

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indira Nagar,
BANGALORE- 560 038.

Dated

193, 198 to 202/86(T)
Application No. 86()

WP No. 12089/79, 13965 to 69/79

15 DEC 1988

Applicant

Balram Gupta & Ors

To

1. Sh V.H. Ron, Advocate, 24, 1st Main Road, Ganganahalli, Bangalore - 32.
2. Secretary, Ministry of Defence, New Delhi.
3. The Controller of Defence Accounts, Southern Command, Pune.
4. Sh MS Padmarajaiah, Senior Central Govt. Standing Counsel, High Court Buildings, Bangalore - 1

5. T.K. Oomen
6. S. Janarthanan
7. Smt. Bhavani S. Rao
(All are Senior Scientific Officer, Grade-I, Aeronautical Development Establishment, Hindustan Aeronautics Ltd, Bangalore 38)
8. R. Ramachandra
Sr. Scientific Officer, Gr. I
RTO. Engineer,
Hindustan Aeronautics Ltd
Bangalore

SUBJECT: Sending copies of Order passed by the Bench in
Application No. 193, 198 to 202/86(T)

....

Please find enclosed herewith the copy of the Order,

Interim Order passed by this Tribunal in the above said Application

No. 193, 198 to 202/86(T) on 27-10-86.

Hoey
SECTION OFFICER
(JUDICIAL)

Encl: as above.

copy to file
A.N.O (93/86(T))

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 27 OCTOBER 1986

Present : Hon'ble Justice Sri K.S.Puttaswamy - Vice Chairman
Hon'ble Sri L.H.A. Rego - Member (A)

APPLICATION Nos. 193, 198 to 202 of 1986

Balram Gupta S/o of Roshanlal Gupta
Senior Scientific Officer I
Government of India,
Ministry of Defence
Directorate of Aeronautics (R & D)
Resident Technical Office (AERO Engine Division)
C/o Hindustan Aeronautics Ltd
Bangalore - Applicant

I.K. Deman
Senior Scientific Officer Grade I
Aeronautical Development Establishment
Indira Nagar, Bangalore 38

S. Janarthanan
Senior Scientific Officer Grade I
Aeronautical Development Establishment
Indira Nagar, Bangalore 38

Smt Bhavani S. Rao
Senior Scientific Officer Grade I
Aeronautical Development Establishment
Indira Nagar, Bangalore 38

R. Ramachandra
Senior Scientific Officer Grade I
RTO (Engines) C/o Hindustan Aeronautics Ltd
Bangalore - Applicants

(Shri V.H. Ron, Advocate) v.

The Union of India
represented by the Secretary
Ministry of Defence
New Delhi)

The Controller of Defence Accounts
Southern Command
Pune)

(Shri M.S.Padmarajaiah, Senior C.G.S.C.)

This application has come up for hearing before the
Tribunal today. Hon'ble Justice Sri K.S.Puttaswamy,
Vice Chairman made the following

O R D E R

These are transferred applications received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act of 1985 ('the Act'). As the question that arises for determination in them are common, we propose to dispose them by a common order.

2. Shri Balram Gupta application in Application No. 193 of 1986, corresponding to W.P. No. 12089 of 1979 was working in the Office of the Hindustan Aeronautics Limited as a Senior Scientific Officer II (SSO II) in the time-scale of pay, of Rs.400-950 which was revised to Rs.700-1350 from 1-1-1973. When he was so working in that office he applied to the Union Public Service Commission (UPSC) for selection to the post of SSO-I - Gazetted Class I carrying a time-scale of pay of Rs.700-1250 revised to Rs.1100-50-1600 from 1-1-1973 to which he was selected.

3. On his selection by the UPSC, Government by its order dated 6-4-74 (Annexure A) appointed him to the said post and he was posted to the office of CRO (Engines) RTO C/o HAL, Bangalore. On his appointment and posting to that office on 11-6-1974, the initial pay of the applicant as SSO I was fixed at Rs.1300/- p.m. in the time scale of Rs.1100-1600 with which he had no grievance.

