck down the OM "in so far as the petitioner is concerned". This decision is not of assistance to the applicant.

4. FR 22-C which was in force at the relevant time, reads as follows:-

"Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued:"

[Emphasis added]

This rule clearly applies to all promotions and appointments to a post carrying duties and responsibilities of greater importance than those attaching to the lower post, whether such promotions and appointments are in a substantive, temporary or officiating capacity and respondents admit in para 14 of their reply that higher responsibility is attached to the post of PS when compared to the post of SPA. There is no exception made with regard to deputation to a second ex-cadre post. Such an exception was sought to be introduced by the OM dated 1.6.70 which reads as follows:-

"Appointment/promotion from one ex-cadre post to another ex-cadre post:- It is clarified that the

above orders apply only in cases of appointment of a Government servant from his parent department to an ex-cadre post. In cases of appointment/promotion from one ex-cadre post to another ex-cadre post where the official opts to draw pay in the scale of the ex-cadre post, the pay in the second or subsequent ex-cadre posts should be fixed under the normal rules with reference to pay in the cadre post only. In respect of appointments to ex-cadre posts on time-scale of pay identical with the time-scale of pay of ex-cadre posts held on an earlier occasion/s the benefit of proviso (iii) to FR 22 will, however, be admissible."

According to this OM, the pay in the first ex-cadre post will be fixed on the basis of FR 22-C with reference to the pay in the cadre post, but the pay in the second ex-cadre post will not be fixed under FR 22-C with reference to the pay in the lower post (which is the first ex-cadre post) as laid down in FR 22-C, but only with reference to the pay in the cadre post. Thus, in terms of the OM dated 1.6.70, the applicant's pay in the scale of PS would be fixed under FR 22-C not with reference to the pay in the scale of SPA in CAT, but with reference to the pay as Superintendent in the Department of Atomic Energy.

5. It is clear that the OM dated 1.6.70 seeks to modify the FR 22-C as regards fixation of pay when appointed to a second ex-cadre post. FR 22-C does not allow any such modification nor does it permit Government to selectively not apply FR 22-C to certain categories of appointments. If as a policy, Government wished to do so, they could very well have amended FR 22-C. In fact, FR 22-C was amended in 1965 and again in 1989 and 1990, but the amendments did not incorporate any clause that FR 22-C would not apply to pay fixation in a second or subsequent ex-cadre

contd.

post or that it would be applicable to such cases only in a modified form. We, therefore, have to conclude that FR 22-C will have to prevail over the OM dated 1.6.70 to the extent it is inconsistent with FR 22-C. Since FR 22-C specifies that fixation of pay is with reference to the pay in the "lower post", the fixation of pay even in a second or subsequent ex-cadre post has to be made with reference to the pay in the "lower post" and not with reference to the pay in the "cadre post", unless such cadre post happens to be the lower post from which the appointment to the second or subsequent ex-cadre post is made. The undertaking A.2 cannot stand in the way of the applicant getting what is legally due to him.

6. In the light of the discussion above, we see no need to consider the alternate prayer in prayer (ii).

7. As regards the prayer of the applicant regarding the date of next increment, we see no infirmity in allowing the next increment with effect from a date one year from the date of pay fixation.

8. To sum up, we hold that the applicant is entitled to have his pay in the post of Private Secretary fixed under FR 22-C with reference to the pay drawn by him in the lower post of Senior Personal Assistant. We accordingly direct respondents to fix within three months the pay of the applicant as Private Secretary in the scale of Rs.2000-3500, granting him the benefit of fixation of pay under FR 22-C by allowing one increment in the lower scale of Rs.2000-3200 and fixing his pay at the next stage in the higher scale with effect from 6.10.88. A.1 is quashed to the extent indicated above. Any recovery already made in pursuance of A.3 will be refunded to applicant. Respondents will, however, be

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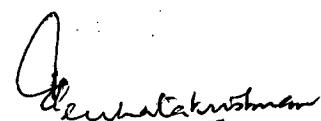
free to recover over-payments, if any, made after the pay of the applicant is refixed as directed above. The prayer that the date of increment be fixed as 1st January is rejected.

9. The application is allowed to the extent specified above.
No costs.

Dated the 28th May, 1997.



AM SIVADAS
JUDICIAL MEMBER



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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LIST OF ANNEXURES

1. Annexure A1: True copy of the order No.A/8(1)/86-Admn. dated 5.12.1995 issued by 2nd respondent to the applicant.
2. Annexure A2: True copy of the undertaking dated 27.4.1994 submitted by applicant to the Hon'ble Vice Chairman, Central Administrative Tribunal, Ernakulam.
3. Annexure A3: True copy of the order No.4/8(1)/86-Admn. (I) dated 19.6.1995 issued by 2nd respondent to the applicant.
4. Annexure A4: True copy of the order No.4/8(1)/86-Admn. (II) dated 19.6.1995 issued by 2nd respondent to the applicant.
5. Annexure R2(A): True copy of Order No.F-4/8(1)/86-Admn. dated 11.5.1989 issued by the Deputy Registrar, Central Administrative Tribunal, Ernakulam Bench.
6. Annexure R2(C): True copy of the D.O. Letter No.1/43/86-Estt./8241(A) dated 26.12.1988 by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi.
7. Annexure R2(D): True copy of the Office Memorandum No.4/8(1)/86-Admn. dated 3.8.1993 issued by the Deputy Registrar, Hon'ble Central Administrative Tribunal, Ernakulam Bench.

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