

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 235/94

Transfer Application No:

30.11.1994
DATE OF DECISION:

A.D.Bhamburkar. Petitioner

Shri S.P.Saxena Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri R.K.Shetty. Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.S.Deshpande, Vice-Chairman.

The Hon'ble Shri

1. To be referred to the Reporter or not ? *W*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *M.*

[Signature]
(M.S.DESHPANDE)
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

Original Application No. 235/94.

A.D.Bhamburkar.

... Applicant.

v/s.

Union of India & Ors.

... Respondents.

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

Appearances:-

Applicant by Shri S.P.Saxena.

Respondents by Shri R.K.Shetty.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 30.11.94.

By this application, the applicant seeks stepping up of his pay so that he is brought on par with his juniors J.L.Sharma w.e.f. 28.7.1986. The applicant was appointed as an LDC on 31.12.1959 and came to be promoted as UDC, Office Superintendent Gr.II and Office Superintendent Gr.I on 1.2.1978, 18.1.1984 and 1.7.1989. The applicant has given a chart at (Ex. A-2) to the petition from which it is clear that when the applicant was promoted as OS Gr.II on 18.1.1984 J.L.Sharma was promoted on 28.7.1986. The applicant's pay was fixed on promotion with the date of next increment at Rs.485/- with the increment on 1.1.1985, while the J.L.Sharma's pay was fixed at Rs.1640/- with the date of next increment on 1.7.1987. The applicant was drawing Rs.515/- as O.S. Gr. II, Rs.515/- on 31.12.1985 while Sharma was drawing Rs.488/- + Special Pay Rs.35/- as allowance for complex nature of duties as UDC. The applicant's pay was fixed on 1.1.1986 at Rs.1560/- as OS Gr.II while that of Sharma was fixed at Rs.1500 + 70 as UDC. The applicant's pay after the increment was Rs.1600/- as

on 1.1.1987 while that of Sharma was Rs.1680/- on 1.7.1987. When the applicant was promoted as O.S. Gr. II on 18.1.1984 he was not in receipt of Special Pay while Sharma was receiving Special Pay when he was promoted on 28.7.1986. The applicant claimed the benefit of the Circular dt. 7.6.1989 (Ex. A-8) by which the benefit of the Judgments of the CAT to similarly placed UDCs was extended to UDCs [redacted] who were drawing Special Pay of Rs.35/- in terms of the Ministry's O.M. No.7(52)/E.III/78 dt. 5.5.1979 and promoted to higher post prior to 1.9.1985 and who fulfilled the conditions mentioned in the O.M. dt. 1.9.1987. The pay was to be fixed on notional basis from the date he was promoted by taking special pay of Rs.35/- into account and accordingly benefit was to be accorded only without payment of any arrears.

2. The submission of Shri Shetty, the learned counsel for the Respondents was that the requirement before the benefit could be extended was that the senior should be drawing special pay prior to 1.9.1985 and the applicant did not fulfill this requirement. Shri Saxena for the applicant, however, relies on the decision of a Division Bench of this Tribunal at Ernakulam Bench in K.Krishna Pillai & Ors. V/s. UOI & Ors. [(1994) 26 ATC 641] where while considering the Ministry of Finance O.M. No.F2(10)-EIII(A)/62 dt. 20.6.1965 it was held that in view of F.R. 22-C and DG P&T's Instruction the applicants were entitled to stepping up of pay. This is what the Division Bench observed:

"Counsel appearing for applicants invited our attention to several reported decisions, which

lay down that a senior drawing a pay lesser than his junior is entitled to have his pay stepped up to the level that of his junior, irrespective of the reasons that lead to the anomaly in pay. Difference in pay and allowances would result from a variety of reasons. A junior may receive an ad hoc promotion. A junior may receive special pay. There could be other reasons as well. In all cases (except where reduction is by way of disciplinary proceedings) a senior will be entitled to have his pay stepped up to the level of the pay received by his junior, due to fortuitous circumstances. This is the view taken in N.Lalitha (Smt) V. Union of India (1992 19 ATC 569 (Hyd) and Anil Chandra Das v. Union of India (1988 7 ATC 224) (Cal).

It is also said that the view in Anil Chandra Das V/s. Union of India was affirmed on merits by the Supreme Court in SLP No.13994/91. This Bench of the Tribunal also has taken a similar view in P.Gangadhara Kurup V/s. Union of India (1993)1 ATJ 165."

I am bound by this proposition as laid down by the Division Bench. The application is therefore allowed and the Respondents are directed to step up and re-fix the pay of the applicant w.e.f. 28.7.1986 equal to that of his junior J.L.Sharma. The arrears shall be calculated and paid to the applicant within four months from the date of communication of this order.


(M.S. DESHPANDE)
VICE-CHAIRMAN

B.