4. But, later on 5-1-1977, the competent authority taking the view that that fixation was erroneous and was contrary to the rules and orders regulating the same, refixed the pay of the applicant at Rs.1150/- p.m. as on 11-6-1974. In W.P. No. 1756 of 1977, the applicant challenged that re-fixation before the High Court of Karnataka inter alia, on the ground that no opportunity of hearing was afforded to him, which violated the

principles of natural justice. On 28-8-1978 Rama Jois, J. allowed the said writ petition on the said ground expressly reserving liberty to the competent authority to re-do the matter in accordance with law.

5. With liberty so reserved, Government after affording the applicant an opportunity of hearing made an order on 6-7-79 (Annexure T) refixing his pay as on 11-6-74 at Rs.1150. 00 p.m. in the time scale of Rs.1100-1600 which reads thus :

98966/A/8/RD-Legal Cell/4761/D(R&D)
GOVERNMENT OF INDIA
MINISTRY OF DEFENCE
NEW DELHI, the 6th July 1979

MEMORANDUM

"The undersigned is directed to refer to your (i) letter dated 8 December 1978 received under CRE(Engines) letter No. RTO/ENG/013/3/HC/Est dated 8 Dec 1978 (ii) letter dated 22 Dec '78 received under CRE(Engines) letter No. RTO/ENG/013/3/HC/Est dated 22 Dec 1978 and (iii) letter dated 13 Feb '79 received under CRE(Engines) letter No. RTO/ENG/013/3/HC/Est dated 13 Feb 1979 and to say that your case for fixation of pay has been carefully examined.

"2. You were selected and appointed as SSO I w.e.f 11-6-1974 through the UPSC in competition with those from open market even though you had been earlier serving as SSO II. In accordance with the existing orders there is a difference in the modes of fixation of pay in the grade SSO I in respect of officers promoted through the Departmental promotion committees and those appointed through the UPSC. The former are entitled to the fixation of pay in accordance with the concordance table issued under the Ministry of Defence O.M. No. 2(18)75/D(Civ I) dated 12-1-1976 whereas the later are not so eligible. The pay fixation in the case of later category of officers is done under Ministry of Defence O.M. No. 2(15)/74/D(Civ I) dated 17-6-1974. Your pay accordingly was correctly fixed at Rs.1150/- w.e.f. 11-6-1974. You will appreciate that you have been given the benefit of your past service in the sense that your pay has been fixed at Rs.1150/- instead of the initial starting pay of Rs.1100/- and no discrimination has been done.

3. The receipt of this Memorandum may please be acknowledged.

Sd/-

(N.N.Venkateswaran)

Under Secretary to the Government of India



To

Shri BALRAM GUPTA, SSO I
Resident Technical Office (Engines)
C/o HAL Bangalore

Thro'

The Chief Resident Engineer (Engines)
Resident Technical Office (Engines)
C/o HAL, Bangalore 17

Copy to :

1. The Chief Resident Engineer (Engines)
Resident Technical Office (Engines)
Bangalore - You are requested to issue
necessity Part II Order to the
fixation of pay at Rs.1150/- p.m.
w.e.f. 11-6-1974 in respect of
Shri Balram Gupta, SSO I
2. The Director
ADE, Bangalore
3. CDA, Southern Command, Poona
4. The ACDA-in-Charge Pay Office (DC)
Cubbon Road Cross
Bangalore
5. Shri B.G. Joshi
Dy CGDA (AT),
West Block V, RK Puram
New Delhi : With reference to his DO
2412/AT-P(PCC) dated 4-7-79"



Aggrieved by this, the applicant approached the High Court
of Karnataka in Writ Petition No. 12089 of 1979 which on
transfer to this Tribunal had been registered as
Application No. 193 of 1986

6. Applicants in Applications Nos. 198 to 202 of 1986
corresponding to W.P. Nos. 13965 to 13969 of 1979 who
were working in one or the other departments of Government
applied to the UPSC between 1977 and 1978 for selection to
the post of SSO I and they were selected and appointed
as SSO I on 15-5-1978 by Government (Annexure A).

.. On

On their appointment and posting as SSO I, the competent authority fixed the pay of the applicants in the time-scale of Rs.1100-1600 p.m. either at the minimum of that time-scale or at the next stage of the pay they were earlier drawing. But, all of them claim the benefit earlier allowed to the applicant in Application No. 193 of 1986.

