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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD

O.A. No. 756 of 1987.

Date of order: 20-6-1990.

Between:

S. R. Chouhan. Applicant.

And

The Director of Training,
DGE&T., Ministry of Labour,
Govt. of India, New Delhi
and another. Respondents.

Sri V. Venkateswar Rao, learned counsel for the Applicant.
learned
Sri N. Bhaskara Rao, /Additional/ Standing Counsel for the
Respondents.

CHORAM:

Hon'ble Sri J. Narasimha Murty, Member (Judicial).

Hon'ble Sri R. Balasubramanian, Member (Administrative).

Judgment of the Bench delivered by
Hon'ble Sri J. Narasimha Murty,
Member (Judicial).

-:-

This Application is filed by the applicant seeking a declaration that Order No. OGET-I-26011/1/87/TA.II dated 28-8-1987 of the 1st respondent and consequent Order No. I/17011/3/87-Adm. I/2170 dated 30-9-1987 of the 2nd respondent are illegal, arbitrary, discriminatory and unconstitutional in so far as the said orders limited the benefit of senior scale of pay of Rs. 550-750 (Rs. 1600-2660 revised) to the applicant from 28-8-1987 and for a direction to the respondents that the applicant is entitled to the senior scale of pay of Rs. 550-750 (1600-2660 revised) in the category of Office Superintendents with effect from 14-11-1975 with all consequential benefits.

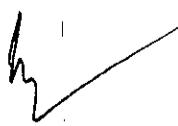
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The averments in the application are as follows:

The applicant who was initially appointed as Lower Division Clerk was promoted from stage to stage to the post of Office Superintendent with effect from 14-11-1975 in the scale of Rs.335-15-425 (pre-revised). This promotion was made on the recommendation of the D.P.C., on ad-hoc basis. The services of the applicant in the cadre of office Superintendent were regularised with effect from 26-3-1980 by an order dated 2-4-1980. The applicant states that he was continuously functioning as Superintendent and his services are to be regularised with effect from 14-11-1975.

On the recommendations of the 3rd Pay Commission, the Ministry of Labour introduced two scales of pay for the post of Office Superintendent i.e., Rs.425-700 (Junior) and Rs.550-750 (Senior). by notification dated 14-7-1977. The revised scales were brought into effect from 1-1-1973. The allocation of Junior and Senior Superintendents was made as follows:

Junior Scale of pay (Rs.425-700)	Senior Scale of pay (Rs.550-750)
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1. C.T.I. Hyderabad.	1. C.T.I. Calcutta.
2. C.T.I., Ludhiana.	2. F.T.I. Bangalore.
3. C.T.I. New Delhi.	3. A.T.I. Madras.
	4. C.T.I. Calcutta.
	5. C.T.I. Bombay.
	6. C.T.I. Kanpur.
	7. C.T.I. Madras.



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The scales were introduced to protect the senior staff Members who have worked as Office Superintendents from the period from 1--1--1973 between different institutions. The senior scale of pay according to the applicant was allocated to the institutions taking into account the overall seniority of the Office Superintendent on All India basis.

Subsequently the post of Office Supdts, in C.T.I., Ludhiana and C.T.I., New Delhi were also upgraded to senior scale in 1979 but the post of Superintendent at C.T.I., Hyderabad was not upgraded. Though it was not upgraded the petitioner's predecessor Sri V.S.Rao was given senior scale from the period 1.1.1973 to 10-11-1975 . After the transfer of Sri V.S.Rao, the applicant was posted at C.T.I., Hyderabad on 14--11--1975 on promotion. But he was denied senior scale of pay. Thereafter when the applicant was transferred to Ludhiana, Sri G.S.Thakur was posted in his place at Hyderabad. He was also given the senior scale of pay during the period he was functioning . When the applicant was brought back again to C.T.I., Hyderabad the applicant was given only the junior scale. He was denied the senior scale. When new posts of Office Superintendents were created in at C.T.I., Jamshedpur, A.T.I., Dehradun, M.I. TI, Calicut, R.D.A. AT, Faridabad etc., they were given senior scale of pay. The applicant avers that the persons who were far more juniors to him were promoted as Office Superintendents and were given senior scale of pay. For example he mentions the names of Sri C.R.Bali at A.T.I., Ludhiana, K.G.Prabhakaran at R.D.A., AT, Madras, Mr. Toppo at Kanpur, Mr. A.K.Das at A.T.I., Calcutta.

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The applicant states that the denial of senior scale of pay to him, though his predecessor and successors were given, is arbitrary and illegal. Hence the application.

