

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
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Annexure 1

Commercial Complex(BDA),  
Indiranagar,  
Bangalore - 560 038

Dated : 11 DEC 1988

Application No. 170 & 171 /86(T)

W.P. No 3443/79

Applicant

HS Sadashiv *M. S. Muniswamy* Vs. Secretary, M/o Labour, New Delhi & 2 o

To

1. Shri SB Swethadri, Advocate,  
Papaiah Bldg.,  
Subedar Chatram Road,  
BANGALORE-9.
2. Shri MS Padmarajaiah,  
Central Govt. Sng. Counsel,  
High Court Bldgs.,  
BANGALORE-1.
3. The Secretary,  
Ministry of Labour,  
Shram Shakti Bhavan,  
NEW DELHI-1.
4. Central Provident Fund Commissioner,  
9th Floor, Mayur Bhavan  
Connaught Circus, NEW DELHI-1.
5. Regional Provident Fund Commissioner,  
3- Rajaram Mohan Roy Road,  
BANGALORE-25.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH IN  
APPLICATION NO. 170 & 171

Please find enclosed herewith the copy of the Order/~~Interim Order~~  
passed by this Tribunal in the above said Application on 28-11-86.

Encl : as above.

REGISTRAR  
SECTION OFFICER  
(JUDICIAL)

Balu<sup>th</sup>

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE 26TH DAY OF NOVEMBER 19 86.

Present : Hon'ble Shri Ch Ramakrishna Rao.. Member (J)  
Hon'ble Shri L.H.A. Rego .. Member (A)

Application No. 170 & 171/86.

H.S. Sadashiv S/o.  
H.L. Siddappa,  
aged about 42 years  
residing at 80, III Main,  
Kengeri Sattalite Town,  
Bangalore-60.

... Applicant

(Shri S.B.Swethadri, Advocate )

Vs.

1. Union of India,  
by its Secretary,  
Ministry of Labour,  
Shram Shakthi Bhavan,  
New Delhi-1.

2. Central Provident Fund Commissioner,  
9th Floor, Mayur Bhavan,  
Cannaught Circus,  
New Delhi-1.

3. Regional Provident Fund Commissioner,  
No.3, Rejaram Mohan Roy Road,  
Bangalore-25.

... Respondents.

(Shri M.S.Padmarajaiah, Advocate )

The application has come up for hearing before  
Court today. The Members made the following :

O R D E R

These are writ petitions filed under Article 226  
of the Constitution of India which are transferred

by the High Court of Judicature, Karnataka, to this Bench under Section 29 of the Administrative Tribunals Act 1985 ( as amended ) and are renumbered as applications. The applicants pray that the respondents be directed by a writ or order in the nature of mandamus to refix their pay with effect from 4.7.1975 and 11.2.1974 respectively in accordance with Rule 22 (C) of the Fundamental Rules with consequential benefit, in accordance with the judgement of the High Court of Judicature, Karnataka in W.P.No.6086 of 1978. Since both these applications are alike in facts and circumstances and the issues to be determined are the same, we propose to dispose of both these applications by a common order.

2. The relevant service particulars of the two applicants are tabulated as under, to facilitate reference at a glance :

Sl. No.	Service Particulars	Sh.E.Krishnaswamy, ( Applicant 1 )	Sh.S.Sade- Shiv ( Applicant 2 )
		Appln.No.170/86	Appln.No.171/86
(i)	Date of promotion as UDC I/C and the pay fixed per month.	4.7.1975 Rs.455/-	12.2.1974
(ii)	Date of promotion as HC and the pay fixed per month.	8.7.1975 Rs.485/-	28.8.1974 Rs.485/-

NB : UDC means Upper Division Clerk

UDC I/C means Upper Division Clerk In-Charge

HC means Head Clerk

3. The details as regards the pay scales of the following pertinent three categories of the posts in the Provident Fund Organisation (PFO) prior to and after 1.1.1973 (i.e. the date with effect from which the pay scales were revised on the recommendations of the IIIrd Pay Commission) are as below :

Sl. No.	Category of Post	Pay Scale Rs.	
		Prior to 1.1.1973	After 1.1.1973
(1)	(2)	(3)	(4)
(i)	UDC	130-5-160-8-200 EB-8-256-EB-8-280	330-10-380-EB-12- 500-EB-15-560
(ii)	UDC I/C	130-5-160-8-200- EB-8-256-EB-8-280- 10-300 plus Charge Allowance of Rs.20/- per month.	425-15-530-EB-15- 560-20-600
(iii)	HC	210-10-290-15-320- EB-15-425	424-15-500-EB- 15-560-20-700

NB : The Charge Allowance of Rs.20/- p.m. was discontinued.

