

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 1198/94

Transfer Application No:

19-3-96  
DATE OF DECISION:

A.G.Shende.

Petitioner

Shri V.G.Deshpande.

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri M.P.M.Pillai

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri 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 ?

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH, BOMBAY,  
CAMP AT NAGPUR.

ORIGINAL APPLICATION NO. 1198/94.

TUESDAY, the 19<sup>th</sup> day of MARCH 1996.

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

A.G.Shende. ... Applicant.  
(Advocate Shri V.G.Desphande)

V/s.

Union of India & Ors. ... Respondents.  
(By Advocate Shri M.P.M.Pillai).

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this Original Application the applicant has impugned the Memorandum dt. 22.4.1994 issued by the Respondent No.4 refusing to accede to the request for stepping up of the pay of the applicant in the Assistant cadre with reference to the pay of his junior Shri S.C.R.Pathak. The applicant has stated that in the year 1981 Shri S.C.R.Pathak junior of the applicant was promoted on ad hoc basis as Head Clerk at local office Akola w.e.f. 18.6.1981. The applicant had given his option on 5.6.1981 for working at Akola, but his earlier option was ignored and his junior was promoted. As a result of this, as on 18.6.1981 Shri S.C.R.Pathak began to draw the pay of Rs.425/- in the grade of Head Clerk as against the pay of Rs.358 + 22 equal to Rs.380/- which the applicant was drawing. This difference (persisted till 1.1.1986 i.e. at the stage of introduction of revised pay scales, consequent on IVth Pay Commission when the pay of Shri S.C.R. Pathak was Rs.1520/- as against Rs.1410/- which was drawn by the applicant. The applicant

contends that his pay deserves to be re-fixed under F.R. 27 by stepping up of his pay with that of Shri S.C.R.Pathak as on 18.6.1981 and subsequently on 1.4.1989 when the scales of pay of the post of Assistant and Head Clerk were one and the same viz. 1400-2300. The applicant had made representations on 5.6.1981, 29.11.1991, 8.1.1992, 4.2.1992, [redacted] 18.1.1993 and 24.5.1994 and he has impugned the communication from the Respondents turning down his request.

2. The Respondents have stated that so far as the seniority list as on 1.3.1978 is concerned, Shri S.C.R. Pathak was placed at Sl.No.236, whereas, the applicant was not given any serial number in the said seniority list since he was officiating on ad hoc basis and his seniority was re-fixed. When a vacancy for the post of Manager Gr. III had arisen at local office Amravati, Shri S.C.R.Pathak was promoted on ad hoc basis w.e.f. 23.7.1981 because he was the seniormost U.D.C. as per the aforementioned seniority list. Subsequently, a fresh seniority list was circulated by the Regional Office on 1.3.1979 in which the applicant was placed at Sl.No.229 and Shri S.C.R.Pathak was placed at Sl.No.235 and thus the applicant was shown as senior to Shri S.C.R.Pathak. However, the promotion already given to Shri S.C.R.Pathak was continued pending the decision on the representation. In the mean time an option from the applicant was called for as to whether he was willing to be posted as Head Clerk on ad hoc basis at local office at Aurangabad, but the applicant declined ~~not~~ this option of posting at local office Aurangabad by his letter dt. 29.5.1982. Thus the applicant cannot make a grievance of his being ignored

for promotion as Head Clerk. So far as the applicability of Rule F.R.22(I)(a) is concerned which corresponds to the old F.R. 22-C, the same applies while fixing the pay on promotion to the higher grade. The difference in the pay between the applicant and Shri S.C.R.Pathak was not due to the application of F.R. 22-C, but it was due to the fact that Shri S.C.R. Pathak was promoted earlier than the applicant on ad hoc basis on the basis of the then available seniority list.

3. The applicant has relied on the case of N.Lalitha (SMT) and Others V/s. Union of India and Others (1992) 19 ATC 569 in which it was held that when a junior earns increments due to ad hoc promotion on the basis of local seniority leading to fixation of pay of a junior at a stage higher than the senior's pay then the senior was ~~not~~ entitled to fixation of his pay on par with the pay of such junior and Lalitha's case in its turn relied on Calcutta Bench case of Anil Chandra Das V/s. Union of India (1988) 7 ATC 224). The applicant also relies on the case of L.Rameshwara Rao V/s. Regional Director, ESIC, Hyderabad ( O.A. No.607/90) decided on 3.9.1991 by the Hyderabad Bench of the CAT. In that case again the Tribunal had relied on the case of Anil Chandra Das V/s. Union of India and held that when the junior was fixed at the higher scale only by virtue of ad hoc promotion and not by grant of advance increments, then the senior is entitled to stepping up of the pay of the applicant on par with that of the junior.

4. The applicant has also relied on the Division Bench Judgment of Ernakulam Bench in K.Krishna Pillai and Ors. v/s. Union of India and Ors. in which it was held that 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.

5. I have considered the matter. The main question is whether the three conditions which are a pre-requisite for application of F.R. 22-C for stepping up of the pay have been fulfilled. The contention of the respondents is that the anomaly should be directly as a result of application of F.R. 22-C and should not be due to other reasons. The reference to an advance increment is only illustrative and does not exhaust all the sources of creation of an anomaly. The fact that a junior was promoted on ad hoc basis is certainly a circumstance which can give rise to an anomaly, but this circumstance cannot be said to have directly arisen out of the application of F.R. 22-C. I am required also to take note of a very important circumstance applicable to the case in question. After the revised seniority list as on 1.3.1979 was received, the applicant was offered an opportunity of being promoted, but the applicant did not accept the offer of being promoted, apparently because the promotion was at a place not of his choice viz. it was at Aurangabad and not at Akola. It would not be open to the applicant place, whether to refuse promotion whatever they at Akola or at Aurangabad and then, thereafter, make a grievance that his pay should be stepped up to that of his junior who opted for being posted on local promotion at

a place which was then available. The applicant in such a case cannot be allowed to adopt a pick and choose policy. I am therefore of the view that in the facts and circumstances of the case the three conditions of the old F.R. 22-C corresponding to new F.R. 22(I)(a) have not been fulfilled and the applicant therefore, is not entitled to any relief. The O.A. is therefore dismissed with no orders as to costs.

*M.R.K. Kolhatkar*

(M.R.KOLHATKAR)  
MEMBER(A).

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH.

Review Petition (N) No.6/96 in  
Original Application No.1198/94.

Anant Gopalrao Shende.

... Applicant.

V/s.

Union of India and 3 ors.

... Respondents.

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

ORDER ON REVIEW PETITION BY CIRCULATION :

(Per Shri M.R.Kolhatkar, Member(A)) Dt. 29.9.1996.

In this Review Petition, the review petitioner/ original applicant has sought a review of my Judgment dt. 19.3.1996. By that Judgment, the prayer of applicant for grant of relief by way of stepping up of pay with reference to his junior was denied to the applicant. In the grounds for review, the review petitioner has adduced the same grounds which he had adduced at the time of the hearing of the O.A. The review jurisdiction is quite distinct from appellate jurisdiction and the Review Petitioner has not pointed out any error apparent on the face of the record or similar factors warranting the review of my order. I am therefore, of the view that the Review Petition lacks merit and the same is dismissed by circulation as provided in the Rules.

*M.R.Kolhatkar*

(M.R.KOLHATKAR)  
MEMBER (A)

B.  
11/3/96  
order/Judgment despatched  
to Appellants/Respondent(s)  
on 13/9/96

*25/9/96*