

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1264/94

Transfer Application No.

Date of Decision

5/10/95

Shri S.S.Pandit

Petitioner/s

Shri R.C.Kotiankar

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri P.M.Pradhan

Advocate for
the Respondents

CORAM :

Hon'ble Shri. P.P.Srivastava, Member (A)

Hon'ble Shri.

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

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? No



(P.P.SRIVASTAVA)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 1264/94

Shri S.S.Pandit

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri R.C.Kotiankar
Advocate
for the Applicant

Shri P.M.Padhan
Advocate
for the Respondents

JUDGEMENT

Dated: 5/10/95

(PER: P.P.Srivastava, Member (A)

The applicant was appointed as LDC in B.A.R.C. and thereafter got promoted as Junior Stenographer in 1968 and thereafter was promoted as Senior Stenographer in the scale of Rs.1400-2300 in the year 1974. While working in this grade the applicant came on deputation to Ministry of Law (Branch Secretariat) at Bombay as Sr.PA in the scale of Rs.2000-3500 and his pay on deputation was fixed at minimum of the grade at Rs.2000/- on his option to accept the grade of the Law Ministry on deputation. While on deputation in the Ministry of Law the applicant's pay scale for the post of Sr.Steno in his parent department was revised from ~~Rs. 1400-2300~~ to Rs.1400-2600 w.e.f. 1.1.1986 and his pay was fixed at Rs. 1950/- w.e.f. 1.2.1988 on his opting for the revised pay from that date. The applicant also was given proforma promotion in his parent department first as a Stenographer Gr.I in the scale of Rs.1640-2900 w.e.f. 1.9.1989. The applicant opted for the new grade w.e.f. 1.2.1990 and his pay was fixed at Rs.2120/- from that date in the new



scale in the scale of Stenographer Gr.I. The applicant further got a proforma promotion in his original department, i.e. B.A.R.C. as Sr.P.A. in the scale of Rs.2000-3200 w.e.f. 1.8.1991 and opted for pay fixation in the new scale w.e.f. 1.2.1992 and his pay was fixed at Rs.2375/- The applicant was repatriated to BARC on 31.3.1992 on completion of deputation period. The applicant was again selected for deputation to the Ministry of Law as Private Secretary in the scale of Rs.2000-3500 w.e.f. 6.8.1993. The grievance of the applicant is that on his pay being revised in his parent department on proforma promotion as Stenographer Gr.I in the scale of Rs.1640-2900 and as Sr.PA in Grade Rs.2000-3200, his pay was not correspondingly revised in terms of F.R. 22-1(A)(1) in the Ministry of Law where he was on deputation. The second grievance of the applicant is that on his deputation to the Ministry of Law again as Private Secretary in the scale of Rs.2000-3500 in the year 1993, his pay has not been fixed under FR.22-1(A)(1).

2. As regards the fixation of pay of the applicant while on deputation with Ministry of Law on revision of his pay in his parent department as a result of proforma fixation, the applicant submitted a representation to the Ministry of Law for fixing his pay as a result of his proforma promotion in his parent department. However, the Ministry informed the applicant in November, 1993 that the applicant has not exercised any option for refixation of his pay consequent on his proforma promotion and if he wishes to exercise option now, he can do so and he should also give reasons for the delay in exercising the option and the Department of Personnel might have to be consulted before accepting the option. On receipt of the reply the applicant submitted his option on December 2, 1993



(placed at Ex. 'D'). The applicant also gave an explanation in letter dated December 2, 1993 that originally he had opted for the pay scale of Ministry of Law on coming to deputation and therefore he thought that he need not give any new option if he continued to opt for the scale of Ministry of Law even after his proforma promotion and if there is any delay then it should be excused. The pay of the applicant, however, was not refixed in terms of the new option under FR.22.I (a)(1). The Ministry of Law by their letter dated 27.7.1994 informed the applicant as under :-

"2. The Department of Personnel & Training has informed that the scale of pay of Rs.2000-3200 is a segment of the standard scale of Rs.2000-3500 and the scales are analogous. Therefore, the benefit of F.R. 22.I(a)(1) is not admissible to Shri S.S. Pandit, P.S. A copy of the DG.P&T's O.M. in this regard is enclosed."