4. UDC I/C is entrusted with the charge of a Section comprising 5 or more clerks for which a monthly Charge Allowance of Rs.20/- is sanctioned. His functions there-fore are semi-supervisory in nature. The pay scale of this post was nearly identical with that of the UDC prior to revision of the pay scales with effect from 1.1.1973 as would be seen from the above tabular statement, except that its terminal stage was marginally higher by Rs.20/- p.m. As compared to this post, the pre-revised pay scale



of the post of HC was significantly higher as would be seen from the above tabular statement. A H.C. supervises ten Clerks or more in a Section of which he is in charge.

5. The Central Provident Fund Commissioner (CPFC) in his letter dated 13.6.1977 (Exhibit F) addressed to all the Regional Provident Fund Commissioners (RPFCs) declared, that the appointment of UDCs I/C ( in the revised pay scale of Rs.425-600 ) as HCs, in the revised pay scale of Rs.425-700, did not involve assumption of duties or responsibilities of greater importance, for the purpose of Fundamental Rules and Supplementary Rules (FR & SR), and the revised pay scale of UDC I/C was only a segment of that of the HC. Consequently, they were directed to re-fix the pay of the employees concerned, in accordance with FR 22 (a)(ii) and not under FR 22-c as was done earlier. Pursuant to this direction, the third respondent, re-fixed the pay of the first applicant, under FR 22(a)(ii) at Rs.455 p.m. in the post of HC w.e.f. 8.7.1975 under his Order dated 31.8.1977 (Exhibit G) while he was actually drawing pay of Rs.485/- p.m. The pay of the second applicant was similarly re-fixed by the third respondent at Rs.485/- pm. in the post of Head Clerk under his order dated 31.8.1977 (Exhibit G) w.e.f. 28.8.1974 whereas he was actually then drawing pay at Rs.545/- p.m. and had even crossed the Efficiency Bar in the post of UDC I/C in the revised pay scale. This order was later partially modified by the selfsame

respondent on 3.9.1977 (Exhibit D) when the pay of the second applicant was refixed at the stage of Rs.515/- p.m., on the condition that it would take effect from the date of that order, after obtaining sanction from the competent authority to cross the Efficiency Bar.

6. Both the applicants have cited the case of one Shri V.R.Hegde, Head Clerk in the Office of the RPFC, as similar to theirs, who had filed W.P.No. 6086 of 1978 in the High Court of Judicature, Karnataka, challenging the direction of the CPFC in his aforesaid letter dated 13.6.1977 (Exhibit F) to refix their pay in the post of HC according to FR 22 (a)(ii). The High Court is seen to have upheld the writ petition and quashed the impugned order observing among other things, that the said order was contrary to FR 22-c and that the petitioner was not given an opportunity to explain his case before reduction of his pay, which was violative of natural justice, having resulted in serious civil consequences to him.

7. The first applicant had represented to the third respondent on 1.3.1977 (Exhibit I) to refix his pay in the grade of HC in the light of the above judgement. In reply, he was informed on 16.3.1979 (Exhibit J) that the matter was under examination by the CPFC, and that a further communication would follow. The

second applicant had similarly represented to the third respondent on 31.8.1978 (Exhibit F) and he too was given a reply in like manner on 23.10.1978 (Exhibit G). Both the applicants have now come before us for redress as the third respondent has not refixed their pay in accordance with FR 22-c in the grade of HC in the light of the above judgement of the High Court of Karnataka. They also <sup>stated</sup> ~~said~~ that their pay be refixed in accordance with FR 22-c with effect from 4.7.1975 and 11.2.1974 respectively in the case of the first and the second applicants with consequential benefit.

8. We have examined carefully the pleadings of both sides as also the material placed before us. It is necessary at the outset, to study the implications of FR 22(a)(ii) and FR 22-c which have a crucial bearing on these two applications. To facilitate reference the relevant extract of these rules is reproduced below :

"FR 22(a)(ii) : When appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or if there is no such stage, the stage next below that pay, plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum pay of the time-scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay;"

"FR 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 of the 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 :

Provide that the provisions of this rule shall not apply where a Government servant holding a Class I post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to a higher post ( which is also a Class I post and carries a time-scale of pay with the minimum more than Rs.1,500:)

Provided further that the provisions of sub-rule (2) of Rule 31 shall not be applicable in any case where the initial pay is fixed under this rule :

Provided also that where a Government servant is, immediately before his promotion or appointment to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the 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 an amount equal to the last increment in the time-scale of the lower post :

Provided that if a Government servant either—  
(1) has previously held substantively, or officiated in—



- (i) the same post, or
- (ii) a permanent or temporary post on the same time-scale, or
- (iii) a permanent post other than a tenure post, or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale ; or


(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated;

then proviso to F.R.22 shall apply in the matter of the initial fixation of pay and counting of previous service for increment.

