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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1189/92

Shri Gurubhagat Singh Gupta
and 18 others.

...Applicants.

Original Application No. 85/93

Shri R.H. Brahmhatt
and 53 others.

... Applicants.

V/s.

Union of India through
The Scientific Adviser to the
Minister of Defence,
Director General of Research &
Development, Ministry of Defence
New Delhi.

The Controller of Defence
Accounts (R & D)
'L' Block, Church Road,
New Delhi.

The Director,
Armament Research & Development
Establishment, Pashan
Pune.

Smt. Lalitha Gopalakrishnan,
alias T.R. Lalithambikamma,
Junior Scientific Officer,
N.C.M.L. Naval Dock Yard,
Bombay.

... Respondents.

CORAM: Hon'ble Shri Justice M.S. Deshpande, Vice Chairman.

Appearance:

Smt. Devaki Iyer, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 17.2.94

¶ Per Shri M.S. Deshpande, Vice Chairman ¶

As identical facts in all respects
and common law points are to be decided, OA 1189/92
and OA 85/93 are being decided by a common judgement.

2. The applicants as well as respondent
No.4 were working as Junior Scientific Assistants
Grade I and were eligible for next promotion as
Senior Scientific Assistants. Respondent No.4

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was appointed as Senior Scientific Assistant on adhoc basis with effect from 24.12.76 and her service came to be regularised on 25.3.80. It is not in dispute that the present 19 applicants in OA 1189/92 and 53 applicants in OA 85/93 were senior to respondent No. 4 in the cadre of Junior Scientific Assistants and were promoted before respondent No.4 in the cadre of Senior Scientific Assistants. The grievance of the applicants is that by virtue of respondent No. 4 having drawn four increments in the cadre of Senior Scientific Assistants, as she was appointed on adhoc basis. When she was promoted, she started drawing higher grade i.e. Rs. 625/- p.m. as on 25.3.80, instead of Rs. 550/- the applicants were drawing. The applicants made representations to the respondents. By their reply dated 4.12.91, they were informed that the stepping up of pay in respect of Shri K.C. Jena with Smt. Lalita Gopalakrishnan, respondent No.4 was not automatic to others until and unless this benefit is extended by the CAT in general to the similarly placed persons. Being aggrieved by the reply the applicants have brought this application for a direction to respondent No. 1 to 3 to step up the pay of the applicants in the post of Senior Scientific Assistants on par with that of respondent No.4 at Rs. 625/- with effect from 25.3.80 and for paying them the arrears accrued and due to them by such fixation.

3. The learned counsel for the respondents contended that the case of the applicants would not fall within the parameters as laid down in FR 22(c), because respondent No.4's pay was fixed under FR 26 which provides that all duty in a post on a time scale counts for increments in that time scale.

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- b) The scales of pay of the lower and higher posts 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 increments the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officer in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of requisite qualifying service with effect from the date of re-fixation of pay. "

The emphasis of learned counsel for the respondents was on clause (c) above. He urged that the clause (c) ^{would} ~~to be excluded~~ in the present case from the portion of the instructions. The example given in clause (c) illustrates and speaks of the instances whether the pay of the junior has raised is due to advance increments. There cannot be any dispute of the position that the present case is covered by clause (a) and (b). Respondent No.4 was working on adhoc basis from 24.12.76 and why she was asked to do the work on adhoc basis is to be found out and the order of adhoc appointment dt. 3.1.77 under which she was appointed as Senior Scientific Assistant in an existing vacancy initially sanctioned for one year. She was holding lien on permanent post of Junior Scientific Assistant, Grade I. It is clear that ^{her} ~~the~~ adhoc appointment had been considered and her appointment came to be regularised with effect from 25.3.80. Even at that stage she was not

4. It is true that the applicants have no grievance regarding the promotions and the increments accrued to respondent No.4 in the cadre of Junior Scientific Assistant. Respondent No.4 was appointed as Senior Scientific Assistant with effect from 24.12.76 on adhoc basis and regularised with effect from 25.3.80. The Government of India decision in Ministry of Finance O.M. No. F.2(78)-E.III(A)/68 dated 4.2.66 shows that the instructions were given with a view to remove the anomaly by stepping up of pay of senior on promotion drawing less pay than his junior. The instructions are stated below:

a) As a result of application of FR 22 C:

In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1.4.1981 drawing drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment or the junior officer and will be subject to the following conditions, namely:

- 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 indential and in the same cadre:

given any seniority over the present 19 applicants in OA 1189/92 and 53 applicants in OA 85/93 and merely because appointment of respondent No.4 came to be made on adhoc basis, her case will not be taken out of clause (a) and (b) and shall have to be regarded as anomaly which directly relates to the application of F.R. 22(C).

5. Shri Shetty, counsel for the respondents has referred to Government of India instructions dated 16.5.68 issued under article 156-A CSR and urged that if a Government servant has previously held substantively or officiated in a permanent or temporary post on the same time scale, interalia then the service referred to above will be taken into account for initial fixation of pay and counting of previous service for increment. This will have no bearing upon the position which would arise by the application of FR 22(c) referred to above. Respondent No.4 ^{did} not hold either temporary or permanent post and her appointment was purely on adhoc basis. The same contention has been raised in OA 125/88, Krishna Chandra Jena V/s. Union of India decided on 30.6.89 by the Cuttack Bench of this Tribunal and while considering the case of Jena, who was applicant in that case and senior to respondent No.4. In that case the Bench observed that Jena would be entitled to stepping up of pay on account of higher pay which respondent No. 4 had been drawing.

6. Shri Shetty ~~with pains~~ pointed out that the relevant provisions had not been considered by the Hon'ble Vice Chairman in this respect. After the re-consideration of all relevant material pointed out by him, I am satisfied that a different view ~~cannot~~ be taken in the present case.

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7. In the result the applications are allowed. Respondent No. 1 to 3 are directed to step up the pay of the applicants in the post of Senior Scientific Assistant on par with respondent No.4 at Rs. 625/- with effect from 25.3.80. The arrears shall be calculated and paid to the applicants within four months from the date of receipt of this order. No order as to costs.

(M.S. Deshpande)
Vice Chairman

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