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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 751/93
Transfer Application No. ---

Date of Decision :

28/2/95

K.K.R.Pillai

Petitioner

Mr.K.B.Talreja

Advocate for the
Petitioners

Versus

U.O.I. & Ors.

Respondents

Mr.S.C.Dhawan

Advocate for the
respondents

C O R A M :

The Hon'ble Shri M.R.Kolhatkar, Member(A)

The Hon'ble Shri ---

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

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M.R.Kolhatkar
(M.R.KOLHATKAR)
M(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 751/93

K.K.R.Pillai,
Pharmacist Hospital
Store Keeper,
Babasaheb Ambedkar Hospital,
Central Railway, Byculla,
Bombay - 400 027. .. Applicant

-versus-

1. Union of India
through
The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway
Manager,
Central Railway,
Bombay V.T.
3. The Chief Hospital
Superintendent,
Babasaheb Ambedkar Hospital,
Central Railway, Byculla,
Bombay - 400 027. .. Respondents.

Coram: Hon'ble Shri M.R.Kolhatkar,
Member(A)

Appearances:

1. Mr.K.B.Talreja,
Counsel for the
Applicant.
2. Mr.S.C.Dhawan
Counsel for the
Respondents.

JUDGMENT: Date: 25/2/95
(Per M.R.Kolhatkar, Member(A))

The applicant was appointed in Central Railway as Pharmacist in the year 1963. It is not disputed that he is senior to one Shri M.S.Abhyankar in that grade. In the seniority list of Pharmacist in the grade of Rs.1640-2900 as on 1-7-1991 the applicant is shown at Sr. No.2 and Shri Abhyankar is shown at Sr.No.3, the applicant having been promoted on 19-6-87 and Shri Abhyankar having been promoted on 25-4-89. The applicant

states that he came to know that Shri Abhyankar, though junior, is drawing more salary and i.e. Abhyankar's that his basic pay is Rs.2214/- from 1-4-92 whereas his basic pay is Rs.2,000/-; hence he made a representation on 23-3-92 (Annexure-3). However, he was informed by letter dated 27-4-93 at Annexure-1 which is the impugned order that "From a review of SR of Shri M.S. Abhyankar it is seen that he is drawing more pay due to local officiating/adhoc officiating in Gr.425-640 from 1975. Under the rules such a situation is called fortuitous and no stepping up is permitted." The applicant, therefore, claims the relief of stepping up of his pay with reference to Shri Abhyankar w.e.f. 1-4-92 and also the relief of arrears from the date Shri Abhyankar started drawing more pay.

2. The respondents Central Railway have opposed the application. According to them, the applicant is barred by limitation as the alleged cause of action arose in 1975 or in any case in 1984 when the applicant and Shri Abhyankar were promoted to the post of Pharmacist Gr.II in the scale of Rs.455-700 due to restructuring. Even on merits, the applicant is not entitled to any relief because Shri Abhyankar started getting higher salary due to loyal workers' advance increment in the year 1974. In this connection, the respondents have referred to Govt. instructions dated 28-12-74 on this subject vide Ex.R-II. Thirdly the respondents contend that considering this fact of advance increment as well as

other facts the applicant does not fulfil the relevant conditions in the Indian Railway Establishment Manual, paragraph 1316 corresponding to FR-22C, although the applicant has failed to specifically refer to the same. The respondents have also stated that the applicant's representation were looked ^{into} and it was noted that the applicant was given an option for fixation of pay in the Gr. of Rs.455-700 when the applicant was promoted as Pharmacist Gr.II w.e.f. 1-1-1984. The said option had been overlooked and the applicant's pay was not correctly fixed. The applicant's pay was, thereafter, correctly fixed on the basis of the option given by the applicant and he was also paid arrears amounting to Rs.12534.80. However, the officiating arrangement of Shri Abhyankar being fortuitous cannot be taken into account for the purpose of stepping up of pay of seniors and therefore the applicant was informed accordingly.