EXPLANATION. - In this rule, the expression "Class I" has the meaning assigned to it under the Central Civil Services (Classification, Control and Appeal) Rules, 1965."

9. The learned counsel for the respondents submits that the pay of the first applicant in the post of UDC I/C was fixed under FR 22-C at the stage of Rs.455/- p.m. on 4.7.1975, consequent to the pay scale of this post having been revised as Rs.425-15-530-EB-15-560-20-600 with effect from 1.1.1973 as recommended by the III rd Pay Commission. The applicant was subsequently appointed to officiate as HC with effect from 8.7.1975 i.e. just 4 days after his promotion as UDC I/C. At this time also, his pay was fixed at the stage of Rs.485/-p.m., with effect from 8.7.1975 in the post of HC in the revised pay scale

entitled to incremental benefit under that rule provided, the post to which they are appointed carries duties and responsibilities of greater importance than those attached to the post held by them earlier. In the context of this Rule, it needs to be determined, as to whether the two posts in question namely that of UDC I/C and HC, carry duties and responsibilities of greater importance as compared to the posts immediately below them. Among other things, the normal parameters to help determine this are, the very nature of the pay scale of the posts, the nature of the duties involved, the mode of appointment and the extent of supervisory control exercised over the ministerial personnel. Para 56.1 I(3), Chapter IV of the Employees' Provident Fund Manual, lays down the following yardstick for the creation of posts of HCs and UDCs I/C in a Regional Office.



Sl.No.	Category of Post	Yardstick Prescribed
(1)	(2)	(3)
(i)	HC	For a Section of 10 Clerks or more
(ii)	UDC I/C, with Charge Allowance of Rs.20/- p.m.	For a Section of 5 clerks and above.

16. Prior to 1.1.1973 it carried a Charge Allowance

of Rs.20/-p.m. <sup>if on account</sup> of the higher workload and responsibility involved, as compared to the post of UDC. Even the pre-revised pay scale of this post, was not exactly identical with that of the UDC as its terminal stage was higher by Rs.20/-p.m. After 1.1.1973, the pay scale of this post was revised to Rs.425-600 which was distinctly higher than that of UDC, which was revised to Rs.330-560. Viewed in this context and taking into account the fact, that a UDC I/C exercises supervision over a Section of 5 Clerks and above, while a UDC has no such supervisory function, it is apparent that the post of UDC I/C as compared to that of the UDC, carries duties and responsibilities of greater importance, so to attract the provisions of FR 22-C for the benefit of fixation of pay, in the event of appointment from the post of UDC to that of UDC I/C.

17. On a similar analogy, it cannot be gainsaid that the post of HC as compared to that of UDC I/C carries duties and responsibilities of greater importance. The revised pay scale of Rs.425-700 of this post, cannot be said to be wholly identical with that of the UDC I/C namely, Rs.425-600, as the terminal stage is higher by as much as Rs.100/-p.m. and the stage of ~~fixing~~ the Efficiency Bar, is earlier i.e. at Rs.500/- as compared to Rs.530/- in the case of UDC I/C. Besides, a HC exercises wider supervisory control as compared to UDC I/C, in that, he supervises a Section of 10 Clerks and more, while a UDC I/C supervises the work of only 5 Clerks and above. It is, therefore,

- (i) the same post, or
- (ii) a permanent or temporary post on the same time-scale, or
- (iii) a permanent post other than a tenure post, or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale ; or

(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated;

then proviso to F.R.22 shall apply in the matter of the initial fixation of pay and counting of previous service for increment.

EXPLANATION. - In this rule, the expression "Class I" has the meaning assigned to it under the Central Civil Services (Classification, Control and Appeal) Rules, 1965."

