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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 587/88

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~~T.A. No.~~

DATE OF DECISION 07.9.93

SURENDRA KUMAR-II & ANR. **Petitioners / Applicants.**

SH.M.C.JAIN KAGZI **Advocate for the Feticioner (s)**

Versus

UNION OF INDIA & ORS. **Respondent**

SHRI U.D. SHARMA **Advocate for the Respondent (s)**

CORAM :

The Hon'ble Mr. GOPAL KRISHNA, MEMBER (J).

The Hon'ble Mr. O.P. SHARMA, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*.
2. To be referred to the Reporter or not? *Yes*.
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*.
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*.

(Signature)
(O.P. SHARMA)
MEMBER (A)

(Signature)
(GOPAL KRISHNA)
MEMBER (J)

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JAIPUR.

Date of Decision: 07.9.93.

QA 587/88

SURENDRA KUMAR-II AND ANR. ... APPLICANTS.

v/s.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

HON. MR. GOPAL KRISHNA, MEMBER (J).
HON. MR. O.P. SHARMA, MEMBER (A).

For the Applicants ... SHRI M.C. JAIN KAGZI

For the Respondents ... SHRI U.D. SHARMA.

PER HON. MR. O.P. SHARMA, MEMBER (A).

The applicants, Surendra Kumar-II and Ashok Kumar Pareek, have filed this application u/s 19 of the Administrative Tribunals Act, 1985, praying that they may be paid the same amount of pay and allowances w.e.f. 1.4.87 in the revised scale of pay Rs.1400-2600 which are being paid to persons declared as Senior Accountants with effect from the aforesaid date.

2. At the outset, the learned counsel for the applicant stated that he did not press the case on behalf of Surendra Kumar-II. Therefore, we are concerned with the second applicant namely Ashok Kumar Pareek only. The case of the applicant, who is a Junior Accountant in the Department of Posts, is that as a result of cadre restructuring 80% posts of Junior Accountant were upgraded to

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those of Senior Accountant, w.e.f. 1.4.87. The scale of pay of the Junior Accountant is Rs.1200-2040, whereas that of the Senior Accountant is Rs.1400-2600. The upgradation of 80% of the posts of Junior Accountant and grant of the higher pay scale to the upgraded officials has been assailed on various grounds. One is that cadre restructuring has not been done by any statutory rules framed under Article 309 of the Constitution but has been done ^{by} an executive order, which is not a proper course of action to adopt. The second is that the upgradation of only 80% posts to that of Senior Accountant is arbitrary. The third ground is that the principle of 'Equal pay for equal work' should be followed. Since the Senior Accountants and the Junior Accountants are even now doing the same work, they should be granted the same scale of pay. Another ground for assailing the procedure adopted by the respondents is that the posts to which the Senior Accountants have been appointed on upgradation were not identified. This identification was done later on, after the promotions consequent upon upgradation were granted. Another ground taken by the applicant is that the principle of seniority-cum-fitness on the basis of which upgradation was purported to have been done was in fact not followed while giving the higher scale of pay on upgradation of posts. The learned counsel for the applicant, during the arguments, cited before us the case of U.P. Rajya Sehekari Bhoomi Vikas Bank Ltd., U.P. v/s. its workers (AIR 1990 SC 495). In this case, both the senior and junior groups of promotees were doing the same type of work. Higher wages were given to one group from a

particular back date. The Hon'ble Supreme Court held in this case that promotees of another group cannot be denied that benefit.

3. The respondents have stated that the cadre restructuring was done as a result of the recommendations of the 4th Pay Commission. Their recommendations were given after due deliberation and in so far as the numbers of post for upgradation is concerned, the recommendations of the 4th Pay Commission were accepted in toto. The Pay Commission is an expert body which is constituted precisely for the purpose of determining matters like pay, cadre restructuring etc. If recommendations of such body have been followed by the respondents, no charge of unfairness can be laid on their door in the matter of treatment of Senior Accountants and Junior Accountants.

Q 4. The respondents have further stated that the Govt. is empowered to do the exercise of power restructuring by executive orders. These executive orders will have the force of the rules, in the absence of rules under Article 309 having ^{been} framed in this regard. They have maintained that the principle of seniority-cum-fitness was strictly followed in granting higher pay to employee on upgradation in accordance with the principles laid down in the ^{relevant} order. Further, according to them, the posts have also since been identified against which the upgraded officials are to be fitted. According to them, therefore there is no proper basis for the challenge to the upgradation of a part of the total number of posts of Junior

Accountants and grant of higher pay to those officials who have been upgraded.

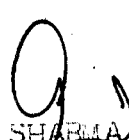
5. We have heard the learned counsel for the parties and have also perused the records as also the judgement cited by the learned counsel for the applicant. In this case, cadre restructuring, as a result of which 80% posts of Junior Accountant were upgraded to those of Senior Accountant was done on the basis of recommendation of the 4th Pay Commission. A Pay Commission is constituted precisely for carrying out exercise of this nature and making recommendations after due deliberation. Once a recommendation to the effect that 80% of the posts of Junior Accountant should be upgraded to those of the Senior Accountant ^{was made} and the Govt. accepted the recommendations, it can be said that the Govt. followed a reasonable basis in the matter of upgradation. Unless the upgradation and the classification of posts can be shown to be wholly arbitrary and unreasonable, such classification cannot be called in question. In the instant case, the persons to be promoted to the post of Senior Accountant on upgradation were to be selected on the basis of seniority-cum-fitness. Because ^{of} the application of this principle all seniors are eligible for promotion on the basis of upgradation, except where their record is bad enough to justify their being ignored. In following this principle, by and by all the Junior Accountants will be covered. Therefore, the principle and the procedure adopted in this case cannot be considered as arbitrary in any manner.

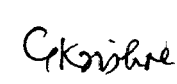
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6. The principle of 'Equal pay for equal work' would not be applicable in this case. The reason is that the posts of Senior Accountant have been created with a view to assigning higher responsibilities to the incumbents. The respondents have maintained in their reply that the persons promoted as Senior Accountants are being given higher responsibilities. Even if the identification of the posts against which the promoted officials are to be fitted was made later, that does not alter the situation. In all cases in which cadre restructuring is done, usually the seniors are given benefit or higher pay. If seniors are given higher pay on the basis of their seniority-cum-fitness, it cannot be said that there is any discrimination against the juniors in the matter of promotion or upgradation. If it was decided that 80% of the Junior Accountants will be upgraded on the basis of seniority-cum-fitness, the remaining 20% cannot have a grievance ^{because} / they will get the benefit of this principle when their turn comes. The question of application of the principle of 'Equal pay for equal work' does not arise in this case because the seniors ^{have been} / given higher pay on promotion or on upgradation or posts after assessing their seniority and fitness. There cannot be any mechanical application of the principle of equal pay for equal work. We are satisfied that in this particular case that principle has no application.

7. In the light of the above facts and circumstances, we find no merit in this OA. It is accordingly dismissed with no order as to costs.


(O.P. SHARMA)
MEMBER (A)


(GOPAL KRISHNA)
MEMBER (J)