

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 176/89

199

T.A. NO:

DATE OF DECISION 34.92

Shri Madhukar Vishnu Atre Petitioner

Shri D.V. Gangal Advocate for the Petitioners

Versus

Comptroller and Auditor General of India, New Delhi Respondent

Shri P.M. Pradhan Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Mr.~~ Miss Usha Savara, Member (A)

The Hon'ble Mr. S. Santhanakrishnan, Member (J)

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. Whether it needs to be circulated to other Benches of the Tribunal ?

U. Savara
(USHA SAVARA)
Member (A)

mbm*

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original application No. 176/89

Shri Madhukar Vishnu Atre

... Applicant

v/s

Comptroller and Auditor General
of India, Post Box No.7,
Indra Prasha Head Post Office,
New Delhi and another

... Respondents.

CORAM: Hon'ble Miss Usha Savara, Member (A)

Hon'ble Shri S.Santhanakrishnan, Member (J)

Appearance:

Mr. D.V.Gangal, advocate
for the applicant.

Mr. P.M.Pradhan, advocate
for the respondents.

JUDGEMENT

Dated: 3.4.82

I Per Miss Usha Savara, Member (A)

By means of this application, the applicant, who is working as Audit Officer at Bombay has claimed the stepping up of his salary as the salary of his junior - Shri S.K. Raulgaonkar (in short S.K.R.) is higher than his salary. The applicant was appointed as U.D.C. on 1.5.1958, while S.K.R. was appointed to this grade on 21.10.59. At that time, the applicant was drawing salary of Rs. 135 in the revised scale of Rs. 130 - 300, and S.K.R. was drawing Rs. 130 in the scale. The applicant continued to draw higher pay than S.K.R. till 14.12.77. On 14.12.77 both the applicant and S.K.R. were working as Section Officers, but S.K.R's pay was fixed at Rs. 660 P.M. while the applicant was drawing only Rs. 640/- P.M. (Annex A). The applicant had passed R.A. Exam on 30.11.73, and was given the grade of S.G.A. on 20.12.71, whereas S.K.R. was given the S.G.A. grade on 29.4.73, and passed R.A. Exam on 14.12.77. The applicant was promoted as Section Officer two years earlier than S.K.R. and yet S.K.R.

 was drawing higher pay on 14.12.77.

Shri Gangal, learned counsel for applicant, submitted that S.K.R. had got his pay stepped up twice - once on 12.11.73, when his pay was raised from Rs. 500 to Rs. 550/- as Senior Grade Auditor, and again on 31.3.75 when his pay was raised to Rs. 600/- on 31.3.75 on his promotion as Section Officer. The applicant was drawing Rs. 600/- on 31.3.75 though he had passed R.A. Exam in 1973. It is argued that since S.K.R. got the benefit of stepping up of his pay twice on the ground that his junior should not draw more pay than him, by the same yardstick, the applicant's pay ought to be raised and brought at the level of his junior. The applicant represented against this anomaly from 1978 onwards, but received a final reply to his representation dated 28.9.88 (Anx.B) only on 1.9.88 (Anx. C) rejecting his representation as no new facts had been brought out. The learned counsel submits that the applicant's case is fully covered by the provisions of para 8 of FR 22 C. The fundamental rules and Govt. of India's instructions including the instructions issued by the Controller of Auditor General of India are mandatory provisions, which have to be applied in all cases. ~~No~~ discrimination can be made, hence ~~denial of~~ stepping up of pay of the applicant is violative of Article 14&16 of the constitution. Further, while S.K.R. has been granted the benefit of stepping up of his pay twice, the applicant is being denied this, resulting in discrimination. Therefore, it is prayed that the applicant's pay be stepped up to Rs. 660/- with effect from 14.12.77 and he be allowed to draw further increments every year. Shri Gangal relied upon the judgment in the case of S.T. Papalkar OA No. 297 of 1989 decided by the Bombay Bench on 15.10.91, and the case of Govind Prasad Gupta V. Union of India and ors. decided on 24.4.89 by the Principal Bench.

Abh.

The respondents have stoutly resisted the claim of the applicant. They did not deny that the applicant had drawn more salary than S.K.R till 14.12.77, but rejected the claim of the applicant that his salary be stepped up as the anomaly had arisen on account of the fact that he passed the R.A.E. before 1.1.73, and S.K.R. passed it after 1.1.73. It was pointed out by Shri P.M. Pradhan, the learned counsel for the respondents that as a matter of fact both the applicant and Shri S.K.R. had passed the R.A.E. after 1.1.73, and the applicant had already been informed of this fact by letter dated 27.11.87.

Admittedly, Shri S.K.R's pay had been stepped up from Rs. 500/- to Rs. 530/- on 12.11.73 in S.G.A's cadre. At that time, the applicant was working as Section Officer, and drawing a higher salary, and therefore this stepping up did not affect him. On 31.3.75, the pay of Shri S.K.R. was refixed under FR 22 -C on the date of his promotion as Section Officer consequent to his passing the S.A.S Examination. This fixation of pay also did not give any cause of action to the applicant. The anomaly, which arose only on 14.12.77 was not rectifiable under para 8 of Rule 22 -C, nor was it covered by any other orders, which could be invoked. Therefore the claim of the applicant was not accepted.

We have heard both the learned counsel, and given our earnest consideration to the Annexures and judgements referred by them. It is undisputed that both the applicant and Shri S.K.R passed the R.A.Exam after 1.1.73, which fact is confirmed by Anxx. A. In the circumstances, the applicant's plea on this count has to be rejected.

(9)

Shri Gangal has relied upon para 8 of Rule 22 - C, which reads as below:

"The stepping up of pay of Senior on promotion drawing less pay than his junior should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely :

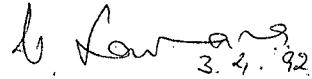
- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of F.R.22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

It is not denied that both the officials belong to the same cadre and the posts to which they have been promoted are identical in the same cadre. The unrevised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay are identical. The only question for determination is whether the anomaly has arisen directly as a result of the application of the provisions of F.R. 22 - C in the revised scale. Shri S.K.R. was given an Advance increment for passing the R.A.Exam, which was held in December 77, raising his pay from Rs. 620/- to 640/- by order dated 12.7.78, as a result of which he is drawing higher pay than the applicant on 14.12.77, because the date of Advance increment was 14.12.77. This is an advance increment granted to him for passing the RAE and as classified in sub-para (c) , the provisions for removal of anomaly need not be invoked to step up the

pay of the senior officer in the above circumstances. Even if it were ~~true~~ that Shri S.K.R. has been granted stepping up of pay twice, there is no rule, which provides that the pay of the applicant be stepped up as a consequence of that. There is no violation of Article 14 and 16 of the constitution, and there is no discrimination. The judgement cited above are not at all applicable to the facts of this case, and therefore, we do not consider it necessary to discuss them.

For the aforesaid reasons, we find no merit in this application, and therefore, dismiss the same accordingly with no order as to costs.


(S. Santhanakrishnan)
Member (J)


3.2.92
(Miss Usha Savara)
Member (A)