9. The learned counsel for the respondents submits that the pay of the first applicant in the post of UDC I/C was fixed under FR 22-C at the stage of Rs.455/- p.m. on 4.7.1975, consequent to the pay scale of this post having been revised as Rs.425-15-530-EB-15-560-20-600 with effect from 1.1.1973 as recommended by the III rd Pay Commission. The applicant was subsequently appointed to officiate as HC with effect from 8.7.1975 i.e. just 4 days after his promotion as UDC I/C. At this time also, his pay was fixed at the stage of Rs.465/-p.m., with effect from 8.7.1975 in the post of HC in the revised pay scale

of Rs.425-700 by applying FR 22 C. Since the pay of the first applicant was thus fixed twice, according to FR 22C barely within four days, the matter was reexamined by the CPFC, who directed, that his pay be fixed according to FR 22-C [and not under, FR 22 (a) (ii)] on his appointment to the post of HC, as the appointment to this post from that of UDC I/C, did not involve assumption of duties and responsibilities of greater importance, for the purpose of FR 22-C and the pay scale of the post of UDC I/C as revised, was only a segment of that of the post of HC.

10. The same contention is advanced by the counsel for the respondents in respect of the second applicant. His pay as UDC I/C was re-fixed under FR 22-C with reference to the lower post of UDC, as the former post involved assumption of duties and responsibilities of greater importance, but so far his appointment to the post of HC was concerned, his pay was re-fixed under FR 22(a)(ii). The other argument put forth by the counsel for the respondents was, that the post of UDC I/C was an ex-cadre post and according to the Employees Provident Fund (Staff and Conditions of Service) Regulations 1962 (Regulations, for short), it was not in the feeder channel for promotion to the post of HC. The following is the relevant extract of these Regulations:



### THIRD SCHEDULE

Sl. No.	Post	Posts to be reserved for deptal. promotion.	Next lower grade from which promotion is to be made
24	Head Clerks (Regional Offices)	75%	Promotion of UDCs and Stenographers (Junior) serving in the respective regions on the basis of seniority subject to the rejection of unfit.
		25%	Promotion of employees serving in the Headquarters and Regional Offices on the basis of a qualifying examination restricted to those who have rendered not less than three years' service as UDCs including Stenographers (Junior) and who are not more than 40 years of age on the 1st day of January of the year in which the examination is held, failing which by direct recruitment, Provided that the vacancies falling in the quota of 25% referred to above shall first be filled by promotion of employees from the respective Regional Offices who have successfully competed in the examination and to the extent such employees from the respective Regional Offices are not available for promotion against the available vacancies in any recruitment year, any such vacancy or vacancies, as the case may be, shall be filled in by promotion of employees serving in the Headquarters and other Regional Offices who have successfully competed in the said examination.

(1)

(2)

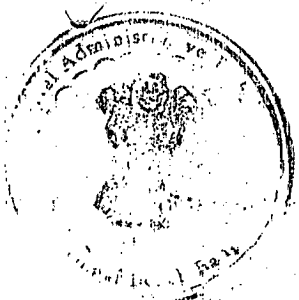
(3)

(4)

Provided further that inter-seniority of the successful candidates so appointed from the same examination, whether from amongst the successful employees of the Regional Offices or the Headquarters Office shall be determined according to the merit on the basis of marks obtained.

11. The counsel for the respondents submits that for the above reasons, the pay of the applicants in the post of HC, is to be fixed according to FR 22-C, with reference to their pay in the lower cadre post of UDC and not in the post of UDC I/C which is an ex-cadre post not in the channel of promotion to the post of H.C. He further submits that the pay fixed in an ex-cadre post, is relevant only for the duration for which the post is held and therefore cannot be the basis for fixation of pay on promotion from a lower to a higher cadre post.

12. The counsel for the respondents states, that in the case of Shri V.R. Nagde, who is said to be similarly circumstanced as the two applicants, his pay in the post of HC, has been fixed under FR 22-C in compliance with the direction of the High Court of Karnataka, in the writ petition referred to above. He admits that initially for want of specific instructions from the



Union Ministry of Home Affairs, the pay of the applicants was erroneously fixed in the post of HC under FR 22-C with reference to the pay drawn by them in the ex-cadre post of UDC I/C and the increments authorised provisionally in that post. This was later rectified on the instructions issued by the said Ministry on 8.2.1979.

13. The counsel for the respondents further contends that the post of UDC I/C being an ex-cadre post and not in the line of promotion to the post of HC, the appointment of the applicants to the post of UDC I/C is not a promotion for the purpose of fixation of their pay under FR 22-C.

