

OA 1310/94
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MUMBAI

O.A. NO: 1021/94 AND O.A. 1310/94

Pronounced this the 28th day of March 1996

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

1. Shri Phool Singh

Assistant Foreman,

C.Q.A.(E) Aundh Camp,

Poona - 411 027

(By advocate Ms. Neelima Gohad
for Mr. S.P. Saxena)

.. Applicant in
O.A. 1021/94

-versus-

Union of India

through

Director General ,

Quality Assurance,

O/O Directorate General,

Quality Assurance,

Ministry of Defence,

DHQ P.O. New Delhi-110011

(By advocate Ms. Shenoy for
Mr. V.S. Masurkar)

.. Respondents
in O.A. 1021/94

2. Mrs. V.A. Upadhya

H.No.3, Sarvatra Society,

Paul Road, Pune 411038.

(By advocate Shri S.P. Saxena)

.. Applicant in
O.A. 1310/94

-versus-

The Union of India,

through

The Secretary,

Ministry of Defence,

DHQ PO,

New Delhi - 110 011.

The Chief Engineer,

Southern Command,

Pune 411 001.

The Chief Engineer,

Poona Zone,

Pune 411 001.

Commander Works Engineer,

Poona 411 001.

(By counsel Mr. R.K. Shetty)

.. Respondents .2/.

O R D E R

¶Per M.R.Kolhatkar, Member(A)¶

As these two OAs raise the issue relating to stepping up of the pay under the old FR-22-C they are being disposed of by one common judgment. The reasons are contained in judgment in O.A. 1021/94 but facts in the other O.A. are narrated separately as necessary.

O.A.1021/94

In this case the applicant who is working as Asstt.Foreman in CQAE,Aundh Camp, Poona is claiming stepping up with reference to his junior P.K.Nawadkar, who began to draw more basic pay compared to the applicant with effect from 24-11-1984.

2. The applicant was working in the post of Chargeman Gr.I till 1-1-1985 and thereafter he was promoted to the post of Asstt.Foreman on 2-1-1985 and was transferred to Poona in July,1988 in the office of respondent No.2. Shri P.K.Nawadkar working in the same department of the Ministry of Defence was junior to the applicant in the post of Chargeman. P.K.Nawadkar was promoted to the post of Asstt.Foreman w.e.f 24-11-1984 on ad-hoc basis till 25-3-1985. The applicant was regularly promoted to the post of Asstt.Foreman w.e.f. 2-1-1985 whereas P.K.Nawadkar was regularly promoted w.e.f. 26-3-1985. Due to the earlier adhoc promotion of P.K.Nawadkar, the pay of Nawadkar was fixed at Rs.700/- w.e.f. 26-3-1985 with date of next annual increment on 1-11-1985, as the adhoc service rendered by him

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in the post of Asstt. Foreman was to count for determining the next annual increment. However, the pay of the applicant was fixed at Rs.700/- w.e.f. 2-1-1985 with date of next annual increment on 2-1-1986. Thus P.K.Nawadkar started drawing more basic pay compared to the applicant w.e.f. 24-11-1984. On 1-11-1986 the applicant was drawing Rs.2120/- in the revised scale of pay whereas P.K.Nawadkar was drawing Rs.2240/- in the revised scale of pay. Thus the difference persisted to this date. The applicant made several representations, the latest of which is dated 10-2-1994 which is not yet replied by the respondents. It is contended by the applicant that in terms of former FR-22-C corresponding to the new FR²²(1)(a)(i) the conditions which are required to be fulfilled for stepping up of the pay which are incorporated in the Ministry of Finance O.M. No.F.2(78)-E III(A)/66 dt. 4-2-1966 are as below :

- (a) Both the junior and senior officers 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; and
- (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 of FR-22-C. For example, if even 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 provisions contained in this decision will not be invoked to step up the pay of the senior officer."

According to the applicant, these conditions are fulfilled in his case and he should be given stepping up of the pay with effect from the date the difference occurred viz. 24-11-1984. The applicant seeks pay fixation on this basis and also arrears on account of difference of pay.

