

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Transferred Application No. 1169 of 1987(L)

Versus

(By Hon'ble Mr. Justice U.C.Srivastava, VC)

The grievance of the applicant in this case is that the respondents have ^{mis-} interpreted the provisions of Fundamental Rule 22(c) and they have reduced his pay on the higher post of T-4 and as such they have prayed that a mandamus may be issued directing them to fix the pay of the applicant w.e.f. 27.1.78 in accordance with Fundamental Rule 22(C) after taking its correct interpretation at Rs. 625/- per month and a direction ^{be issued} in the nature of mandamus, directing the respondents not to withdraw the benefit of already earned 3 advance increments in the shape of encouragement from the applicant and take ^{the same} into consideration while fixing his pay in the category of Senior Technical Assistant and to pay the full arrears after fixing the pay of the applicant at Rs. 625/- per month ^{it has also been prayed that} the impugned decision/order dated 28.12.1979 in this behalf be declared ^{as well as} as ultra vires and the same be quashed and the order dated 7.2.1980 fixing the pay of the applicant at Rs. 575/- per month be also quashed as well as the reply dated 8.4.1983 given by the respondents. By means of amendment yet another relief was claimed that the respondents be directed to pay the entire arrears of pay to the applicant consequent upon the pay fixation as prayed by the applicant within a period of three weeks or within such reasonable time as tribunal may deem fit.

2. The applicant started his service as Field Assistant on 14.5.1956 at the Indian Institute of Sugar Cane Research

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Lucknow(hereinafter known as I.I.S.R.) under the Government of India, Ministry of Food and Agriculture in the grade of Rs. 60-4-120-EB-5-150. After intervening promotion the applicant was promoted to the Post of Junior Scientific Assistant, Central Civil Service Class III on 16.12.1960 in the scale of Rs. 150-300. The government of India decided to transfer the administrative control of the I.I.S.R. to the Indian Council of Agriculture Research(hereinafter known as I.C.A.R or Concil) vide decision dated 1.4.1969. The rule regarding the technical services of the council to which the applicant also belongs came into effect in the year 1977, but the same was enforced retrospectively with effect from 1.10.1975 . These rules provide that the Technical Services can be grouped into three categories and all the three categories have been branched into various grades. The applicant falls in Category II. Prior to the formation of the Technical Services in the Council the applicant was appointed to officiate as a Research Assistant(Centralised Civil Services Class III) at the institute(IISR) in the scale of Rs. 210-425/- with effect from 1st June,1969, which was later on revised into the scale of Rs. 425-700/- by Second Pay Commission. After introduction of the Technical Services, the applicant was inducted in the Technical Grade T-II-3 in category II in the same scale of pay of Rs. 425-700/- and his pay was fixed at Rs. 530/- vide order dated 22.7.1977. Later on after enforcement of the Technical Services with retrospective effect from 1.10.1975, instead of the year 1977, the applicant was inducted to the respective Technical Grade T-II-3 in category II with effect from 1.10.1975 vide order dated 10.8.1978 and his pay was fixed on Rs. 515/- on 1.10.1975. Under the rules a system of career advancement through the assessment of the past 5 years' work of a technician has been provided in the Technical Services Rules

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No. 6 and 7 provides for-recruitment. The applicant has given the example of one Sri T.N. Srivastava and Mr. Nand Lal to indicate that the career advancement through assessment and direct recruitment are different and independent and the Recommendation of one Committee does not mean the withdrawal of the benefits given by the other and in this connection he has made reference to these cases that the said Sri T.N. Srivastava was given three advance increments on the recommendation of the Assessment Committee and later on he was recruited directly through open selection in T-4 in the category II and thus he has not only availed the benefit of three advance increments as well as the benefit of his appointment on the post of Senior Technical Assistant T-4 through open selection. Later on it was decided by the authorities that since the technical services rules came into force retrospectively with effect from 1st October, 1975 and in view of the aforesaid change the application was again assessed by the duly constituted Assessment Committee and was granted three advance increments with effect from 1.7.76 over and above the ~~normal~~ increments for the work done during the year 1971 to 1975. The applicant drew the increased pay in consequence of the grant of advance increments which was granted to him over and above the normal increments and the applicant's pay was accordingly fixed at Rs. 580/- with effect from 1.7.1976. The applicant was ~~second time~~ ^{second time} assessed for the year 1976 i.e. for the period ending 31.12.1976, but nothing more was given to him. The work for the year 1977 was not assessed. Under rules 8 of the Technical Services, a post of Senior Technical Assistant was published ^{also} and the applicant who was/eligible, applied for the same and

