

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 708 of 2005

Date of order :

9th September
August, 2010**CORAM**

Hon'ble Mrs Rekha Kumari, Member [Judicial]
Hon'ble Mr. Sudhir Kumar, Member [Administrative]

Satyendra Kumar, son of Late Parmanand Shrivastava, resident of Mohalla – Kankarbagh, District – Patna, at present working on the post of Postal Assistant SBCO, at Purnia Head Post Office.

Applicant.

By J.K.Karn, Advocate

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1. The Union of India, through the Secretary cum D.G.. Ministry of Communications and Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Deputy Director General, [Estt.], Ministry of Communications and Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
3. The Chief Postmaster General, Bihar Circle, Patna.
4. The Director Postal Services, O/o the Chief Postmaster General, Bihar Circle, Patna.
5. The Chief Postmaster General, Jharkhand Circle, Ranchi.
T. K. Dutta.
6. ~~Sri D. K. Dutta~~, through the Chief Postmaster General, Jharkhand Circle, Ranchi.

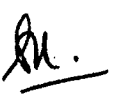
Respondents.

By S.K.Tiwari, ASC

ORDER**Sudhir Kumar, Member [Administrative] : -**


This application has been filed by the applicant claiming stepping up of his pay equal to the pay fixed for his junior [Private Respondent No.6], under the Next Below Rules [in short NBR], which has been rejected by the Respondent No.2 through his order dated 16.6.2004 in case of wrong application of Rules/Law, and for release of pay and monetary benefits and arrears along with

admissible interest thereupon. The prayer of the applicant is that since the cause of action is continuing wrong and his salary is being affected every month, the instant OA is not barred by law of limitation.

2. The applicant is an employee of Department of Posts. He was initially appointed as Lower Division Clerk [in short LDC] in SBCO at Madhubani. The seniority of the employees of SBCO is maintained at the Circle level, as they are posted at Head Post Offices rather than at the out-lying Post Offices. The applicant joined his post on 05.01.1979, and has stated that the Private Respondent No.6 joined this post later on 11.01.1979. The applicant has stated that his seniority was placed at Sl. No. 10, and the seniority of the Private Respondent No.6 was placed at Sl. No. 19 as per the gradation list corrected up to 30.6.1981 issued by the Postmaster General, Bihar Circle, Patna, the applicant was placed at Sl. No. 45 while the Private Respondent No.5 was placed at Sl. No. 53. In the list corrected up to 1.7.1999, the applicant was placed at Sl. No. 81, while the Private Respondent No.6 was at Sr. No. 87. However, the applicant has stated that an anomaly has later crept in the basic pay of the applicant, and he was getting lesser salary due to said anomaly, because the Respondent No.6 had been given an adhoc promotion by ignoring the case of the applicant, because of which he was getting higher salary than the applicant. The applicant submitted several representations before the respondents pointing out this anomaly, but his case was rejected first by 07.05.1987. Afterwards also, the applicant submitted a series of representations, and finally the case of the applicant was sent to New Delhi. When the representation of the applicant was pending in the Directorate at New Delhi, he came before this Tribunal in O.A. 581 of 2003, which was heard and disposed of on 01.08.2003, directing the Secretary-Cum-DG, Posts, to treat the OA of the applicant as a fresh representation, and look into the matter, and dispose of the same along with the applicant's representation dated 20th March, 2003 as previously filed, by passing a reasoned and speaking order in accordance with law. 

Thereafter, the respondent authorities have passed their order dated 16.6.2004 issued under the signature of Respondent No.2, whereby the applicant's claim for stepping up of his pay equal to the pay fixed for his junior has been rejected, against which he has filed this OA. The applicant submitted that on 21.9.2004, he had submitted an appeal/representation also against the said impugned order dated 16.6.2004, distinguishing his case from the decision of the Hon'ble Supreme Court cited by the Respondent No.2, and subsequently he submitted two reminders also on 11.2.2005 and 31.5.2005, but he has not received any reply. As such, the applicant felt compelled to approach this Tribunal once again, and has claimed stepping up of his pay pursuant to FR 22 vis-a-vis his junior, Private Respondent No.6, and for quashing and setting aside the impugned order dated 16.6.2004 [Annexure-A/6 of the OA].

