BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MUMBAI

O.A.NOS:710/95, 712/95 TO 736/95(25 OAs), 756/95 TO 820/95, 833/95 TO 856/95, 862/95 TO 904/95 1057/95 TO 1064/95(TOTAL 163 OAs)

Pronounced this, the 28th day of March 1996

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

G.Peter
(By advocate Shri A.I.Bhatkar) .. Applicant

-versus-

1. Union of India,
through
The Secretary,
Ministry of Defence,
Sena Bhavan,
New Delhi - 110 011.

2. The Chief of the Naval
Staff, Naval Headquarters,
DHQ PO,New Delhi 110 011.

3. The Flag Officer Commanding
in-Chief, Headquarters,
Western Naval Command,
Shahid Bhagatsingh Road,
Bombay - 400 001.

(Shri V.S.Masurkar,Counsel for Respondents) .. Respondents

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

The applicant in O.A.710/95 was appointed as LDC on regular basis with effect from 22-3-66 and he was promoted to the post of UDC on regular basis with effect from 27-2-81. His pay on promotion as UDC was fixed at Rs.360/- On revision of pay according to the IVth Pay Commission, his pay was fixed at Rs.1350/- with effect from 1-1-86. His junior Mr.M.C.Nair was appointed

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as LDC on regular basis with effect from 4-1-68 and he was promoted as UDC on regular basis with effect from 22-9-82. His pay on the date of his promotion was Rs.452/- in the scale of UDC and accordingly his pay was fixed at Rs.1470/- with effect from 1-1-86 in accordance with the recommendations of the IVth Pay Commission. The applicant contends that his junior Shri M.C.Nair is getting more pay due to the fact that he enjoyed adhoc/ officiating promotion in the cadre of UDC and is continuously drawing higher rate of pay than the applicant even after he was regularly promoted as UDC. According to the applicant, both were borne on a single seniority list of LDC. Applicant further submits that after promotion he and his junior Mr.M.C.Nair are borne on a single seniority list of UDC and in both the seniority lists Mr.M.C.Nair has been shown as junior to the applicant. The promotion from the post of LDC to the post of UDC is on the basis of seniority-cum-fitness and that he is entitled to stepping up of the pay in terms of Govt. of India order No.8 under FR 22(C) in which the conditions prescribed for stepping up are laid down as below:

"(a) Both the junior and senior officers who belong to the same cadre and the post 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;

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(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 increment, the above provisions will not be invoked to step up the pay of the senior officer."

According to the applicant, he made a representation to the respondents on 4-3-94 at page 12 Ex.1 but there was no reply and therefore he has filed the O.A. The applicant ~~xxx~~ contends that the matter is settled by a series of cases decided by C.A.T. wherein it is held that due to fortuitous circumstance the senior should not be at the disadvantage in the pay fixation. The applicant has, therefore, claimed the relief of stepping up of pay of the applicant with reference to his junior Mr.M.C.Nair and of directing the respondents to grant consequential benefits including arrears within a specified period with 18% interest.

2. The respondents have opposed the O.A. It is firstly contended that the O.A. is with reference to the cause of action which arose on 15-3-71 and therefore it is barred by time. On merits it is contended that Mr.M.C.Nair the junior individual has tendered his willingness in response to the circular issued and he was promoted as officiating UDC w.e.f. 15-3-71 to perform the duties of Assistant Cashier in the pay scale of Rs.130-300 attached to the post of UDC and after due

consideration by the DPC. The respondents have enclosed an extract of the relevant office order dt. 19-3-71, at Annexure R-1, which states that he will be on probation for a period of two years with effect from 15-3-71, that he will not get any cash allowance, his seniority in the U.D. Grade will count from the date on which he would normally be promoted as U.D. Clerk according to his seniority in the L.D. Grade, he will be required to make Security Deposits/Govt.Securities/National Savings Certificates or take out fidelity Bonds etc. in accordance with N.I.55/57. Thus the respondents drew a higher salary for the work performed by him which was of a highly responsible nature for which he got the benefit and the applicant who never worked as a Cashier cannot make a grievance of not having got the benefit and cannot claim benefit without having worked in a responsible position. According to the respondents the case law cited by the applicant does not apply to the facts of the case.

5. In his rejoinder the applicant states that willingness of the applicant to work on the post of cashier was never ascertained and therefore he is entitled to the benefit of stepping up in terms of FR 22-C.

6. So far as the point of limitation is concerned counsel for the applicant has relied on the Supreme Court decision in M.R.Gupta vs. U.O.I. & Ors. reported at 1995(2)SLJ 337. In this judgment the Hon'ble Supreme Court has held that the

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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. In my view the contention of the respondents that the O.A. is time barred cannot be accepted so far as the cause of action is concerned. However, that contention may be relevant while deciding on the question of payment of arrears if the O.A. is allowed.

7. The applicant has relied on the following judgments: K.Krishna Pillai and others vs. Union of India & ors.(1994)26 ATC 641 which refers to the case of N.Lalitha v. U.O.I. (1992) 19 ATC 569, Anil Chandra Das v. Union of India (1988)7 ATC 224 and P.Gangadhara Kurup v. Union of India,(1993)1 ATJ 165. Since this is a division bench judgment decided on 29 October,1993 the proposition laid down by this judgment appears to have been followed by various benches of the Tribunal. It is laid down in K.Krishna Pillai's case that "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

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received by his junior, due to fortuitous circumstances." Other cases cited by the applicant are O.P.Gupta and Others vs. U.O.I. & Ors. (1995)31 ATC 84, Dilip Kr. Mukherjee & Ors. vs. U.O.I. & Ors. 1995(2)ATJ 73, M.Mallikharjuna Rao vs. U.O.I. & Ors., (1993)24 ATC 297, Smt.V.K.D. Rajyalakshmi vs. Regional Director, ESIC,Hyderabad, 1993(1)ATJ 579, Mrs.Rajam Krishnan and Ors. vs. U.O.I. & Ors., 1994(2)ATJ 52.

