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J A I P U R.

Date of decision: 28.7.93

: Applicants.

: Applicants.

VERSUS

: Respondents.

1 Counsel for the applicant
2 Departmental Representative

: Departmental Representative
for the respondents

for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. P.P. Srivastava, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

The applicants have prayed in their representations for stepping up of their pay equivalent to Respondent no. 3 which was turned down vide Annexure A-2, dated 8.3.1988. This order (Annexure A-2) should be quashed and the respondents may be directed to give the benefit of special pay and the pay of the respondent no. 3 should not be, in any case, higher than that of the applicants. From the perusal of Annexure A-3, it is clear that the names of the applicants who have completed 16 years on 30.11.83 find place at various serial nos. above the respondent no. 3. The name of the applicant finds place in the list of the officials who have completed 16 years' service from 1.12.83 to 31.3.84. In part B, the name of the respondent no. 3 finds place at serial no. 137.

2. Admittedly, the respondent no. 3 was junior to all the applicants and even from the perusal of the Annexure A-2, the respondents have taken the view that Shri M.P.Tyagi is drawing pay at higher rates in L.S.G. by virtue of his having officiated in the LSG w.e.f. 24.9.78 to 25.9.81 on local arrangement. To continue on adhoc appointment for a pretty long time or to continue on local arrangement for such a long time is violative of the rights of the persons who are senior because their cases are not considered for the purpose of promotion. This back door entry needs a checking. Stop-gap arrangement or local arrangement can be only for a short span of time whenever there is an urgency. To continue on stop-gap arrangement is thus violative of the fundamental rights of senior persons under Article 16 of the Constitution also.

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3. F.R. 22-C provides that 'Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted, or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued: Under Rule 22-C, there are three conditions relating to the stepping up. It provides that -

- (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;
- (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 F.R. 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 above provisions will not be invoked to step up the pay of the senior officer.

It will not be out of place to mention that the conditions laid down are that both the junior and senior officers should belong to the same cadre. There is no doubt that substantially they were holding the same cadre and subsequently they were promoted or appointed on identical posts of the same cadre. So the condition no. 1 is fulfilled. Condition No. 2 is also fulfilled that the scales of pay should be identical. The posts which all of them have substantially are of the same grade of the same cadre. Now the question about the anomaly on account of the applicability of condition (c) is to be seen. Although anomaly may not have arisen as a result of direct application of FR-22-C but the fact remains that respondent no. 3 earned grade increments on account of his officiating on local arrangement or on account of stop-gap arrangement. The cases of the applicants have not been considered for that time. Ordinarily, the stop-gap arrangement may be of urgent nature or may be for one month or two months. It cannot be continued indefinitely for years together as it will be violative of Articles 14 and 16 and it will infringe the rights of the persons who are better placed. Thus, the

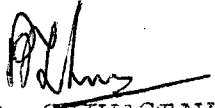
(4)

action of continuing on stop-gap arrangement in respect of junior persons or not considering the cases of the senior persons for stop-gap arrangements for indefinite period is violative of Articles 14 and 16. It is not a case of advance increment. There may be some cases of exceptional nature where it can be said that a person who has served with meritorious service or who has risked his life for the society and in appreciation of that special grade increments or special promotions are given. In such cases, the seniors cannot claim the right of ^{stepping up of} special pay. It is not a case of such nature. So the condition no. (c) ~~also~~ does not apply in the instant case as it is not an advance increment for meritorious service etc. Respondent no. 3 has earned the increments and he has earned the advance increments on account of service rendered on stop-gap arrangement or local arrangement without the consideration of the cases of the senior persons who completed 16 years prior to him. Thus, the action of the respondents in continuing him for 3 years on local arrangement depriving large number of persons is violative of Articles 14 and 16 of the Constitution and for this reason, the applicants are entitled to claim the stepping up and to claim ^{that} for their salary should not be less than Respondent no. 3 who is working on local arrangement. We are also fortified with the judgment of the Hyderabad Bench of the C.A.T. in the case of N.Lalitha & Ors Vs. Union of India & Ors (O.A. No. 816 of 1989) decided on 15.11.91, reported in RMS Worker (Vol. XXXIX, Feb.93 Edn. No. 2). In the said judgment, there is a reference of the SLP decided by the Hon'ble Supreme Court on 28.8.91.

4. In view of the above, we direct the respondents to fix the applicants' pay at par with their junior, respondent no. 3, Shri M.P. Tyagi in the cadre of LSG w.e.f. 1.1.1986. They are also entitled to all the consequential benefits including the arrears of difference of pay. The directions may be implemented within a period of 3 months from the receipt of this order.

5. We further direct that the persons similarly situated and having identical cases for not approaching the court may be given the advantage of this decision to achieve the objective laid down in Articles 14 and 16 of the Constitution.

6. The O.A. stands disposed of accordingly, with no order as to costs.


(P.P. SRIVASTAVA)
Administrative Member


(D.L. MEHTA)
Vice-Chairman