

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 29 SEP 1988

APPLICATION NOS. 923 to 928 / 88(F)

W.P. NO. _____

Applicant(s)

Respondent(s)

Dr Srinivasa Rao & 5 Ors V/s The Chief Medical Officer, CGHS, B'lore & anr
To

- | | |
|---|---|
| <p>1. Dr Srinivasa Rao
698-E, II Phase
Vishwabharathi Housing Complex
Girinagar
Bangalore - 560 085</p> <p>2. Dr P. Vasanth Kumar
No. 181, I Floor, V Main
J.P. Nagar III Phase
Bangalore - 560 078</p> <p>3. Dr C.S. Naik
10-A, 10th Main
1st 'N' Block, Rajajinagar
Bangalore - 560 010</p> <p>4. Dr (Mrs) Vatsala R
98-A, Broadway Road
Bangalore - 560 051</p> <p>5. Dr (Mrs) Sushma Chand
591, 17-A Cross, 7th Main
Indiranagar II Stage
Bangalore - 560 038</p> | <p>6. Dr (Mrs) Premate Venkatesh
No. 7, Narayanappa Block
R.T. Nagar
Bangalore - 560 032</p> <p>7. Dr M.S. Nagaraja
Advocate
35, II Floor, 1st Main Road
Gandhinagar
Bangalore - 560 009</p> <p>8. The Chief Medical Officer
Central Govt. Health Scheme
21/2/2A, 9th Main
IIIrd Block West
Jayanagar
Bangalore - 560 011</p> <p>9. The Secretary
Ministry of Health & Family Welfare
(Department of Health)
Nirman Bhavan
New Delhi - 110 011</p> <p>10. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001</p> |
|---|---|

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAY/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 6-9-88.

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE SIXTH DAY OF SEPTEMBER, 1988

Present: Hon'ble Shri P. Srinivasan

.. Member (A)

APPLICATION NOS. 923 TO 928/1988

1. Dr. Srinivasa Rao
Aged 40 years
S/O. Sri R. Nanjundaiah
No.698-E, II Phase
Vishwabharathi Housing Complex
Girinagar, Bangalore-560 085.

2. Dr. P. Vasanth Kumar
38 years
S/O. Shri P. Gopinatha Rao
No.181, I Floor, V Main
J.P. Nagar, III Phase
Bangalore - 560 078.

3. Dr. C.S. Naik
Aged 45 years
S/o. Shri S.D. Naik
No.10-A, 19th Main
Rajajinagar Ist 'N' Block
Bangalore - 560 010.

4. Dr. (Mrs.) Vatsala R.
Aged 40 years
W/o. Dr. K. Radhakrishnan
No.98-A, Broadway Road
Bangalore - 560 051.

5. Dr. (Mrs.) Sushma Chand
Aged 41 years
W/o. Shri K.C. Gupta
No.591, 17-A Cross, 7th Main
Indiranger II Stage
Bangalore - 560 038

6. Dr. (Mrs.) Premlata Venkatesh
Aged 42 years
W/o. Shri R. Venkatesh
No.7, Narayanappa Block
R.T. Nagar, Bangalore-560 032.

.. Applicants

Dr. M.S. Nagaraja, Advocate)

Vs.

1. The Chief Medical Officer
Central Government Health Scheme
Bangalore.
2. Government of India represented
by its Secretary
Ministry of Health & Family Welfare
New Delhi.

.. Respondents

(Shri M. Vasudeva Rao, Advocate)



P. Srinivasan

These applications having come up for hearing before the Tribunal today, Hon'ble Shri P. Srinivasan, Member (A), made the following:

ORDER

The six applicants in these applications were appointed to the Junior scale of the Central Government Health Scheme (CGHS) Class I on different dates in 1974 and 1975. By a common order dated 4.1.1983, they were all promoted to the senior scale of Class I of the said service with retrospective effect from 25.11.1982. Curiously enough, they contend that their promotion should not have been made effective retrospectively from 25.11.1982 but from the date of the order of promotion, i.e., 4.1.1983 or from a still later date.