7. The applicants claim that their cases are similar to promotees to the posts of SSO I of the departments and therefore they are entitled to fixation of their pay on their initial appointment, as extended to the promotees under the Rules and orders of Government. All of them in one voice claim, that the pay initially fixed in the case of the applicant in A.No. 193 of 1986 at Rs.1300/- p.m. on his appointment as SSO I on 11-6-1974 was correct, legal and valid and the same should be upheld rejecting the contrary stand of the respondents.

8. In their separate but identical statement of objections, the respondents have urged that on their selection by the UPSC, the applicants had been appointed to the posts of SSO I as direct recruits and they cannot be treated as promotees for fixation of initial pay. The respondents have urged that the pay initially fixed in the case of the applicant in A.No. 193 of 1986 as if he was a promotee, was erroneous and the same had been rightly corrected. On this basis the respondents oppose the claim of the applicants in A.Nos. 198 to 202 of 1986.

9. On the controversies raised, we must first examine the case of the applicant in A.No. 193 of 1986.

10. Sri V.H. Ron, learned counsel for the applicant contends that for purposes of fixation of initial pay of the applicant on his appointment as SSO I on 11-6-1974, he had to be treated as a promotee of the department and the earlier fixation of his pay at Rs.1300 p.m. was correct and legal in all respects and the order made by Government on 6-7-1975 (Exhibit T) was opposed to Rules and the ruling of the Supreme Court in PURUSHOTTAM LAL v. UNION OF INDIA (1973 SCC (L&S)357 = AIR 1973 SC 1088) and the Division Bench ruling of the High Court of Andhra Pradesh in J.P. GUPTA v. UNION OF INDIA (W.P. No.4859 of 1977) decided on 17-2-1983.

11. Sri M.S. Padmarajaiah, learned Central Government Standing Counsel appearing for the respondents refuting the contention of Sri Ron sought to support the order of Government.

12. Admittedly in response to the notification calling for applications, the applicant being eligible, applied to the UPSC for selection to the post of SSO I which selected him to the advertised post. On that selection, Government appointed him to the post of SSO I on 6-4-1974 in pursuance of which he reported for duty as SSO I on 11-6-1974. On these incontrovertible facts, the one and the only inescapable conclusion one can reach and must reach, is that the applicant was directly appointed to the post of SSO I on 11-6-74 and was not promoted to that post at all. An appointment by direct recruitment is not the same as an appointment by promotion. While in the former, a person is directly appointed to a post, in the latter, a person is promoted from a lower post to a higher post.

The claim of the applicant to treat the two as one which are separate and distinct will obliterate their very identity. On principle, logic and reason this claim of the applicant, is wholly misconceived and far-fetched and cannot be countenanced at all.

13. Every one of the Rules and orders relied on by Sri Ron to drive home his point do not support the claim of the applicant.

14. But, notwithstanding our earlier conclusions, we consider it necessary, to refer to the two decisions of Government of India one reproduced in Chowdary's Compilation, an extract of which is also produced by the applicant as Exhibit U and another dated 11-7-1974 (Exhibit N).

15. We find, that Government of India in its decision relied on by Sri Ron, was interpreting the Union Public Service Commission (Exemption from Consultation) Regulations of 1958 ('the Regulation'). We are of the view, that, that decision of Government must only be confined to interpreting those Regulations and not to all other matters and in any event, not to cases of initial fixation of pay or appointment. Even otherwise, the decision of Government and in any event the sentence viz., "The rules also provide that the departmental officer in the lower grade will also be considered and in case he is selected for appointment, it would be treated as a case of promotion." cannot be read out of context and applied blindly to all cases so as to destroy the very basic concepts behind ^{merit} appointment and promotions. We see no merit in this contention of Sri Ron.

16. The order dated 5-5-1978 of Government, on which strong reliance is placed by Sri Ron reads thus:

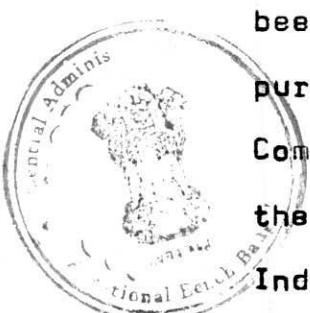
"(b) GTRE letter No. GTRE/3089/Admin dated 5 May 78

It is clarified that the departmental candidates, who compete for higher appointments with outside candidates and are selected for appointment to higher grade against the posts falling in Recruitment quota are treated as direct recruits for all purposes except for fixation of pay."