3. The applicant relied upon the judgment in **1997 Supreme Court Cases [L&S] 1852, Union of India & Others vs. R. Swaminathan and Others** to state that local adhoc promotion against short term vacancy does not adversely affect seniority or regular promotion of a senior employee on the basis of All India seniority.

4. The respondents filed their written statement on 11.11.2008. In this they did not deny the fact that soon after their joining, the initial pay of both the applicants were same and the applicant was senior to the private respondent no.6. The respondents further submitted that both the officials were promoted to UDC Grade on temporary and adhoc basis vide memo dated 5.5.1982, and they were placed in their seniority at Sl. No. 3 and 4 respectively in that memo. Prior to the issuance of the aforesaid memo of promotion, both the officials had officiated in UDC cadre due to local vacancies which had arisen in their respective offices of posting. The applicant had officiated as UDC, SBCO, Madhubani from 18.8.1979 to 2.12.1979 and UDC, SBCO at Patna GPO from 24.7.1981 to 23.8.1981 and from 8.2.1982 to 4.5.1982, whereas the Private Respondent No.6 

had officiated in UDC cadre at Jamshedpur HO from 6.4.1979 to 12.7.1981, 18.7.1981 to 21.8.1981, 16.9.1981 to 30.9.1981, 13.10.1981 to 31.10.1981, 14.12.1981 to 14.1.1982 and 2.2.1982 to 4.5.1982. The respondents stated that on promotion to UDC cadre, pay of the applicant was fixed at Rs. 330/- on 5.5.1982 and the next increment to Rs. 340 was given on 23.9.1982, taking into account the prior date of local officiating prior to promotion. Similarly, the pay of the Private Respondent No.6 was fixed at a stage of Rs. 350/- on 5.5.1982 and the next increment to Rs. 360/- was given on 15.8.1982 due to the date of his local officiating prior to promotion.

5. The respondents stated that the applicant's request for stepping up of his pay in comparison to the Private Respondent on the ground of anomaly was examined by the Circle Office, and replied on 21.5.1987, as anomaly was not covered under the Rules, as one of the conditions for stepping up of pay was that anomaly should be directly as a result of the applicability of FR 22[I], but in this case, the anomaly was not due to the application of FR 22[I][a][i], but due to the date of local officiation in UDC cadre prior to promotion. The respondents also relied upon the same judgment in **R. Swaminathan** [supra] to state that the Supreme Court had held as follows :-

“Where junior staff officiating for different periods on account of adhoc promotion granted to him, and were given higher pay than their seniors, the difference in pay of a junior and a senior is a result of application of FR [I][A][I].


6. They further cited the Hon'ble Supreme Court to have held that the increased pay drawn by a junior because of adhoc officiating or regular service rendered by him in higher post for periods earlier or longer than the senior is not an anomaly, because pay does not depend on seniority alone, nor is seniority alone a criterion for stepping up of pay.

7. The respondents pointed out that the applicant had filed a representation

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with the Directorate, and also approached this Tribunal in OA 581 of 2003, which was disposed of on 20.3.2003 with the direction to pass a reasoned and speaking order in accordance with law, and that in compliance of this direction, the Directorate had, through the impugned order dated 16.6.2004, decided that there is no justification to accept the request of the applicant. They had denied that the case of the applicant is covered under the departmental rules for stepping up of his pay, and submitted that the applicant is not entitled for any such benefit. They pointed out that there is no anomaly in the pay of the applicant, as he was getting lesser salary not due to any anomaly, but due to having officiated in the UDC cadre from a date later than the private respondent prior to their respective substantive promotions.