14. It appears from the contentions of the counsel for the respondents, that the applicants are ineligible for the benefit of FR 22-C in regard to fixation of their pay on their appointment to either posts namely UDC I/C and HC. As the picture presented to us seems hazy, it is necessary to clear the mist by going to the root of the pertinent rules viz FR 22(a)(ii) and FR 22-C, on which this case crucially rests.

15. A plain reading of FR 22-C reveals, that regardless of the nature of the post held or from which appointed to the next post i.e. whether in a substantive, temporary or officiating capacity, the applicants are



evident, that the post of HC carries duties and responsibilities of greater importance than that of IDC I/C and consequently an incumbent appointed to this post, from the post of UDC I/C is entitled to incremental benefit, for fixation of his pay in terms of FR 22-C.

18. The counsel for the respondents contends, that the post of UDC I/C being an ex-cadre one, is not in the feeder channel for promotion to the post of HC and therefore, when an incumbent holding the post of UDC I/C is appointed to that of HC, his pay in the latter post, needs to be fixed under FR 22-C, with reference to his pay in the post of UDC which is in the feeder channel of promotion. On the other hand, the counsel pleads, that since the pay scale of the post of UDC I/C is a segment of that of the post of HC, both these posts are equivalent and therefore a person holding the post of UDC I/C appointed as HC, cannot claim incremental benefit under FR 22-C, for fixation of his pay. If the post of UDC I/C is an ex-cadre post, as contended by the counsel for the respondents, we cannot comprehend, as to how he can deem it to be equivalent to the cadre post of HC with its pay scale forming a segment of it, apart from the fact, that for the reasons aforesaid, we are of the view, that the post of HC carries duties and responsibilities of greater importance as compared to the post of UDC I/C. To us this line of argument by the counsel for the respondents seems fallacious and equivocal.

19. In the case of the second applicant, the counsel for the respondents contends that as he held the post of UDC I/C for a period of barely four days from 4.7.1975 to 7.7.1975, in which he was conferred incremental benefit under FR 22-C while fixing his pay, he cannot claim the same benefit again, on his appointment to the post of H.C., as this would be tantamount to giving him double benefit. We are unable to appreciate the validity of this contention. It is strange as to how the second applicant was appointed by the respondents to the ex-cadre post of UDC I/C, for only four days instead of appointing him direct to the post of H.C. subject to eligibility and suitability of the applicant for this post. Nevertheless, having once appointed, the applicant to the post of UDC I/C despite the above circumstances, it is obligatory for the respondents, to adhere to the principle of fixation of pay under the rules, uniformly. We have already expressed earlier, for the reasons stated, that the post of HC carries duties and responsibilities of greater importance as compared to that of UDC I/C and as such, in our view, the second applicant is entitled to the benefit of Rule 22-C for fixation of his pay in the post of HC, with reference to the pay drawn by him in the post of UDC I/C, whatever be the duration for which, he held this post.

20. The ratio of the decision of the High Court of Judicature, Karnataka in Writ Petition No. 6385 of 1978 filed by Shri V.R. Hagde, cited by the applicants, as

relating to their case, they being similarly circumstanced, seems to accord with our reasoning and conclusion in this case. Learned Counsel for the respondents however, vehemently contends, that the aforesaid decision, suffers from legal infirmity apart from the fact, that it is not binding on this Tribunal, and therefore, we may find to bear a de novo examination of the matter. While the decision of the High Court of Karnataka may not have a binding effect on us, as submitted by the learned counsel, we are not persuaded to accede to his contention, as the two applicants in these two applications, are similarly circumstanced as Shri V.S.Hegde, the writ petition filed by whom was decided by the High Court of Karnataka. We are, therefore inclined to give effect to the principles enunciated in the decision referred to above, lest this should result in invidious discrimination between Shri V.S.Hegde on the one hand and the applicants on the other, which is not desirable.

21. In the result we make the following order.

- (i). The appointments of both the applicants from the post of UDC first to that of UDC I/C and thereafter, to that of the HC are deemed to be of the nature of promotion as they entailed assumption of duties and responsibilities of greater importance, as compared to the corres-



pending immediately lower posts, from which they were so promoted. We therefore direct the respondents, to refix the pay of the applicants in the posts of UDC 1/C and HC in accordance with FR 22-C and grant them consequential benefit, within a period of 2 months from the date of receipt of this order.

- (ii) In the result, the applications are allowed as indicated above. We direct the parties to bear their own costs.



Sx/-

MEMBER (A)(R) 28.11.86

Sx/-

MEMBER (J)

kam/3.12.1986.

True Copy

REGISTERED  
Central Administrative Tribunal  
Bangalore Bench  
Bangalore

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