2. Why should anybody make a grievance of the fact that he is given antedated promotion? The answer to this question is provided by the manner of fixation of pay on promotion from the revised Junior Class I to the Senior Class I scale of pay in certain organised Class I services (including the CGHS) laid down in an Office Memorandum dated 14.11.1975 issued by the Ministry of Finance of the Government of India (Page 422, Appendix-9 of Swamy's Compilation of FR and SR, Part 1 - General Rules, Eighth Edition) - herein after referred to as "the OM". According to the OM, the initial pay to be fixed in the senior scale is correlated to the stage in the junior scale at which

P. S. - - -

pay was being drawn by the official concerned immediately before his promotion. A "Concordance Table" setting out each stage in the Junior scale and the corresponding stage in the senior scale at which the promoted official is to be fixed forms part of the OM. To understand ^{how} this concordance table has affected the applicants, we may take the case of the first applicant, Dr. Srinivasa Rao, as an illustration. Dr. Srinivasa Rao was drawing pay at the stage of Rs 1060 in the junior scale ~~immediately~~ on the date from which his promotion to the senior scale was made effective i.e., 25.11.1982. However, he was due to draw an increment in the junior scale raising his pay to Rs 1100 on 1.12.1982. The concordance table provides that as against the pay of Rs 1060 in the junior scale, pay admissible on promotion to the senior scale would be Rs 1250. ~~The admissible pay in the senior scale would be~~ Rs 1250. The admissible pay in the senior scale corresponding to the stage of Rs 1100 in the junior scale is Rs 1300. Thus by being promoted with effect from 25.11.1982, Dr. Srinivasa Rao's pay in the senior scale on promotion from that date was fixed at Rs 1250 (as he was drawing Rs 1060 in the junior scale at that time). If he had been promoted from 1.12.1982 or from the date of the order of promotion, i.e., 4.1.1983, his pay in the senior scale on promotion would have been fixed at Rs 1300 (corresponding to the pay of Rs 1100 in the junior scale which he would have reached on 1.12.1982). Thus by antedated



P. S. - 45

Promotion, Dr. Rao suffered loss of pay in the senior scale. Even prior to the OM of 14.11.1975 which was issued after the junior and senior scales of pay were revised from 1.1.1973, a concordance table was in force to regulate the fixation of pay on promotion to the senior scale of Class I. However, after the initial fixation of pay in the senior scale on promotion, increments in the senior scale were allowed on the same dates on which increments would have fallen due in the junior scale. Taking the illustrative case of Dr. Srinivasa Rao again, if he were to be governed by the rules in force prior to 1.1.1973, though his pay on 25.11.1982 in the senior scale would still be fixed at Rs 1250, he would draw the next increment in that scale raising his pay to Rs 1300 on 1.12.1982 itself when he would have become due for an increment in the junior scale. The OM of 14.11.1975 brought about a change in this rule by providing that persons promoted from the junior to the senior scale of Class I after 1.1.1973 "shall be allowed their increment in the senior scale on the anniversary of the date of their promotion". This meant that Dr. Srinivasa Rao would get the next increment taking his pay to Rs 1300 in the senior scale only one year after his promotion, i.e., from 1.11.1983. It would therefore have been decidedly to his advantage if his promotion to the senior scale had been made effective from 1.12.1982 or even from 4.1.1983 for his pay would then have been fixed at Rs 1300 from the date of promotion itself. Similar is the position as regards the other applicants

P. Srinivasa Rao

-5-

also, though the actual pay being drawn by them in the junior scale, the pay in the senior scale allowed to them on promotion from 25.11.1982 and the date on which they would become due for an increment in the junior scale were not the same.

3. The application of the concordance Table with the amended rule regarding the date of increment in the senior scale after promotion involved another anomaly. It could result in a junior officer promoted to the senior scale subsequently drawing a higher pay in the senior scale than his senior promoted earlier. In the illustrative case of Dr. Srinivasa Rao, ^{or} a junior of ^{his} ~~him~~ also drawing pay in the junior scale at the stage of Rs 1060 on 25.11.1982 with the next increment falling due also on 1.12.1982 ^{or} ~~were~~ promoted to the senior scale, say, with effect from 1.1.1983 would straightaway have his pay fixed at Rs 1300 from the date of promotion, while Dr. Rao was still drawing only Rs 1250. Recognising this anomaly, the OM of 14.11.1975 provided that the pay of the senior would be stepped up to equal the pay of the junior from the date the junior starts drawing the higher pay in the senior scale on promotion.

4. Dr. M.S. Nagaraja, learned counsel for the applicants contended that the respondents had discriminated against the applicants by fixing a retrospective date of promotion in their cases while normally such promotions took effect only from the date of the order of promotion or from such date thereafter as and when the promoted officials took charge of the post in the senior scale. He, therefore, pleaded that this Tribunal should



direct that the promotion of the applicants shall take effect only from 4.1.1983 or such later date on which they assumed charge of the higher posts.

5. Shri M. Vasudeva Rao, learned counsel appearing for the respondents, resisting the contention of Dr. Nagaraja, submitted that the respondents had every right to fix the date from which the promotion of the applicants would be effective depending on administrative convenience and the question of discrimination does not arise.

6. On careful consideration, I am of the view that it is for the administration to decide when posts in a higher grade are to be filled in. If orders of promotion are issued before the date from which it is decided to fill up vacancies in the higher grade, promotions would take effect from a future date; for instance, even in the present case, the order of promotion could just as well have been passed on 25.11.1982 itself or on some earlier date. It is not for this Tribunal to tell the administration when posts in a higher scale should be filled up. The mere accident of an order of promotion being issued before or after the date from which such promotion is to take effect cannot give rise to the change of discrimination. I, therefore, reject the contention that the applicants had been subjected to hostile discrimination.

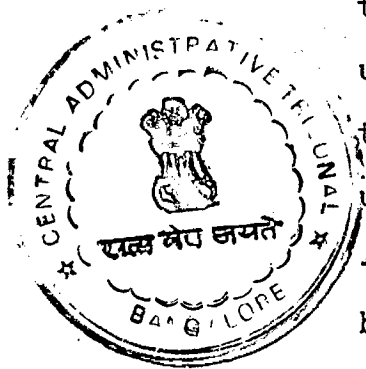
7. Dr. Nagaraja next urged, relying on FR 31 (2), that even though the applicants were promoted to the senior scale with effect from 25.11.1982, they

P. S. - 182

should have been allowed to draw their first increment in the senior scale from the date on which the next increment in the junior scale became due to them. In the illustrative case of Dr. Srinivasa Rao, his pay, fixed at Rs 1250 as on 25.11.1982 should have been raised to Rs 1300 with effect from 1.12.1982 when his pay in the junior scale would have stood enhanced to Rs 1100.

8. Shri M. Vasudeva Rao on the other hand, contended that FR 31(2) had no application to fixation of pay under the OM of 14.11.1975 which was a self contained code governing the subject.

9. As I have indicated earlier in this order, fixation of pay under the concordance table could give rise to two kinds of anomalies. The first is that a junior person promoted later could be fixed on a higher initial pay in the senior scale than his senior promoted earlier. Both prior to and subsequent to 1.1.1973, this anomaly ^{or could} ~~can~~ be rectified by stepping up the pay of the senior to that of the junior from the date of the latter's promotion. It was, however, urged on behalf of the applicants before me that though such anomalies are bound to have occurred as between the applicants and their juniors promoted from later dates, they were in no position to avail of the remedy of having their pay stepped up: the gradation list of Medical Officers of CGHS in Class I issued on an All India basis did not indicate either the date of promotion of each individual to the senior



P. S. - 80

scale or the pay drawn by each such person from time to time in the senior scale after promotion. In the absence of such information in the gradation list, it was not possible for the applicants to obtain the same themselves from every individual officer promoted after them as the officers in the service are spread out all over the country. The authorities do not undertake to set right the anomaly themselves and take action only when claims are preferred by the affected officials. Dr. Nagaraja therefore submitted that this remedy of stepping up the pay of seniors to equality with that of their juniors in the senior scale and allowing the seniors increments of pay thereafter annually from such stepped up pay was virtually a dead letter so far as the applicants are concerned.

10. Even without comparing the initial pay fixation of seniors and juniors in the senior scale as mentioned above, the pay of an officer on promotion to the senior scale could vary accordingly as he is promoted a day before he is due for an increment in the junior scale or on or immediately after the date of such increment. If promoted just before the increment in the junior scale falls due, as in this case, the initial pay in the senior scale would be less by one stage as compared to what it would have ^{been} if the promotion had taken place on or after the increment fell due. This anomaly was sought to be set right prior to 1.1.1973 by giving the concerned official the next increment in the senior scale when he became due for an increment in the junior scale, even if only a day after promotion and adopting the same date in

succeeding years for further increments. This would also, to a substantial extent, eliminate the other anomaly of pay fixation of seniors vis-a-vis their juniors referred to earlier. But this concession was withdrawn after 1.1.1973 giving rise to the grievance mooted in this application. The OM of 14.11.1975 in clear terms denies the benefit of increments in the senior scale related to the date of increments in the junior scale and rules that increment in the senior scale would be allowed only "on the anniversary of the date of their promotion".

11. In this background, are the applicants entitled to fall back on FR 31(2) and claim their first increment in the senior scale after promotion (over the initial pay fixed on such promotion) when an increment would have fallen due in the junior scale? To be more specific is Dr. Srinivasa Rao right in urging that the initial pay of Rs 1250 fixed in his case on promotion from 25.11.1982 should have been raised to Rs 1300 on 1.12.1982 when he was due for an increment in the junior scale from the stage of Rs 1060 to Rs 1100 ?

We reproduce FR 31 in full below:

31(1)"Subject to the provision of Rules 30 and 35 a Government servant who is appointed to officiate in a post will draw the presumptive pay of that post.

(2) On an enhancement in the (grade pay of the lower post) as a result of increment or otherwise, the pay of such Government servant shall be re-fixed under sub-rule (1) from the date of such enhancement as if he was appointed to officiate in that post on that date where such re-fixation is to his advantage:

(Provided that such lower officiating post was held for not less than three years or would have been so held but for the officiation in the other higher cadre posts):

Provided further that the provisions or Rule 22-C shall not be applicable in the matter of re-fixation of pay under sub-rule (2) of this rule".



Presumptive pay is defined in FR 9(24) as follows:

"Presumptive pay of a post, when used with reference to any particular Government servant, means the pay to which he would be entitled if he held the post substantively and were performing its duties; but it does not include special pay unless the Government servant performs or discharges the work or responsibility, in consideration of which the special pay was sanctioned".

I may straightaway clarify that FR 30 and 35 do not in the present case, affect the operation of FR 31 and that therefore the qualification at the beginning of FR 31 extracted above may be ignored. In accordance with the concordance table, Dr. Srinivasa Rao was entitled to a pay of Rs 1250 in the senior scale on his promotion with effect from 25.11.1982. That therefore was his "presumptive pay" referred to in FR 31(1). His grade of pay in the lower post (junior scale) stood enhanced from Rs 1060 to Rs 1100 on 1.12.1982 as a result of an increment and the corresponding pay in the senior scale in the concordance table is Rs 1300. According to FR 31(1), his pay in the senior scale is to be refixed "from the date of such enhancement, as if he was appointed to officiate in that post on that date where refixation is to his advantage". It was clearly to Dr. Rao's advantage to have his pay refixed on 1.12.1982 as if he was appointed to a post in the senior scale on that date. Therefore if FR 31 (2) were to be applicable Dr. Rao would be eligible to refixation of his pay in the senior scale ^{at} of Rs 1300 (corresponding to the enhanced pay of Rs 1100 in the junior scale) with effect from 1.12.1982 and increments thereafter at yearly intervals, i.e., on 1st December of each year.

75-10

12. Can Dr. Rao be denied the benefit of FR 31(2) because the OM of 14.11.1975 is a self contained code as urged by Shri M.V. Rao for the respondents? FR 2 extends the application of all the Fundamental Rules" to all Government servants whose pay^{is} debitable to Civil Estimates", "except those" governed by Army or Marine Regulations" (FR 3). The OM of 14.11.1975 does not in specific terms exclude the application of FR 31(2). On the other hand, an OM dated 2/5/1959 of the Ministry of Finance (page 148-149 of Swamy's Compilation of FR SR Part I - General Rules, Eighth Edition) clarifies that FR 31 is applicable to officers promoted from the junior to the senior scale in the Established Central Services, Group A (to whom the concordance table applies); the respondents do not say that the said OM of 2/5/1959 is no longer valid after 1.1.1973. In a letter dated 30.3.1983 (Annexure A-4 to the application), the Accountant General, Karnataka, says that "there is no provision" in the OM of 14.11.1975 "for refixation of pay in the senior scale with reference to the concordance table on an enhancement of pay in the junior time scale", but goes on to add that "this is a matter on which an authoritative ruling should rest with the Government of India, Ministry of Finance".

13. On a careful consideration of the matter, I am led to the view that the applicants are entitled to the benefit of FR 31 (2) and to have their pay in senior scale refixed with reference to the concordance table from the date they became due for an increment in the junior scale after their promotion to the senior scale

P. S. - 12



and for increments over the pay so refixed at yearly intervals thereafter if such fixation is advantageous to the applicants. While the concordance table perhaps confers some additional benefits in the matter of pay fixation on promotion to the senior scale of Class I not otherwise available in the Fundamental Rules, it cannot take away a right conferred on a Government servant by any of the Fundamental Rules (FR 31(2) in this case).

14. The respondents are therefore directed to refix the pay of the applicants in the senior scale of Class I in terms of FR 31(2) from the date they became due for an increment in the junior scale after their promotion to the senior scale. Their pay should be refixed from that date at the stage in the senior scale in the concordance table corresponding to the pay in the junior scale after the said increment, i.e., as if they were promoted to the senior scale on the date of the said increment. The applicants will be allowed increments in the senior scale over the pay so refixed at annual intervals thereafter. By way of illustration Dr. Srinivasa Rao's pay in the senior scale should be refixed at Rs 1300 from 1.12.1982 and his increments in the said scale over this pay should be allowed at annual intervals thereafter on 1.12.1983, 1.12.1984 and so on. Arrears of pay due to the applicants should be paid to them as expeditiously as possible and in any event not later than 3 months from the date of service of this order.

75-48

15. The application is allowed as indicated above. Parties to bear their own costs.

Sd/-

(P. SRINIVASAN)
MEMBER (A)

TRUE COPY



[Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

Yours faithfully,
for Addl. Registrar.

noted above and that the same was/were ~~xxx~~ dismissed/denied of by this Court on the 17th day of March, 1989

Kannada Central Administrative Tribunal at Bangalore

I am to inform you that the Petitions above-mentioned for Special Leave to Appeal to this Court was/were filed on behalf of the Petitioner above-named from the judgment and order of the ~~XXXXXX~~

STP

Dr. Srinivasa Rao & Ors.

Versus

••Petitioner (S)

Chief Medical Officer & Amr.

Mannarkudi/Central Administrative Tribunal, at Bangalore. In Application Nos. 923-928/88.

Special Leave to Appeal to the Supreme Court from the judgment of the High Court of the

1646-51 OF 1989. PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS.

~~The Registrar~~
Central Administrative Tribunal
at Bangalore.

01

The Additional Registrar,
Supreme Court of India.

From:

Dated the 17-4-1989

SUPREME COURT OF INDIA
NEW DELHI

712-17/89 D.No. /Sec-IVA

124/89 JJ