8. In regard to the statement in the OA regarding the gradation list corrected up to 30.6.1981, they had pointed out that as on 01.01.1981 the pay of the applicant was shown as Rs. 272/- whereas that of the private respondent was shown as Rs. 340/-. However, when the private respondent was reverted to his own cadre on 13.7.1981, and his pay was fixed once again to Rs. 272/- equal to that of the applicant. They pointed out that the applicant is not entitled for any stepping up of his pay as the difference in the pay of his junior and his own was on account of the junior having officiated against higher post from a prior date because of the local arrangements made. Therefore, they submitted that the claim of the applicant has been correctly rejected by the Directorate as being devoid of any merit. In the facts and circumstances of the case, they prayed that the present OA is fit to be dismissed.

9. During the course of arguments, the learned counsel for the applicant took us through the gradation list corrected up to 30.6.1981 at Annexure-A/1, the Circle gradation list corrected up to 1.7.1999 [Annexure-A/2], and other documents annexed to the OA. The learned counsel for the respondents explained that paragraphs 4, 5, and 6 of the speaking order dated 16.6.2004 [Annexure-A/6] .

are self explanatory, and that the applicant could not be allowed the benefit of FR 22 as he has not officiated in the higher post earlier, as laid down by the Hon'ble Supreme Court in the case of **R. Swaminathan** [supra], which has been cited by both the applicant and the respondents.

10. We have anxiously gone through the facts of the case and the documents annexed to the OA. Apart from the case of **R. Swaminathan** [supra] decided by the Hon'ble Supreme Court, which was cited by both the parties, this Tribunal has also had the benefit of examining the applicability of the next below rule [NBR] for considering stepping up of pay [under FR 22 [C] as it stood earlier] under FR 22[I][a][I] in the following cases :-

- [1] **1995 [2] [CAT] All India Services Law Journal page 405, CAT Bombay Bench, T.P.Shyamalan vs. Union of India & Ors.,**
- [2] **CAT Hyderabad Bench order dated 21.9.1998 in OA 316 of 1997, Smt. Kusuma Jaya Kumar vs. Union of India & Ors.,**
- [3] **CAT Hyderabad Bench order dated 6.9.2001 in OA 1917 of 2000, V. Venkata Muni vs. Union of India & Ors.,**
- [4] **CAT Hyderabad Bench order dated 10.10.2001 in OA 1917 of 2000, A. Venkata Muni vs. Union of India & Ors.,** which was pronounced, after the matter was examined by Full Bench for deciding the points for authoritative decision

11. In these four cases concerned, the point of second stepping up of pay relying upon the Govt. of India, Ministry of Finance OM dated 4th February, 1966, was examined, which has laid down the conditions for stepping up of pay of seniors in 3 situations reproduced below :-

“Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior -

As a result of application of FR 22-C [Now FR 22[I][a][I] – In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1.4.1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and

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promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up 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 FR 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.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay

[G.I., M.F., O.M. No. F.2[78]-E.III] (A)/66, dated the 4th February, 1966]"

12. In the case of **Venkata Muni** in the judgment dated 6th September, 2001, the Bench observed as follows :-


"Thus, it is seen that the above order was issued by the Government only to set right pay anomaly which arose directly 'as a result of application of FR 22-C, between a senior and his junior, on their promotion from a lower post drawing same salary to a higher post in the same cadre'. It is significant to observe that the FR 22-C itself does not speak of such stepping up of pay. It was a benefit that was given by the Government in its decisions in the OM. It can also be said that prior to 4.2.1966, such stepping up of pay was not allowed under FR 22-C, in spite of existence of such anomalies of pay. Further, the stepping up of pay is allowed only in cases fulfilling the conditions stipulated in the above O.M. and not in all cases of pay anomaly between a senior and junior, working in the same cadre. Thus, it is not a result of the principle of equality or equity; the fixation of pay being always referable to individual employees.

