

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
CIRCUIT BENCH: GOA

O.A. No.542/96

THIS THE 9th DAY OF OCTOBER, 1998.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR. N.SAHU, MEMBER(A)

Shri P. George Joseph
MES 108005
Age B/R
Garrison Engineers (NW)
Vasco-da- Gama,
Goa.

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APPLICANT

(BY ADVOCATE SHRI G.VIJAYACHANDRAN)

Vs.

1. Union of India
through Secretary,
Ministry of Defence,
Govt. of India,
South Block,
New Delhi.
2. The Engineer-in-Chief,
Army HQRS
Kashmir House,
New Delhi.
3. Shri S. Ramaswamy
through Central Record Office (Officers)
C/o Chief Engineer
Delhi Zone
Delhi Cantt-10

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RESPONDENTS

(NONE FOR THE RESPONDENTS)

ORDER

N.SAHU, MEMBER(A):

The prayer in this O.A. is for a direction to the respondents to fix the applicant's pay at the same level as that of the third respondent with effect from 1.11.1985 at the rate of Rs.920 per month and from 1.1.1986 at the rate of Rs.2675 per month with consequential arrears.

2. The brief facts leading to the above claim were that the applicant was promoted as Supdt. B/R on 16.3.1984 on ad hoc basis. Respondent No.3 was promoted to the same rank on 1.11.1985. Respondent No.3 has been drawing Rs.920 from the date of his promotion. The applicant addressed a letter dated 15.7.1986 to the Chief Engineer Headquarters

Southern Command. He was informed that the matter would be looked into and anomaly, if any, adjusted on the applicant's regular promotion. The applicant again represented on 6.9.1986 and subsequently ^{renewed his claim} ~~also~~ even after his transfer to various other stations. The matter was considered at length and as early as on 2.5.1990, the respondents showed their disinclination to consider the applicant's case favourably. Even so, the applicant persisted with repeated representations which only ended in the communication impugned in this O.A. of the Central Record Office dated 28.10.1994 stating that the stepping up of the applicant's pay at par with his junior Shri S. Ramaswamy has once again been turned down by the DOP&T. The applicant seeks relief in the present O.A. against the said impugned order. He refers to various decisions by the Madras Bench in G.S.Gurraja's case in OA No.48/90 and the decision of the Ernakulam Bench in K.Krishnapillai's case (Jan. 1994, Swamy's News page 51). The general principle laid down in these decisions is that a senior drawing pay less than his junior is entitled to have his pay stepped up to the level of that of the junior irrespective of the reasons that led to the anomaly in pay. He cited other decisions as under:

1. Lalitha & Ors. Vs. U.O.I & ors., (1992) 19 ATC 569
2. Anil Chandra Das Vs. U.O.I, (1988) 7 ATC 224
3. P. Gangadhara Kurup & ors. Vs. U.O.I & Ors., 1993 (1) ATJ 165.

3. The respondents, on the other hand stated that the applicant had been promoted on ad hoc basis whereas respondent No. 3 was promoted permanently from day one.

Secondly, there were technical breaks during the ad hoc tenure of the applicant. Such technical breaks were actual breaks for all purposes. On each occasion when an ad hoc officer is given a technical break, his pay in the lower grade is fixed. Thus only on promotion to higher grade, the pay of such officers is again re-fixed. The Ministry of Personnel advised the Ministry of Defence (see Annexure A-11(ii)) that ad hoc promotions are only for a specified period and such appointments are to be treated as having come to a close at the end of that period. On the day of the break, the official concerned will draw pay of the lower post and only on re-promotion his pay will be re-fixed afresh under normal rules. The respondents further point out that respondent No.3 had been drawing higher pay only because he got annual increments earlier than the applicant on account of his regular promotion with effect from 13.6.1986. They also pointed out that the Supreme Court had stayed the operation of the judgements in all similar cases by their order dated 10.5.1996 in a number of SLPs referred to at EX-R-I.

4. We have heard the rival contentions. In fact, the plea taken above stands contradicted by the report of the respondents themselves. The Central Record Office in a report dated 8.2.1993 addressed to the Engineer-in-Chief Branch (Army Headquarters), Annexure A-13(i) stated as under:-

"(d) Para 2(b)(i)&(ii): Shri P George Joseph has been promoted to AE B/R on ad hoc basis initially w.e.f. 16 March 1984 and the terms of ad hoc appointment has been extended from time to time upto 31 December 1986 with technical breaks on 01 July 1985 and 01 January 1986. On the days of technical breaks the

officer was not reverted to lower post because there was no reversion order. On these days he physically discharges⁴ duties and responsibilities of the post of AE B/R. There are hundreds of similar ad hoc promotions granted to officers in almost all the categories and extended the same with one day technical breaks in between each sanctions and continued for over 08 years in some cases. As such the refixation of pay for each spell of extension of ad hoc promotion is not recommended as it will result opening of the Pandora's box as large number of cases of similarly placed officers are to be reopened inviting many objections/representations."

The comparative statement showing the pay drawn with effect from 26.7.1982 in different grades by the applicant and his junior Shri S.Ramaswamy, Annexure- A-13(11) shows that both of them had drawn the same pay upto 1.7.1983. On 16.3.1984, the applicant was made AE B/R (ad hoc). He had drawn Rs.845/- and on 1.3.1985, he earned an increment and had drawn Rs.880/-. Fourth Pay Commission recommendations were implemented from 1.1.1986 whereupon his pay was fixed at ^{Rs 2600 on 1-1-86 and ab} Rs.2675 on 1.3.1986 and thereafter annual increments were given at Rs.75 as on 1st March. The junior Shri Ramaswamy was drawing at Rs.870/- in the scale of Superintendent B/R grade-I. On 1.11.1985, he was promoted as AE B/R (ad hoc) and he had drawn Rs.930/- with DNI as on 1.11.1986. However, on 1.1.1986, junior officer Shri Ramaswamy had drawn Rs.2675/- in the scale of Rs.2000-60-2300-EB-75-3200-100-3500 with DNI 01-11-1986, whereas the applicant on 1.1.1986 had drawn only Rs.2600/. Thereafter the anomaly persisted. According to the Government

Order dated 4.2.1966, the three conditions are as under:-

- (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 scale of pay of the lower and higher post 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 increment, the above provisions will not invoke to step up the pay of the senior officer.

5. The Hon'ble Supreme Court in U.O.I & anr. vs. R.Swaminathan, 1997(2) S.C. SERVICES LAW JUDGEMENTS AT PAGE 383 held as under at page 387 of the report:-

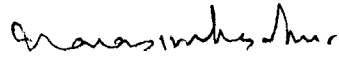
"The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in that past. Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the junior. This cannot be considered as an anomaly requiring the stepping up of the pay of the seniors."

6. We are of the considered opinion that the pay fixed at Rs.920/- as on 1.11.1985 has nothing to do with any anomaly but was a direct result of the pay drawn by the junior as Superintendent B/R Grade I from 26.7.1982 till 1.11.1985.

There is, therefore, no justification for stepping up applicant's pay upto 1.11.1985. From 1.1.1986, however, all the three conditions mentioned above stand satisfied and, therefore, the applicant's pay shall be fixed at Rs.2675/- and all consequential arrears shall be paid within 12 weeks from the date of receipt of a copy of this order. In the circumstances, there is no case for awarding interest on the arrears. O.A. is partly allowed without any order as to costs.



(K.M.AGARWAL)
CHAIRMAN



(N.SAHU)
MEMBER (A)