

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 896/94/199

Date of Decision: 12-09-96

Mrs. Sulochana Radhakant Shinde

Petitioner/s

Mr. A. I. Bhatkar

Advocate for the
Petitioner/s

V/s.

U.O.I. & CRS.

Respondent/s

Mr. V. S. Masurkar

Advocate for the
Respondent/s

CORAM:

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

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)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Pronounced this the 12th day of September, 1996
O.A. 896/94

CORAM: HON'BLE SHRI M.R. KOLHATKAR, MEMBER(A)

Mrs. Sulochana Radhakant Shinde,
Office Superintendent Gr. II
Naval Pay Office,
Mumbai,
C/o. A.I. Bhatkar, Advocate,
4/13, Mohd. Hussain Chawl,
Opp. Antop Hill Post Office,
S.M. Road, Antop Hill,
Mumbai - 400 037.

By Advocate Shri A.I. Bhatkar

.. Applicant

-versus-

1. Union of India
through
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Flag Officer Commanding-in-Chief,
Headquarters,
Western Naval Command,
Shahid Bhagat Singh Road,
Mumbai - 400 001.
3. The Supply Officer-in-Charge,
Naval Pay Office,
Shahid Bhagat Singh Road,
Mumbai - 400 001.

By Counsel Shri V.S. Masurkar

.. Respondents

O R D E R

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

In this O.A. the applicant who is working as Office Superintendent Gr. II since 28-7-89 in the office of Respondent No. 3 has claimed the relief of stepping up of her pay in the post of Office Superintendent Gr. II in the pay scale of Rs. 1400-2300 w.e.f. 12-2-1991 when her junior one Mrs. M.M. Hande began to draw a pay of Rs. 1800/- which is more than the pay of the applicant. It is not disputed that the applicant in the earlier grade of UDC as well as in the promotional grade of O.S. Gr. II is senior to

...2/-

Mrs. Hande. In this connection applicant has submitted a comparative statement at Ex.2 which is reproduced below:

	<u>Applicant</u>	<u>Mrs. M.M. Hande</u>
1. Appointed as LDC	09-04-62	25-09-62
2. Promoted as UDC	01-06-73	12-02-74
3. Pay as on 31-12-85 in pre-revised scales	Rs. 476/-	Rs. 464/-
4. Pay fixed as on 1-1-86 in revised scales	Rs. 1470/-	Rs. 1470/-
5. Date of increment	12-02-86	12-02-86
6. Date of promotion as OS Gr. II	28-07-89	16-08-90
7. Pay fixed on promotion as OS Gr. II under FR 22(a)(i) as on 28-7-89 of applicant.	Rs. 1640/-	Rs. 1600/- as UDC
8. Pay fixed under FR 22(c) as on 12-2-90 of applicant.	Rs. 1720/-	Rs. 1640/- as UDC
9. Granted special pay from 15-5-90 to Mrs. M.M. Hande	Rs. 1720/- as OS	Rs. 1640/- + Rs. 70/- as UDC
10. Pay fixed on promotion under FR 22(c)(i) as on 16-8-90 of Mrs. M.M. Hande	Rs. 1720/-	Rs. 1720/-
11. Pay fixed under 22(c) as on 12.2.91 of Mrs. M.M. Hande	Rs. 1760/-	Rs. 1800/-

The applicant is challenging the order dt. 9-3-93 for stepping up Ex.1 by which her representation has been rejected.

The applicant submits that the possible reason for rejecting her claim is grant of special pay of Rs. 70/- to her junior Mrs. M.M. Hande from 15-5-90 in the cadre of Upper Division Clerk. This special pay has been granted to Mrs. Hande due to complex nature of work carried out by her. The respondents contend that while working as UDC the applicant was not eligible

for the special pay for complex nature of work whereas Mrs. Hande was eligible for the same and hence the same was taken into account while fixing her pay and therefore the applicant's request for stepping up of the pay with reference to the junior was required to be rejected. The applicant relies, however, on the decision in the case of K. Krishna Pillai vs. U.O.I. reported in 1994(26)ATC 641 in which it is stated 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." It is the contention of the applicant that grant of special ^{pay} is a fortuitous circumstance. According to the respondents the decision of Ernakulam Bench is applicable only to the respective applicants and it does not apply to the present case. Moreover there is another reason viz. that the anomaly referred to by the applicant in comparison with the pay of Mrs. Hande would be for the second time, and in order to remove an anomaly in the ^{comparison} pay with the same junior individual is only admissible in terms of O.M. No.F-4/7/83-Est.(P.I) dt. 31-3-84 from Ministry of Home Affairs. It may be noted that this O.M. has been reproduced in a case decided by this Tribunal viz. T.P. Shyamalan vs. U.O.I. & Ors. reported at 1995(1)ATJ 442. The applicant relying on that judgment states that this Tribunal has held that so long as the conditions set out in FR 22-C are fulfilled the condition referred to in the O.M. dt. 31-3-1984 viz. that the

pay can be stepped up for the second time only on par with the first junior has been held to be unreasonable in that case. Therefore the O.M. relied upon by the respondents cannot ~~be of~~ any help to them and the applicant is entitled to the relief of stepping up of pay.