3. We have considered the pleadings and also allowed the applicant to have an inspection of the service record of Shri Abhyankar. We have also considered the case law cited by the applicant. It is a matter of record that as a matter of grant of advance increment, the pay of Shri Abhyankar was stepped up from Rs.360 to Rs.370/- w.e.f. 1-7-1974. If that was the sole reason for the difference in pay, the case of the applicant would not certainly fall within the frame work of relevant rules. We, therefore, ^{para} reproduce below the relevant rules viz. 1316 of IREM.

"(a) Both the junior and senior employees should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical; and

(c) the anomaly should be directly as a result of the application of Rule 1316(FR 22-C). For example, if even in the lower post the junior employee draws from time to time a higher rate of pay than the senior by virtue of fixation of pay under the normal rules, say, due to grant of advance increments or due to accelerated promotion, etc. the provisions contained in this will not be invoked to step up pay of the senior employee. "

It would be seen that under condition No.(c) if a junior draws higher pay than the senior by virtue of fixation of pay under the normal i.e. rules, say, due to grant of advance increments or due to accelerated promotion, etc. the senior is not entitled to stepping up.

However, it is admitted position in this case that the difference in the pay is not merely due to advance increment which accounts for only for a difference of Rs.10/- w.e.f. July '74 as noticed by us above. The difference is partly due to the officiating promotions enjoyed by Mr. Abhyankar whose case the applicant has cited. Here, the applicant relies on the case of V.K.D.Rajyalakshmi(Smt.) v.

Regional Director, ESI Corporation, which is an O.A. 213/93 decided by Hyderabad Bench of the Tribunal on 16-3-93 in which it has been held that there is no bar of limitation for claiming stepping up of pay, ^{the} grievance being a continuous one, and secondly that a junior getting more pay on promotion even due to fortuitous circumstances then the senior is entitled to get stepping up of pay.

~~the~~ similar effect is ~~xxx~~ the case of P.Gangadhara Kurup and others v. Union of India and others, O.A.42/91 decided on 19-3-92 by the Ernakulam Bench. We had asked the parties to favour us with a comparative statement separating the effect of advance increment and showing the quantum of higher pay drawn by the junior merely due to fortuitous circumstances. However, they were not able to give such a statement till the date of final hearing except that the applicant on an inspection of the record stated that Shri Abhyankar officiated in the grade of Rs.425-640 from 2-9-75 to 13-11-76. The relief is claimed in respect of the difference in the pay from the period 2-9-75.

4. It is now well settled that the question of limitation has to be considered in the context of right to sue and the mere fact that cause of action relates to a past period when the Tribunal was not in existence cannot stand in the way of grant of relief. Secondly the stepping up has to be granted ~~strictly~~ in accordance with the

rules and when the higher pay drawn by his junior is not due to advance increment but also due to officiating promotions then the applicant would be entitled to relief though after allowing for the effect of operation of normal rules viz. grant of advance increment. We are, therefore, inclined to grant relief to the applicant partially and dispose of the case by passing the following order :

O R D E R

The application is partly allowed. The respondents are directed to step up the pay of the applicant vis-a-vis Shri Abhyankar his junior w.e.f. 1-4-92. However, the effect of advance increment granted to Shri Abhyankar in accordance with Govt. orders dated 28-12-74 should be deducted while granting the relief of stepping up. This deduction should be atleast Rs.10/- but could also be more than Rs.10/- in case the respondents are able to show ~~that~~ by detailed calculations that by operation of rules the original increment of Rs.10/- ~~got~~ converted into a difference of larger quantum. So far as the relief in respect of arrears is concerned we hold that

the applicant is not entitled to any arrears prior to the period of 1-4-92 but the arrears from 1-4-92 upto date of order should be paid to him within a period of three months. There will be no order as to costs.

M.R.Kolhatkar

~~(M.R.KOLHATKAR)~~
Member (A)

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