3. Counsel for the applicant has argued that the service conditions of the applicant on deputation are governed by the consolidated instructions of the Department of Personnel and Training's O.M.No. 2/29/91-Estt.(Pay.II), dated 9.1.1994. In terms of Para 5.1(i) of this Circular the pay of the applicant is required to be fixed on deputation under normal rules. The applicant was required to exercise his option in terms of Para 4 of the above mentioned Circular on revision of the pay scale in the parent department. The exercise of option is governed in terms of Para 4.3 (d) which reads as under :-

"(d) based on the revised/same option of the employees, in the event of proforma promotion/appointment to non-functional Selection Grade and revision of scales of pay in the parent cadre, the pay of deputationists will be refixed with reference to the revised entitlement of pay in the parent cadre. However, if the initial option was for the pay scale of the deputation post and no

change in option already exercised is envisaged the pay already drawn in deputation post will be protected if the pay refixed is less.

4. Counsel for the respondents has argued that the applicant is not entitled to fixation of pay under normal rules and F.R.22.I(a)(1) on his promotion as Sr. Stenographer Gr. I as the applicant had not exercised any option for the same when the promotion took place and he has been denied the fixation under F.R.22.I(a)(1) because he has not opted for the same.

5. Counsel for the respondents has also argued that the applicant has not complied with these requirement and since his option is not available on record, he has not been granted proforma fixation on his promotion as Steno Gr.I.

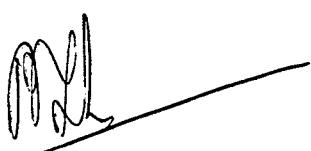
5. I have considered the argument of the counsel for the respondents. However, I am unable to agree with him on this point. The applicant is entitled for refixation of his pay once his pay is revised in the parent cadre. Denying him fixation because he has not submitted his option in a particular form would not be correct as the applicant had already opted for the pay of the post on deputation when he had joined the deputation post in the Ministry of Law. In any case, the Ministry had considered the representation of the applicant and had permitted him to exercise the option vide their letter dated 19.11.1993 (placed at Annexure-'C') and the applicant has submitted his option which he has exercised in terms of this promotion by the letter dated 2.12.1993 (placed at Annexure-'D').

6. I am, therefore, of the view that the applicant cannot be denied fixation in terms of his proforma promotion as Stenographer Gr. I in his parent cadre under F.R.22.I(a)(1).

7. As far as the grievance of the applicant concerning his promotion as a result of his proforma promotion as Sr. P.A. in the scale of Rs.2000-3200 w.e.f. 1.8.1991 in his parent department is concerned, the counsel for the respondents has submitted that the DoP has informed the Ministry of Law that the scale of pay of Rs.2000-3200 is a segment of the standard scale of Rs.2000-3500 and the scales are analogous and therefore the benefit of F.R.22.I(a)(1) is not admissible. The question to be decided here is if the grades are analogous even then the benefit of F.R.22.I(a)(1) can be granted or not. In this connection, my attention was drawn to the provisions of F.R.22.I(a)(1) wherein 3 conditions are laid down for fixing the pay on promotion :-

- "(a) Govt. servant must be holding a post in a substantive, temporary or officiating capacity,
- (b) he should be promoted or appointed in a substantive, temporary or officiating capacity to another post and
- (c) the post to which he is promoted or appointed should carry duties and responsibilities of greater importance than those attached to the post held by him."

8. The counsel for the applicant has argued that nowhere there is any mention of analogous grades in these conditions and therefore the respondents' reply dated 27.7.1994 (Ex. 'A') denying the fixation of the grades being analogous is against the provisions of F.R.22.I(a)(1).