2. In my view I am bound by the ratio of T.P. Shyamalan and I am of the view that the mere fact that the applicant had her pay stepped up with reference to another junior Shri A.K. Devanani, UDC from 1-2-76 vide para 11 of the written statement does not disentitle her to claim stepping up of the pay so long as conditions of FR 22- C are fulfilled.

3. Counsel for the respondents relies on the Supreme Court judgment in Chief Commissioner of Income Tax vs. V.K. Gururaj & Ors. JT 1996(1) SC 709 which deals with payment of Rs.35/- p.m. to the UDC as a special pay for discharge of special duties of onerous nature. It was held in that judgment ^{that} UDCs who do not perform the special duties, though seniors, do not ipso facto get the same pay on the parity of equal pay due to juniors getting higher pay. In that case the Tribunal had directed payment to all the persons who did not discharge such duties assigned to the 10% special posts of UDCs carrying special pay of Rs.35/- per month. The Hon'ble Supreme Court found that the Tribunal had merely followed a decision in an earlier O.A. The Supreme Court held that it being a question of law the failure to file an appeal in the earlier case does not have the effect of

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following in all other cases. It appears to me therefore that the decision in V.K. Gururaj although it does bear on payment of Rs.35/- (since raised to Rs.70/-) as a special pay, does not relate to fixation of pay by stepping but rather to grant a special pay per-se and does not have any bearing on the present O.A.

4. The counsel for the applicant relies on the case of ESIC vs. Gunvantri Umedrai Bhat and others, 1995 SCC (L&S) 903. In that case the Tribunal had taken the view on a consideration of definition of "existing emoluments" and on a consideration of several memoranda issued by the ESIC that special pay was includable in the pre-revised basic pay for the purpose of revised pay. The question was revision of pay scale in the context of third pay commission and the special pay was permissible to Deputy Managers but not permissible to Inspectors which posts were interchangeable. The Supreme Court upheld Tribunal's judgment. I am, therefore, of the view that this particular case ~~also~~ does not help the applicant either.

5. Eventually I am required to go back to whether the three conditions for stepping up of the pay have been fulfilled. These three conditions vide Govt. of India Order No.8 under FR 22-C are as below :

- (a) Both the junior and senior officers who 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.
- (c) ~~The~~ anomaly should be directly as a result of the application under FR 22(C) e.g. even if 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."

6. It appears to me that the first two conditions are clearly fulfilled in this case. The third condition viz. ^{that ~~the~~} anomaly should be as a result of FR 22C, however, does not appear to have been fulfilled. It is evident ~~that~~ the illustration given in the condition No.(c) that even if 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, is only an illustration and it covers several other situations which can give rise to the anomaly in the pay scale. In this ~~O.A.~~ the situation which has given rise to the anomaly is that Mrs. Hande with whom the applicant compares her case ~~had~~ ^a by operation of different set of rules, ~~became~~ eligible to draw special pay of Rs.70/- attached to 10% ~~UDC's~~ discharging complex nature of duties. The applicant herself, though senior

was not found eligible at the material time. Therefore, the higher pay drawn by Mrs. Hande is by operation of a different set of rules and clearly not as a direct consequence of application of FR 22 C. It is, therefore, not a fortuitous circumstance in terms of K.K. Pillai's judgment. I am, therefore, of the view that the request of the applicant to step up her pay was rightly rejected by the respondents and O.A. lacks merit.

7. O.A. is therefore dismissed with no order as to costs.

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M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No.84/97 in
Original Application No.396/94

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

Mrs. S.R. Shinde

... Applicant.

V/s.

Union of India and others.

... Respondents.

Tribunal's order on Review Petition 84/97 by Circulation.


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

Dated: 17-9-97.

In this Review Petition, the Review Petitioner, the original applicant has sought review of my judgement dated 12.9.96. Applicant has also filed an application for condonation of delay because the Review Petition is filed on 11.9.97^{i.e.} after almost one year as against ^{the} statutory limit of one month. The reason given for the delay is that the applicant had retired on 1.5.96 and gone to her native place and could not contact the counsel. The reasons are vague and lacking ⁱⁿ material particulars as to delay. The Review Petition is therefore liable to be dismissed on the short ground of delay. However, I also consider the contentions on merit. The main contention of the applicant is that the principle of the stepping up of pay as has been prescribed under F.R. 22(C) is that the junior should not draw more pay than the senior for no fault of the senior. In this connection the applicant has relied upon the judgement of the

Supreme Court in the case of Union of India and others V/s. P. Jagdish and others 1997 SCC (L&S) 701 pronounced on 17.12.96. Assuming that the judgement helps the applicants, the same could not have been taken into account by this Tribunal. This cannot be a ground for review.

2. I have given reasons for my judgement and I have held that the third condition of the F.R. 22(C) namely " the anomaly should be directly as a result of the application of F.R. 22(C) ~~that~~ ^{condition} has not been fulfilled in the present case. No material has been presented in the Review Petition to show that there is an error apparent on the face of the record or there are other sufficient reasons to warrant a review of the judgement. The ingredients for review have not been fulfilled. The Review Petition is therefore, dismissed both on grounds of delay as well as ^{on} ~~merits~~ ^{by} circulation, as provided under Rules.



(M.R. Kolhatkar)
Member (A)

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