3. The respondents have opposed the O.A. It is contended in the written statement filed that the O.A. is liable to be rejected as it is time barred. The cause of action arose in 1984 whereas the O.A. was filed on 4-9-94. Regarding the promotion of PK Nawadkar, it is stated that he was so promoted against existing vacancy of Asstt. Foreman in COAE, Poona for three months in the first instance and, thereafter, it was extended by a further period of three months w.e.f. 24-2-1985. The adhoc promotion is to be given on "establishment" basis. The applicant was not working in the same establishment at that time and therefore even though senior, he could not be considered for adhoc promotion. On the other hand, PK Nawadkar was seniormost in the establishment and fulfilled the recruitment rules for adhoc promotion. Hence the initial difference in the pay as on 24-11-1984. So far as the subsequent difference is concerned, PK Nawadkar opted to come under revised pay rules w.e.f. 1-11-1986 i.e. the date of his subsequent increment and his pay has been fixed @ Rs. 224⁰/₁₀/- with DNI on 1-11-1987 whereas

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applicant has opted to come over under revised pay rules w.e.f. 1-1-1986 and his pay has been fixed @ Rs.2120/- with the DNI on 1-1-1987. The question of stepping up of the pay of the applicant in comparison with Shri Nawadkar was examined initially but the same was not approved as it was not covered under the rules.

4. In his rejoinder the applicant has contended that the respondents ought to have given adhoc promotion to the seniormost person in the seniority list awaiting promotion. The applicant had neither foregone nor refused any offer of promotion in adhoc or regular capacity.

5. Regarding the claim in the O.A. being time barred, the applicant relies on the case of M.R.Gupta vs. U.O.I. & Ors.(1995)31 ATC 186 decided on 21-8-1995 in which Hon'ble Supreme Court laid down that the claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. The Supreme Court set aside the order of the Tribunal for reconsideration, on the footing that the O.A. was not barred by limitation. The law, therefore, can be taken to be well settled that the continuing wrong gives rise to a recurring cause of action and in the matter of pay fixation the cause of action arises every month. Of course, so far as the question of arrears are concerned the date of

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filing of the application would be material.

I am therefore of the view that the contention of the respondents that the claim for pay fixation is barred by limitation cannot be accepted.

6. The next question is whether the claim is justified in terms of Govt. of India decision under FR-22-C which is reproduced above. It would appear that conditions (a) and (b) enumerated above are fulfilled in the instant case. It is, however, not clear whether the anomaly is directly as a result of application of FR-22-C in terms of condition (c). The anomaly appears to have arisen as a result of adhoc promotion of the junior on the basis of seniority in the "local establishment". The anomaly has not arisen as a direct result of operation of FR-22-C. Moreover under the rules, even ad hoc services counts for increment and therefore I am required to interpret the various rules harmoniously. It is contended by the applicant that under condition (c) it is only the contingency of grant of advance increment which is saved from the requirement of stepping up. A close reading of the rule however, indicates that grant of advance increments is only an example which is given in condition no.(c) and there can be several situations which would give rise to a difference in basic pay between a junior and his senior in the same cadre.

7. The applicant would then contend that it is now settled by case law that higher pay due

to to adhoc promotion can give rise to a legitimate claim for stepping up of pay. In this connection reliance is placed to the case of Anil Chandra Das and another vs. U.O.I. & Ors. decided on 28-1-1988 (1988) 7 ATC 224. This was the earliest case decided by the Single Bench of the Tribunal and the authority derives from the contention that the SLP against the same was dismissed by the Supreme Court. It is on this case that reliance is placed in N.Lalitha vs. U.O.I. & Ors. O.A. No.816/89 decided by Hyderabad Bench on 15-11-1991. It is contended that SLP against N.Lalitha was also dismissed by the Supreme Court. Next, reliance was placed on A.D.Bhamburkar vs. U.O.I. which is an O.A. 235/94 decided by the single member of CAT Bombay Bench on 30-11-1994. Bhamburkar's case, however, relied on division bench decision of K.Krishna Pillai & Ors. v. U.O.I. & Ors.(1994)26 ATC 641. Krishna Pillai's case referred to N.Lalitha's case. The DB laid down the proposition that senior will be entitled to have his pay stepped up to the level of pay received by his junior due to fortuitous circumstance. In my view, the proposition laid down by the DB in K. Krishna Pillai's case does not appear to be good law in view of the Supreme Court judgment in State of Andhra Pradesh & Ors. v. G.Sreenivasa Rao & Ors. decided on 13-3-1989, ATR 1989(1)SC 676. It is laid down by the Supreme Court in para 15 of the judgment as below :