8. The counsel for the applicant has also relied on decisions of Bombay Bench of this Tribunal in the following cases: K.Ramachandran & Ors. vs. U.O.I. & ors. O.A.926/93 decided on 19-7-94, Raghuveer Vinayak Joshi vs. Secretary Dept. of Telecommunication,New Delhi and Ors., O.A. 1229/92 decided on 17-1-1994 and R.Parthasarathi vs. U.O.I. & Ors. O.A. 101/95 decided on 28-12-1995. All the decisions cited by the counsel for the applicant of the Bombay Bench are single bench decisions. As observed by me above therefore the authority of K.Krishna Pillai has been considered for stepping up and it is not necessary to consider any more cases.

9. The respondents,however, have contended that the case law cited by the applicant is not conclusive. He has cited the following cases. D.G.Employees State Insurance Corporation and another vs. B.Raghava Shetty and Ors. (1995)30 ATC 313. That was a case decided by Supreme Court in which scope of FR 22-C was considered. The head note of this reads as below :

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"Fundamental Rule 22-C - Scope-Whether can be relied on for stepping up of pay-Head Clerk in local office of Employees' State Insurance Corporation-Fixation of pay of promotee in the post of - Options for being posted as UDC In-charge in local offices invited from all UDCs but given by the respondent alone-Respondent, consequently, appointed as UDC -In charge in a local office - Subsequently,the respondent also working as Head Clerk at that place on ad hoc basis for several years till his regular promotion as Head Clerk - At this stage several other persons who were senior to the respondent as UDC but had not consented to join as UDC In-charge, also coming to be promoted as Head Clerk - FR 22-C,(new Rule 22(I)(a)(1))held, could not enable such persons to seek parity of pay with the respondent in the post of Head Clerk - Pay - Fixation of, on promotion - Promotion

Appeals Allowed"

Counsel for the respondents have also relied on the judgment of K.M.Mathew vs. Collector of Central Excise and another, (1995)30 ATC 343 on the point of limitation. I need not consider this case because according to me the question of limitation stands concluded by Supreme Court judgment in the case of M.R.Gupta vs. U.O.I.

10. It will be seen that D.G.Employees' State Insurance Corporation and another proceeded on the finding of the fact that the contesting respondents had not shown their willingness for being posted as UDC In-Charge at the local offices. In the present case the applicant has stated in his rejoinder that his

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willingness was not ascertained but this contention of the applicant cannot be accepted because she has not cited any evidence in support of his contention. On the other hand the respondents have filed office order from which it is clear that Shri M.C.Nair was selected for the post and a regular order was issued and he was put on probation and it was open to the applicant to challenge the promotion of the applicant at that stage but he did not do so and now he contends after a period of 24 years that he was not given an opportunity and claims stepping up. His case in any case cannot be supported on the ground that he was entitled to be considered for promotion and would have been promoted but for the denial of the opportunity. The fact of the matter is that it was not denied that Mr.M.C.Nair did work in a responsible position and the applicant did not work so. The applicant's case therefore must depend on the fulfilment of the conditions laid down in FR 22-C and the proposition which can be derived from case law in support of his argument that he fulfills all the conditions. On a plain reading of the three conditions reproduced above it is clear that the applicant vis-a-vis Mr.M.C.Nair can be said to be fulfilling conditions relating to (a) and (b) but so far as condition no.(c) is concerned he cannot be said to be fulfilling the condition because the anomaly between his pay and Mr.M.C.Nair does nor arise as a result of application of FR-22-C per se. It is no doubt true that condition (c)

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refers to saving of grant of advance increment as an illustrative case but that does not exhaust the possibilities. In fact K.Krishna Pillai's case appears to proceed not on application of FR 22-C but it appears to have proceeded on the basis of guarantee of equality viz. Article 14 and 16 of the Constitution. On this point the observations made by the Hon'ble Supreme Court in the case of State of Andhra Pradesh & Ors. etc. vs. G.Sreenivasa Rao & Ors, ATR 1989(1)SC 676 are relevant. The head note of the same reads as below :

> "Equal pay for Equal Work: Doctrine of Constitution of India- Articles 14,16 and 39(d)-Andhra Pradesh Fundamental Rules-Rule 22(a)(i)-Grant of a higher pay to a junior- Pay fixation of the junior was done under the fundamental Rules-Validity of the Fundamental Rules not challenged-Seniors cannot invoke the equality doctrine- "

In para 15 of the judgment the Hon'ble Supreme Court has observed 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,

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> 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 pay 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."

Thus in para 15 the Supreme Court has envisaged several grounds on which a junior may draw a higher pay scale. The Supreme Court has laid down that the differentia on these grounds would be based on intelligible criteria which have rational nexus with the object sought to be achieved. Thus the observations made in Krishna Pillai's case 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 do not appear to be supported by the law laid down by the Supreme Court.

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11. I am, therefore, of the view that the present O.A. is liable to be rejected on the ground that it does not fulfill the condition (c) under FR-22-C and also keeping in view the observations of the Hon'ble Supreme Court in State of Andhra Pradesh & Ors. vs. G.Sreenivasa Roa and Ors as well as DG ESIC case referred to above the O.A. has therefore no merit and is dismissed with no order as to costs. Facts and grounds in other OA's cited in the title sheet are similar to O.A.710/95 and they are also dismissed.

(M.R.KOLHATKAR)
Member(A)

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