9. The counsel for the applicant has also argued that the only condition which is required to be seen is that whether promoted or appointed post carry duties and responsibilities of greater importance than those attached to the post from which the promotion or appointment has been made. In this connection, the counsel for the applicant has cited the judgements of this Tribunal at Principal Bench in Ramesh Chand vs. Union of India & Another 1993(2) (CAT) 95 decided on 5.1.1993 wherein it has been held that:-

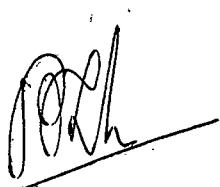
" It is the responsibility attached to the post which is material and crucial in case of promotion where the posts of feeder category and the posts to which promotion is made carry identical scale of pay. In the instant case the post of Inspector of Post Offices carries responsibilities and duties of greater importance than the post of LSG although both the posts carry identical scale of pay. In view of this the petitioner, on promotion to the post of Inspector of Post Offices, would be entitled to fixation of pay with the benefit of F.R.-22C now remembered as F.R.22(1)(a)(i)."

Similar views were also expressed by the Tribunal in Jabalpur Bench in Dhyaneshwar Nandanwar vs. Union of India & Ors. (1993)24 ATC 660, wherein it was held that notwithstanding the parity in pay scale, the post of RMS Inspector carries higher responsibilities than the post of Sorting Assistant and therefore on appointment to the post of Inspector ~~from~~ the post of Sorting Assistant pay has to be fixed under FR 22C and not under FR 22(a)(ii).

10. Since the respondents have denied the fixation of pay under FR 22(1)(a)(i) on the basis of grades being analogous as has already been brought out in Para 2 above, this plea will not be available to the respondents in view of the ratio laid down in the judgements quoted above.



I am, therefore, of the view that the contents of letter dated 27.7.1994 (placed at Annexure-'A') are not in conformity with the law on the subject and therefore this letter is liable to be quashed. The applicant has brought out that the post of Private Secretary in the Law Ministry was advertised and he was selected after a written test and the Private Secretary in the Ministry of Law is attached to the Joint Secretary and the Private Secretary in B.A.R.C. is attached to the officer lower in rank to the Joint Secretary. The respondents have nowhere denied these averments of the applicant nor the counsel for the applicant has argued that the fixation is being denied on the basis of post of Private Secretary in the Ministry of Law does not carry higher responsibilities than that of Sr.P.A. in B.A.R.C. It is also seen that the grade of Sr.PA is Rs.2000-3200 in B.A.R.C. while Private Secretary in the Ministry of Law carries scale of Rs.2000-3500 and certainly the pay scale of Private Secretary in the Ministry of Law is higher than that of pay scale of Sr.PA. in B.A.R.C. Since it has been held in the two judgements quoted above that the fixation under FR.22(1)(a)(i) would be available even when the grades are same in case if the post on which the promotion is made carries higher responsibilities, I have no hesitation in coming to the conclusion that the applicant cannot be denied fixation of pay under FR.22(1)(a)(i) when he was posted on deputation in the Ministry of Law in the grade Rs.2000-3500 as Private Secretary from the post of Sr.PA. in B.A.R.C. in grade Rs.2000-3200.



11. In the result, the OA. is allowed. Letter dated 27.7.1994 (Annexure-'A') is quashed. The respondents are directed to fix the pay of the applicant under FR.22(1)(a)(i) on his promotion from Grade Rs.1400-2300 to the grade of Rs.1640-2900 w.e.f. 1.2.1990 considering his pay in the grade Rs.1640-2900 as Rs.2120/- on 1.2.1990. The applicant will also be entitled to fixation of pay on his deputation to the post of Private Secretary in the Grade Rs.2000-3500 from the Grade Rs.2000-3200 when he joined the Ministry of Law on deputation on 6.8.1993. The respondents are also directed to work out pay of the applicant on the basis of the above directions and pay him arrears within a period of four months from the date of issue of this order. In the circumstances of the case, there will be no order as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)

mrj.