"15. "Equal pay for equal work" does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex-facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when pay-fixation is done under valid statutory Rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given any protection, when a senior is stopped at Efficiency Bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or as incentive for efficiency; are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved. We do not therefore find any good ground to sustain the judgments of the High Court/Tribunal"

The stepping up of pay which is claimed in the present O.A. and the similar O.A. is apparently not strictly in terms of FR-22-C. A closer examination which has been attempted in above paragraphs would show that ^{instant} in case condition no.(c) in Govt. of India decision under FR-22-C

is not fulfilled. However, because of the case law referred there has been a tendency to read this condition restrictively and to grant the relief when conditions (a) and (b) are satisfied keeping in view the ratio laid down by the Krishna Pillai's case. But it would be seen that the ratio in Krishna Pillai's case is not in relation to FR-22-C but really in relation to principle of equal pay for equal work and the Supreme observations in para 15 of G.Sreenivasa Rao's judgment are a complete reply to the proposition laid down in K.Pillai's case. In my view therefore, K.Pillai's case though decided much later viz. on 29-10-93 was decided without attention of the Tribunal having been invited to the proposition laid down by the Hon'ble Supreme Court in G.Sreenivasa Rao's case much earlier viz. 13-3-89 and therefore K. Pillai's case cannot be said to be binding.

8. I am therefore of the view that the applicant is not entitled to any relief firstly because the condition (c) set out in conditions under FR-22-C has not been fulfilled, secondly because the Govt. of India decision under FR-22-C are required to be read harmoniously with the rule which lays down that an increment would accrue even though an employee works in a post on adhoc basis and thirdly because the broad proposition laid down in Krishna Pillai's case that except in the case of disciplinary proceedings there can be no difference in pay between a junior and a senior cannot be said to be

good law, in view of the observations of the Hon'ble Supreme Court in G.Sreenivasa Rao.

9. O.A. is therefore liable to be dismissed and it is so dismissed without any order as to costs.

O.A. 1310/94

10. In this case the applicant has claimed stepping up of the pay with reference to two juniors who started drawing higher pay w.e.f. 1976. The applicant has superannuated but after superannuation made a representation in 1993 and filed the O.A. on 7-11-94. The O.A. for stepping up was opposed by the respondents on the ground of limitation which objection in view of ratio of M.R.Gupta's case cannot be sustained. However, the respondents have also pointed^{out} that the main reason for the difference was the fact that the applicant exercised an option for revised pay rules in terms of relevant Govt. order on 25-1-74 whereas the two employees viz. S/Shri S.O.Zope and S.G.Toni, with whom she compares her case exercised their option to come over to the revised pay scale of 1973^{Shri Toni} w.e.f. 4-6-84 and Shri Zope opted w.e.f. 25-5-84. These belated options were exercised in terms of Govt. orders which permitted exercise of such belated options. The respondents pointed out that inspite of such a wide time period available and the chance to even revise the option exercised earlier, the applicant did not revise her option on 25-1-74. Respondents have also pointed that the

provisions of FR-22-C are not attracted in the case of the applicant as it is not a case of pay fixation on promotion or assumption of higher responsibilities.

11. The applicant has relied on several case laws and mainly on the case of N.Lalitha and Krishna Pillai. For the reasons given in the judgment in O.A. 1021/94 I am not inclined to accept the contention of the applicant.

12. I am, therefore, of the view that the applicant is not entitled to the relief in terms of FR 22-C and is liable to be dismissed and is accordingly dismissed with no order as to costs.

(M.R.KOLHATKAR)
Member(A)

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