The respondents filed their counter contending as follows:

The facts regarding the allotment of senior scale of Office Superintendent and Junior Scale Office Superintendent are correct. The allegation that different scales have been allotted depending upon the seniority of the staff members is not correct. The senior and junior scales were awarded depending upon their work load, magnitude of the project and number of training schemes. Later on the senior staff members in the cadre were allotted the senior scales of pay even though they were posted in the Institutes having junior scale of pay in order to protect their services in the Institutes as mentioned in para 2 of the DGET letter dated 14--7--1977.

Basing on the recommendation of the 3rd Pay Commission the Ministry of Labour introduced two pay scales, Junior and Senior. Out of 10 posts, 7 posts were made senior and 3 posts were made junior. In 1979 Ludiana and New Delhi Institutes were upgraded. On 28--8--1987 the Hyderabad Institute was upgraded. From that time the applicant was also granted the senior scale of pay. The petitioner was allowed to draw senior scale of pay and his pay was fixed under F.R.22(C) without holding D.P.C. The applicant has assailed the said order on the ground that it is highly arbitrary.

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illegal to limit the benefit only from 28-8-1987 when in fact he has been discharging the functions right from his promotion with effect from 14-11-1975 effected on the basis of recommendations of the Departmental Promotion Committee. The respondents that the said action was also held to be irregular and unjustified by the Director General of Employment & Training by letter No. OGET-I.26011/1/87-TA.II(Vol.II)dated 14-12-1987.

The applicant was appointed on Adhoc basis on the junior scale of pay with effect from 14-11-1975 in the post vacated by Sri S.Sreenivasa Rao on his transfer to Advanced Training Institute for Electronics and Process Instrumentation, Ramantapur, Hyderabad. The said Sreenivasa Rao is senior to the applicant. After Sreenivasa Rao was regularised the applicant could be regularised. The respondents state that as soon as Sri V.Sreenivasa Rao was regularised the applicant was regularised.

The respondents denied the allegations that the applicant was promoted and posted against the post of Office Supdt. carrying the senior scale of pay. Actually he was appointed on adhoc basis in the post of junior scale as no post of senior scale office Supdt. was sanctioned till 28-8-1987. The main contention of the applicant is that though the post of Junior Office Supdt., at the Central Training Institute, Hyderabad was not upgraded yet one Sri V.Sreenivasa Rao, his predecessor who worked during the period from 1-1-1973 to 10-11-1975 and another Sri G.S.Thakur his successor who worked during the period from 1-1-1977 to 1978 were allowed the senior scale of pay i.e., Rs.550--750 and that it is only in his case, he was denied

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the higher scale of pay even though he is discharging the same functions. The contention is not correct. It is stated that till the implementation of the III Pay Commission Report allotting senior and junior scales of posts of Office Supdt., to different Institutes and incumbents as per Order No. DGET/96(2)75-TA dated 14-7-1977 giving retrospective effect from 1-1-1973, his predecessor (Sri V.S.Rao) from 1-1-1973 to 10-11-1975, Sri Chouhan, himself from 14-11-1975 to 18-1-1977 and his successor Sri G.S.Thakur from 19-1-1977 to 14-7-1977 (till the issue of the above orders dated 14-7-1977) were actually working/drawing pay only against the existing junior scale in the C.T.I., Hyderabad. Sri V.S.Rao and G.S.Thakur were given senior scale as personal to them for the period they worked there only after 14-7-1977 with retrospective effect as per orders dated 14-7-1977 of DGET. The senior scale was not at all allocated to the post of Office Supdt., at C.T.I., Hyderabad before 1987.

The respondents state that no juniors to the applicant were allowed to draw senior scale of pay. The promotions to the post of Office Superintendents were made on the basis of Unit Seniority as per Recruitment Rules and availability of the posts in the concerned Unit (on selection basis) itself.

The respondents state that the senior scale was given only to those who were already working as Office Superintendents as on 1-1-1973, as per recommendations of the III Pay Commission which were accepted by the Government of India. The respondents deny the other allegations made in the application and state that the application has no merits and it has to be dismissed.

Heard Sri V. Venkateswara Rao learned counsel for the applicant and Sri N. Bhaskar Rao, learned Additional Standing Counsel for the Respondents.

The main contentions raised by the applicant are that the applicant was initially promoted on ad hoc basis on 14-11-1975 to the post of Superintendent. He was continuously functioning in the said post till now and he is entitled for regularisation with effect from 14-11-1975 and for determining the seniority, the seniority on All India Basis i.e., 14-11-1975 has to be taken into consideration.