We are of the view, that even this order when properly read and applied, does not support the case of the applicant. Even otherwise para (b) of this order cannot be read as destroying the basic concepts of appointments and promotions and treating them as one for all purpose.

17. With this we now pass on to examine the authorities relied on by Sri Ron.

18. In Purushothamlal's case the facts were these:

 Purushothamlal and others who were working in the Forest Research Institute and Colleges, Dehra Dun had been denied the benefit of the revision of pay scales pursuant to the recommendations of the Second Pay Commission which were given effect to from 1-7-1959, in the case of all other civil servants of the Union of India. On a representation by Purushothamlal and others, the Government of India revised their pay scales but gave effect to the same from 21-6-1962 on which day it made its order in their favour. Purushothamlal and others, challenged the decision of Government, to the extent it gave effect from 21-6-1962 and not from 1-7-1959 as violative of Article 14 of the Constitution,

...which

which was accepted by the Court and a direction was issued to give them also such benefit from 1-7-59 as in the case of all other civil servants of the Union. But, that is not the position in the present case. In this case, there is no question of giving the benefit of the recommendations of any Pay Commission from any particular date. We are therefore of the view that the ratio in Purushothamalal's case does not really bear the point and assist the applicant.

19. In Gupta's case, the facts were these: Gupta and others who had been promoted as SSO I were denied the benefit of increments for a period of six years, while the direct recruits to that post were given a different treatment. Gupta and others challenged the said action of the Government and urged that their cases were similar to the case of the direct recruits, which was accepted by the Division Bench. But, that is not the position in the present case. On the matter of increments which was the precise question that arose



in Gupta's case, the State is not subjecting the direct recruits to a different and hostile treatment. We are of the view that the ratio in Gupta's case does not also bear on the point and assist the applicant.

20. On the foregoing discussion, it follows that the earlier initial fixation of pay of the applicant as on 11-6-1974, as if he was a promotee though he was a direct recruit to the post was plainly erroneous. When Government realised that mistake it was undoubtedly open to it to rectify the same as has now been done. From this

...it follows

that the challenge of the applicant to the order dated 6-7-1979 (Exhibit T) is liable to be rejected.

21. We must now deal with the overpayment made to the applicant and its recovery.

22. We are informed by Sri Ron, that approximately Rs.21,000/- had been overdrawn by the applicant in Application No. 193 of 1986. Sri Ron on the instructions of his client, who is present before the Tribunal, submits, that the applicant be permitted to repay the overdrawn amount at the rate of Rs.25/- per month. Sri Padmarajaiah submits that recovery of overpayment is regulated by Rules and the same be left to be decided by the authorities in conformity with the Rules.

23. We will assume that there are Rules regulating recovery of overpayment. But, those rules do not take away any power of this Tribunal, to regulate repayment in reasonable instalments.

24. We are of the view, that the rate of recovery suggested by the applicant is grossly inadequate as compared to the amount he had to repay and the gross salary he is drawing which is around Rs.4000/- per month. We are of the view that on a conspectus of all the facts and circumstances, it is reasonable to direct the respondents to recover the overdrawals in 60 equal monthly instalments, the first instalment to commence on 1-1-1987.

25. When we have rejected the claim of the applicant in A.No. 193 of 1986, it follows from the same and for the very reasons stated therein, that the claim of the applicants in A.Nos. 198 to 202 of 1986 cannot be accepted by us and those applications are also liable to be rejected. We must also

...notice

notice that no other contention was rightly urged by Sri Ron in these cases.

26. In the light of our above discussion we make the following orders and directions :

(1) We dismiss Application No. 193 of 1986 in so far as it challenges order dated 6-7-1979 of Government (Exhibit T). But we direct the respondents to recover overpayment made to the applicant in A.No.193/86 in 60 equal monthly instalments, the first instalment to commence on 1-1-1987.

(2) We dismiss Applications Nos. 198 to 202 of 1986.

27. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.



Vice Chairman 27/1

Member (A) 27-X-1986

TRUE COPY

[Signature]
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE