

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : **14 APR 1989**

APPLICATION NO (S) 283 /89(F)

W.P. NO (S) _____

Applicant (s)

Respondent (s)

Shri S.N. Shanbhag

V/s

The Superintendent, Vocational Rehabilitation
Centre for Handicapped, Bangalore & another

To

1. Shri S.N. Shanbhag
Office of the Superintendent
Vocational Rehabilitation Centre
for Handicapped
No. 22, Hosur Road
Bangalore - 560 029
2. The Superintendent
Vocational Rehabilitation Centre
for Handicapped
No. 22, Hosur Road
Bangalore - 560 029
3. The Director of Employment Exchange
Ministry of Labour (DGE & T)
Shree Shakti Bhavan
2 & 4, Rafi Marg
New Delhi - 110 001
4. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STAY~~/~~INTERIM~~~~ORDER~~
passed by this Tribunal in the above said application(S) on 10-4-89.

gk/ued
11.11.89
17.4.89

o/c
Deputy Registrar
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE.

DATED THIS THE TENTH DAY OF APRIL 1989.

Present: Hon'ble Shri L.H.A REGO

.. MEMBER(A)

APPLICATION NO. 283/89(F)

S.M.Shanbhag,
Office of the Supdt.,
Vocational Rehabilitation Centre.
for Handicapped,
No.22, Hosur Road,
Bangalore 560 029.

.. Applicant

vs.

1. The Superintendent,
Vocational Rehabilitation Centre
for Handicapped,
No.22, Hosur Road,
Bangalore 560 029.

2. The Director of Employment Exchange,
GOI, M/O Labour (DGE&T),
'Shram Shakthi Bhavan',
New Delhi 110 001.

.. Respondents.

(Shri M.Vasudeva Rao .. Advocate)

This application has come up today, before this
Tribunal, for Orders. Hon'ble Member(A) made the following:

ORDER

The applicant prays herein, for a direction, to
quash the impugned orders, dated 7.6.1988 and 20.6.1988 issued
by Respondent(1) 1 and dt. 15.12.1988 by Respondents A-3, A-4
and A-6 respectively) and to fix his pay, in the grade of
Office Superintendent (OS), taking duly into account, the
component of Special Pay (SP) of Rs.35/- per mensem, drawn
by him in the grade of Upper Division Clerk (UDC).

2. The following salient features delineate the
facts of this case.





3. The applicant, while working as UDC in the Office of the General Manager, Telecommunications, Karnataka, Bangalore, was deputed to the Vocational Rehabilitation Centre for Handicapped, Bangalore (VRC) as OS, with effect from 1.7.1986. in the pre-revised pay scale of Rs.425-700. Prior to deputation as above, he was drawing pay of Rs.530/- p.m. in the pre-revised pay scale of Rs.330-560 plus SP of Rs.35/- p.m. This SP, was being drawn by him, with effect from 17.12.1982.

4. The pre-revised pay scale of Rs.330-560 in respect of the post of UDC, came to be revised with effect from 1.1.1986, consequent to acceptance of the recommendations of the Fourth Central Pay Commission, to Rs.1200-2400. Sp in respect of this post, came to be revised similarly to Rs.70/-p.m. with effect from that date.

5. According to the applicant, the component of SP, was to be taken into account, for the purpose of fixation of his pay on promotion, to the post of OS, according to the instructions contained, in Office Memorandum dated 1.9.1987 (Annexure A1) of the Union Ministry of Finance, subject to the conditions stipulated in para 2(b) thereof. He further states, that according to the OM, dated 17.12.1988 (Annexure A2) of the said Ministry, this SP which was enhanced to Rs.70/-p.m. as above, with effect from 1.1.1986, was also to be taken into account, while fixing his pay on promotion, as O.S.

6. The applicant further avers, that on his deputation on promotion, as OS to the VRC, his pay was initially fixed at Rs.600/- p.m., which included, the component of SP of Rs.35/- p.m. in the pre-revised pay scale of Rs.425-700. The applicant had no grievance in regard to this pay-fixation.

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7. According to the impugned order dated 7.6.1988, by R-2(Annexure A-3) his pay however, ^{the same} to be re-fixed at Rs.560/- p.m. in the pre-revised scale of pay, exclusive of the component of SP. Pursuant to that order, the alleged over-payment of emoluments, was ordered to be recovered from him by R-1, by his Memo dated 20-6-1988(Annexure A4).

8. The applicant represented thereon to R-2 on 25.4.1988(Annexure A5) with a request to waive the said recovery, and to grant him the benefit of SP in the fixation of his pay, but the same was negatived by the latter, on 15.12.1988(Annexure A-6).

9. The applicant has therefore come before this Tribunal, for redress.

10. The respondents have filed their reply resisting the application.

11. The applicant argued his case in person, without the aid of a counsel. He submitted, that on deputation to another Department of the Government of India, he was entitled to draw, either the pay in the scale of pay in the new post on deputation, or his pay in his parent department, inclusive of Deputation Allowance. He affirmed that he had elected the former and therefore, his pay, in the post of DC in the VAC, ought to have been fixed, under Fundamental Rule(FR) 22c, as the said post carried duties and responsibilities of higher importance, as compared to the post of UDC held by him in his parent department.

12. He strongly relied on the Memorandum dated 1.9.1987(Annexure A1) of the Union Ministry of Finance, to buttress his case. He emphasised, that the condition stipulated in para 2(b) thereof, was wholly fulfilled, as he was officiating in the post of UDC(to which SP was attached) continuously, for a period exceeding three years.



13. According to him, his appointment as OS on deputation to the VRC, was in the nature of promotion, as the said post carried duties and responsibilities of greater importance. The very pay scale of that post, which was distinctly higher than that of the post of UDC, held by him in the parent department earlier, he asserted, was indicative of the same.

14. Shri ...sudeva Rao, learned counsel for the respondents stoutly refuted the contentions of Shri Shanbhag. He sedulously argued, that according to Annexures A1 and A2, SP of Rs.35/- per mensem (now revised to Rs.70 per mensem) drawn by the applicant, in the post of UDC in his parent department, was to be taken into account, for the purpose of fixation of pay, only in the event of his promotion and not merely on account of the fact that he was posted to a higher grade on deputation in the VRC.

15. He further clarified, that on deputation to the VRC, the applicant could have either elected, the pay scale prescribed for the post of UDC in his parent department, in addition to Deputation Allowance or the higher pay scale in the post of OS to which he was deputed in the VRC. Conscious of the same, he pointed out, that the applicant finally elected on 30.3.1987, the pre-revised pay scale in the post of OS, in the VRC, with effect from 1.7.1986, along with the benefit of SP of Rs.35/- per mensem (revised later to Rs.70 per mensem) and the revised scale of pay for the said post thereafter, with effect from 1.9.1986, inclusive of SP, as revised.

Accordingly, he said, the pay of the applicant came to be fixed, in the post of OS in the VRC, at Rs.600/- per mensem, as on 10.12.1987, under FR 226, granting him the benefit of SP of Rs.35/- per mensem.

16. He pointed out, that the Accountant General, Karnataka, (AG) Bangalore, in his letter dated 22.2.1988 (Annexure R1) addressed to R-1 had opined as under:-

" With reference to the above, I am to state that the Special Pay of Rs.35/- plus DA/ADA etc admissible on it will not be taken into account for the purpose of fixation of pay in the revised scale. Further, Special Pay of Rs.35/- will also not be admissible alongwith the pay fixed in the revised scale with effect from 1.1.86 vide Sl.No.IV of Part 'B' of the First Schedule attached to the notification dated 13.9.86.

Fixation of pay on deputation may be allowed if the deputanist opts the pay scale of the new post as may be fixed under normal rules under 22 or FR 22(C) vide Appendix 5 of FR's and this should not be construed as a promotional post. However, you may please refer the matter, to your pay and Accounts Officer and the Controlling Authority, regarding the actual fixation.



17. The AG, he said, had suggested at the end of his above letter, that R-1 may refer the matter to the Pay and Accounts Officer and the Controlling Authority concerned, for a final decision, in regard to fixation of pay of the applicant. Thereon, the matter was referred by R-1, to the Controlling Authority, and as directed by the latter, by his letter dated 15.12.1988 (Annexure R-2), the pay of the applicant, Shri Rao, pointed out, came to be fixed both in the pre-revised, as well as the revised pay scales, exclusive of the component of SP. This, he said, resulted in recovery of overpayment of emoluments to the tune of Rs.1268/- from the applicant, for the period from July 1986 to February 1988.