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appeared in the written competitive examination and interview and was selected. Having been selected on the post of Senior Technical Assistant(T-4) in the grade of Rs. 550-900, the applicant joined on this post on 27.1.1978. When he was selected, the applicant was getting his pay Rs. 600/- per month from 1st July 1977 having earned an increment of Rs. 20/- in the previous pay from 1st July, 1977. The applicant applied for his fixation of pay on 4.8.1978 on the post of Senior Technical Assistant and a reply was given to him on 19.10.1978 to the effect that the matter ~~has been referred~~ to the Higher authorities and the applicant made several representation, but ultimately vide letter dated 7.2.1980, the pay of the applicant was fixed at Rs. 575/- with effect from 27.1.1978 in terms of fundamental Rules 22(C), it was stated therein that the advance increments already given on the basis of five yearly assessment with effect from 1st July 1976 were not taken into account for fixing the pay on the post of Senior Technical Assistant as per ICAR orders issued in this regard.

2. Thus, according to the respondents, the three advancement increments already earned by the applicant in the previous grade ~~which~~ is against the provisions of 22(C) of the fundamental Rules. The applicant submitted the detailed representation in this behalf and reminders after ~~reminders~~ were sent and it was thereafter, on 4.2.1982, the applicant was given a reply that his representation can not be acceded to and the pay fixation was correct and thereafter he received a letter on 18.1.1982 addressed to the Administrative Officer in which it was requested to fix the pay of the applicant in accordance with the letter dated 10.11.1981. In the letter it was stated that the " pay of

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the applicant in the Lower grade immediately before his promotion to the grade of T-4 was Rs. 545/- . The part of pay drawn as advance increments formed the personal pay of the applicant granted to him on the basis of assessment of his work done in the Grade of Rs. 425-15-500-EB-15-560-20-700 and was paid to him till he held that grade, and the applicant was granted the benefits of three advancement increments in the Lower grade w.e.f. 1.7.1976 to 26.1.78 over and above his pay in that grade. The fundamental Rule 22(c) on which reliance has been placed, which reads as under :-

"F.R. 22(C) : 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 on 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."

According to the applicant in view of the fundamental Rule 22(C), his pay should be fixed as Rs. 600/- plus one increment of Rs. 20/- and as this stage accrues at Rs. 625/- in the category of Senior Technical Assistant (T-4) his pay should be fixed at Rs. 625/- instead of Rs. 575/-.

3. *The contention was that* ~~was, according to the applicant~~ a person who is selected to a higher post through open selection attaching greater duties and responsibilities than the post held by him can not be made to get lesser pay than the pay which he was already getting on the lower post ~~as~~ the decision ~~which was~~ given against the applicant, has ~~got~~ no approval

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of the Government of India, which ~~decision~~ was given in the year 1979, whereas the applicant ~~has~~ already been selected to the higher post T-4. The Technical Services Rule 10 referred to above, which reads as under :

" The pay of a person appointed to any grade shall be fixed in accordance with such orders as may be applicable to Council's employees from time to time."

4. According to the respondents, in view of the letter 7.9.1982 and fax message dated 28.10.1982 issued by the Indian Council of Agricultural Research in reply to the respondents letter and circular dated 29.7.90 and dated 27.1.79 of the Indian Council of Agricultural Research, the applicant ~~is~~ not entitled to the benefits of F.R-22C and F.R.-27. Vide order dated 9.7.1990 was issued in pursuance of the direction given by the Central Administrative Tribunal for amending the instructions. In the 1990, it was decided that the advance increment granted to a technical personnel ~~on~~ the basis of five yearly assessment should not count for fixation of his pay on promotion to the next higher grade as a result of subsequent assessment in terms of the provisions of para 10 of the Handbook of Technical Services, subject to the condition that the pay fixed on promotion after subsequent assessment without taking into account the advance increments earned in the lower grade should, however, be not less than the pay plus advance increments drawn in the lower grade and for this purpose the pay in the higher grade may be regulated where necessary, by the grant of personal pay to be absorbed in future

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increments, so that they pay in the earlier post inclusive of advance increments, is fully protected". The decision of P.C.Haridarasankaran dated 27.1.79 that was communicated to the effect that the technical personnel, who have been on notional foreign service and have exercised option for the council's service after 31.12.75 but before the prescribed date i.e.31.3.78, should be treated at par with those who exercised options before 31.12.75. It has been decided that the advance increments granted to a technical personnel on the basis of five yearly assessment should not count for fixation of his pay on promotion to the next higher grade as a result of subsequent assessment in terms of the provisions of para 10 of the Handbook of Technical Service."