"13. Stepping up of pay was a benefit allowed by the Government



in certain situations as contained in O.M. Dated 4.2.1966. The foundation for the claim of stepping up did not lay on the principle of equality of pay between two employees in a cadre. It was a decision taken by the Government in 1966 only to set-right anomaly that arises directly as a result of pay fixation under FR 22-C. If a junior gets higher pay, that does not mean that invariably a senior to him should also get it without foundation for such claim in law. The difference in pay may arise due to several fortuitous circumstances which are not common in service. High pay due to adhoc promotion [**Swaminathan's case 1997 SCC [L&S] 1852**], drawing running allowance while performing duty of Drivers [**O.P. Saxena's case 1997 [6] SCC 360**] in the lower cadre by junior and not drawing by a senior or wrong fixation of pay in the lower cadre to a junior, can be such instances claimed for stepping up in all these cases, were disallowed by Courts. Equal protection means the right to equal treatment in similar circumstances. Different treatment does not per se one of discrimination and violative of Article 14. It denies equal protection only when there is no basis for differentiation. The stepping up of pay however, would be a valid claim under law only if it equally falls within OM dated 4.2.1966 and that too such a stepping up was allowed only once."

"15. The arguments based upon Article 14 of the Constitution also fell for consideration by the Hyderabad Full Bench of the Tribunal, in **B.K. Somayajulu's case** [supra] and it was disposed of as under :-

"7. If a junior gets a higher pay, that does not mean that the senior also should necessarily get it without a foundation for such a claim in law. Fortuitous events are part of life. Fixation of pay is generally with reference to an individual. Various reasons may account for the grant of a higher pay to a junior. For example undergoing a vasectomy operation or achieving excellence in sports or belonging to a certain community or even a wrong fixation of pay may bring about a situation where a junior gets a higher pay. If a junior is granted a higher pay for any of these reasons, that will not confer a corresponding right if a senior to get the same. If, for example, wrong fixation of pay in the case of a junior is to bring about a corresponding fixation in the case of a senior by applying the principle of equality, that would be an instance of using Article 14 to perpetuate illegality. If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a junior. He cannot acquiesce in a wrong, and make a gain from that wrong by 


a comparison. Without disguise the attempt of the senior, is to get the benefit of a higher pay, by comparison. Without challenging the wrong, he cannot claim a remedy from a wrong. Such collational reliefs are alien to law. The decision of the Supreme Court in **Chandigarh Administration vs. Jagjit Singh [1995] SCC 745** supports this view.

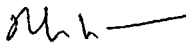
“8. Ultimately the question boils down to this, what is the right of the senior and where does he find that right. Certainly he does not find that right in any law. The law governing the subject is FR 22[1] [a][i]. Incidentally this rule is not challenged. It follows that only those anomalies that are directly referable to that rule, are amenable to the curative process thereunder, namely stepping up, and no other. Equity does not offer a cause of action, as we have already pointed out. Discrimination arises only vis-a-vis law. Difference on facts – often non actional facts, does not give rise to a cause of action in law. The Supreme Court of India in comparable circumstances held **[State of A.P. and others vs. G. Sreenivasa Rao and others [1989] 10 ATC 61]**, that difference per se. is not discrimination.”

13. Thus, it is clear from these cases, any higher pay drawn by a junior due to fortuitous circumstance does not automatically entitle the senior to lay a claim for stepping up of his pay, unless the conditions as laid down by the OM dated 4.2.1966 are satisfied. Life is full of fortuitous circumstances, and here in this case, it has so happened that the applicant, though senior to the private respondent, got officiating charge in the higher post on a later date from 18.8.1979, while the private respondent, got such officiating charge in UDC cadre at Jamshedpur HO more than four months prior to that date, from 6.4.1979 onwards.

14. In view of this, and in view of the position as explained in paragraphs 4, 5 and 6 of the impugned speaking order dated 16.6.2004, it is clear that the applicant does not fulfill the conditions prescribed for stepping up of his pay with respect to his junior Private Respondent, and that there is nothing wrong in the reasoning and logic and the case law as mentioned in the impugned order.

15. In the result, this OA does not survive, and is rejected. No order as to costs.


[Sudhir Kumar] 09/09/2010.
Member [Administrative]
mps.


[Rekha Kumari]
Member [Judicial]