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18. The main plank of Shri Vasudeva Rao's contention is, that even though the applicant had been granted the benefit of FR 22C, on appointment to a higher grade on deputation, in the post of OS in the VRC, that appointment could not be regarded as promotion for the reason, that the post was an ex cadre one, on account of which, protection of pay was not guaranteed. Shri Rao, however, was not able to cite the relevant statutory rule, in support of this contention.

19. I have carefully examined the averments of both sides and the records of the case. The fate of this application hinges essentially on the fact, as to whether the post of OS, to which the applicant was appointed, on deputation to the VRC, carried duties and responsibilities of greater importance, as compared to the post of UDC, held by him in his parent Department, immediately prior to this deputation, so as to lend to it, the character of promotion.

20. It is relevant to extract below the provisions of FR 22-C :

"Notwithstanding anything contained in these Rules, where a Government servant holding a post 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:

Provided 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 FR.22 shall apply in the matter of the initial fixation of pay and counting of previous service for increment."



21. FR 22C in its plain reading reveals, that its benefit is admissible to a Government servant, regardless as to whether the post held by him on promotion or appointment to a post, is substantive or not, provided (emphasis added) it carries duties and responsibilities of greater importance, as compared to the post of UDC held by him in his parent Department immediately prior thereto. It is significant, that the above Rule contemplates, conferment of benefit, not only in the event of promotion but also of appointment, to a post carrying duties and responsibilities of greater importance, irrespective of whether, the post is borne on the cadre or not. The respondents admit, that the post of OS held by the applicant, on deputation to the VRC was of a higher grade than that of UDC held by him in his

parent Department, immediately anterior thereto. In fact, the

very pay scale of the post of OS, which is distinctly higher

than that of UDC, is indicative.

22.

It is not in dispute, that the applicant held the

lower post of UDC (to which SP was attached, from a certain date)

in his parent department continuously, for a period of not less than

three years. Despite this fact and the foregoing, the plea of SRI

Rao, that the applicant is not entitled to the benefit of SP, in

the post of UDC, being taken into account, while fixing his pay

under FR 22C, in the post of OS, on deputation to the UDC, merely

because, the latter post was not within the cadre and appointment

of the applicant therein, was not in the nature of promotion but only

posting in a higher grade, to say the least, is distinguished, and

well-founded. It is evident, that appointment of the applicant,

to the post of OS on deputation to the UDC, has all the attributes

of a promotion and therefore, he fulfils the condition specified

in Annexure A-1, to entitle him to the benefit of SP, in the

post of UDC held by him, while fixing his pay in that of OS, to

which he was appointed on deputation to the UDC.

23.

In the result, I make the following order:

ORDER

1) The impugned orders dt. 7.6.1988 and 20.6.1988 passed

by R-1 and dt. 15.12.1988 passed by R-2 (Annex A-3, A-4 and A-

A-6 respectively) are hereby QUASHED.

11)

The respondents are DIRECTED to fix the pay of the

applicant, in the post of OS in the UDC, as on 1.7.1986,

in the pre-revised pay scale of Rs.425-700, inclusive

of the component of SP of Rs.35 per mensem (pre-revised) upto

31.8.1986 and thereafter, in the revised scale of

of Rs.1400-2300, equivalent to the pay, inclusive of SP,

drawn by him, in the pre-revised pay scale, as on 31.8.1986.



iii) The respondents are DIRECTED. to reimburse to the applicant, the emoluments recovered from him, as overpayment, owing to erroneous fixation of his pay, and to stop further recovery from him on this account.

iv) This Order shall be complied into, within a period of three months from today.

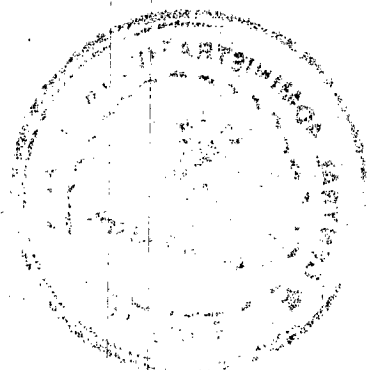
24. The application is disposed of in the above terms, with no order however, as to costs.

Sd/-
MEMBER (A) 10.4.489

bk.

TRUE COPY

B. Venkatesh Reddy
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
JANUARY 1964