5. The respondents in support of their plea that the fundamental Rules 22-C and fundamental rule 27 are not ~~applicable~~ applicable to the case of the applicant and no benefit can be drawn by him from ~~the~~ such rules or any other fundamental rules have also placed reliance on the instructions of the I.C.R. dated 7.2.84 providing that the advance increments are treated only as adhoc increases. All the documents in which the reference has been made by the respondents ~~or were~~ came into existence subsequent to the appointment of the applicant. The question will be that the applicant was appointed as a senior Technical Assistant whether he was entitled to get the three increments which he ~~was~~ already getting from before or his pay was to be enhanced or it was to be reduced as has been done in the case. In case, the applicant would have been promoted after 1979 or 1974, the contention raised by the respondents would have been correct, but the question as to what would have been the position, when the applicant was promoted, he was entitled under any rule/directions/circulars or by virtue of post to get the benefits of three advance increments which he was getting on the lower -----

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post and on getting the higher post, the pay which he was getting was to be reduced or the same could not have been reduced and was entitled to get the same, may be in some other name. Vide Government of India Ministry of Finance (Department) of expenditure memo No. F.3(4) E/III(B)/71 dated 15.2.1972, the pay of a government servant holding a post in a substantive temporary officiating capacity on promotion or appointment to another post carrying duties and responsibilities of greater importance than those attaching to the former is fixed under F.R.22-C in cases where this rule is applicable with reference to the pay drawn immediately before such promotion. It may sometimes happen that the pay of an employee, permanent in post A but officiating in post B and subsequently transferred promoted to post C fixed with reference to the officiating pay in post B may work out to be less than the pay fixed with reference to the substantive pay in post A. In order to remove this anomaly the President is pleased to decide that in such cases pay should be fixed under F.R. 22-C with reference to the substantive pay or the officiating pay whichever may be beneficial to the Government servant." The fundamental Rules 27 which provides that :-

"Subject to any general or special orders that may be made by the President in this behalf, an authority may grant a premature increment to a Government servant on a time-scale of pay if it has power to create a post in the same cadre on the same scale of pay."

Government of India Memo No. 5634-DS(RI)/58, dated 11.12.58 which provides that :

"The questions of giving encouragement to scientific personnel by way of promotion and advance increments

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and of giving powers to Head of Scientific Organisations in this regard was considered recently at an Inter-departmental Meeting convened by Finance Ministry. It pursuance of the conclusion reached at that meeting, the Finance Ministry concurred to the introductions of a Scheme of 'Merit' promotion and advance increments to Scientific personnel employed in the Defence Research and Development Organisation and the Indian Agricultural Research Institute subject to the certain conditions and in this effect, the advance increment was provided."

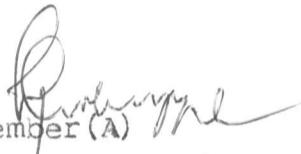
The Government of India Finance Department No. 752-C.S.R. dated 6.7.1919, it was provided that :-

"In the cases of increments granted in advance, it is usually the intention that the officer should be entitled to increments in the same manner as if he had reached his position in the scale in the ordinary course and in the absence of special orders to the contrary he should be placed on exactly the same footing as regards future increments as an officer, who has so risen."

6. The applicant's case was thus fully covered with fundamental rule 22-C, it is because he was of the scientific department that this advance increment was given, the same being the part, the clear position which was that when he was promoted his pay included three advance increments and that's why the department also accepted the same. After promotion, his pay could not have been reduced and fixed at the lower level without giving him an opportunity of hearing. The fundamental Rule 22 extracted above fully covers the case of the applicant and the respondents by mis-interpreting the same have reduced the pay of the applicant on the higher post of T-4. The application deserves to be allowed and the respondents be directed to fix the pay of the applicant w.e.f. 27.1.1978 in accordance with fundamental Rule 22-C after

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fixing the pay of the applicant at Rs. 625/- per month and are further directed to restore the benefits which has already been earned three advance increments and arrears of the same shall also be paid to him. The order dated 28.12.79 contained in Annexure-4 is rejecting his prayer in this behalf is accordingly quashed. The application stands disposed of with the above directions. No order as to costs.


Member (A)


Vice-Chairman

Lucknow Dated: 15th 3, 1993.

(RKA)