The applicant states that the 3rd Pay Commission recommended two scales of pay to the Superintendents i.e., Junior Scales Rs.425--700 (pre-revised) and senior Scale Rs.550--750 (pre-revised.) The same was notified on 14-7-1977. The revised scales were brought into existence with effect from 1-1-1978.

The Superintendents working in seven places were given senior scale of pay and the Superintendents working in Ludhiana, Delhi and Hyderabad were given the junior scale of pay. According to the applicant, the senior scale was given basing on the overall seniority of Office Superintendents on All India basis. Subsequently the posts of Superintendents at Ludhiana and at New Delhi were upgraded and given senior scale i.e., Rs.550--750 during the year, 1979 but the post of Superintendent at Hyderabad was not up-graded. He states that one V.S.Rao worked prior to him from 1-1-1973 to 10-11-1975 as Superintendent at C.T.I., Hyderabad and he was given senior scale. Subsequently when he was appointed on 14-11-1975, he was given junior scale of pay Rs.425--700. Thereafter, one Sri G.S.Thakur was

posted on senior scale of pay.

The applicant contends that one V.S.Rao was posted at Hyderabad prior to him and that V.S.Rao was allowed to draw senior scale of pay. Subsequently, the applicant was posted in the same place and he was given only junior scale. Thereafter one ~~S~~.S.Thakur was posted and he was also given senior scale. The applicant therefore claims that because those persons were allowed to draw senior scale, he too is entitled for senior scale though the post carries junior scale of pay. For this the respondents contend that it is true that V.S.Rao and Sri Thakur were allowed to draw senior scale, but they were already acted in the senior scale posts and they were regularised much earlier to the applicant and because they were acting in the senior scale posts and they were & regularised much earlier to the applicant, though they were acting in the junior scale post, the difference was treated as personal pay. Therefore, the contention of the applicant they were allowed to draw senior scale against the post of Junior scale is not correct and there was no discrimination. The applicant's contention is, therefore, not tenable and it is accordingly rejected.

The applicant further contends that some new posts were created at Jamshedpur and Dehradun etc., on senior scale of pay and in those posts the juniors to the applicant were posted. The respondents state that it is true that new posts of Superintendents on senior scale of pay were created and in those posts, senior to the applicant

posted as Superintendent at Hyderabad from 19--1--1977.

He was given senior scale of Rs.550--750. The petitioner was brought again as Superintendent to work in C.T.I., Hyderabad but he was given junior scale. The applicant contends that this amounts to discrimination and violative of Articles 14 and 16 of the Constitution.

Subsequently, new posts of Superintendents in various places were created i.e., Jamshedpur, Dehradun etc. The applicant contends that juniors to the applicant were posted in those posts on the pay scale of Rs.550-750. He gave number of representations to the Authorities that he is entitled to get senior scale of pay. The Ministry of Labour sanctioned senior scale of pay of Rs.550-750 to the post of Superintendent from 28--8--1987. He contends that he has been working since 14--11--1975 as Office Superintendent and that he is entitled to senior scale of pay from 14--11--1975 and not from 28--8--1987.

The respondents replied to all the points raised by the applicant in their counter. Regarding fixation of pay of the applicant, the respondents contend that the 3rd Pay Commission recommended two scales of pay i.e., junior Scale Rs. 425-700 and Senior Scale of pay i.e., Rs.550-750 (pre-revised) basing on the work load in those particular stations. According to them, Ludiana, New Delhi and Hyderabad, the work load is less when compared to the other stations and therefore, the junior scale was allocated to those stations. In these places, Superintendents with junior scale of pay were posted and in the remaining stations, superintendents

were alone posted treating the seniority of the persons on the basis of Unit-wise but not on All India Service Basis. They state that for fixing the seniority ~~is~~ the basis is the Unit-wise. According to Unit-wise seniority the applicant is not senior to the persons posted in those places. The applicant has not filed any seniority list prepared and followed by the Respondents to show that the respondents have made the promotions on All India Basis. In the absence of any material produced by the applicant, we cannot reject the contention of the respondents that the basis for counting seniority is the Unit-wise. This contention of the applicant must also fail.

It is, no doubt, true that the respondents on the basis of the representations of the applicant made recommendations to the higher authorities to upgrade the post and allow the applicant to draw senior scale of pay. Ultimately, the Ministry of Labour accepted the recommendations of the respondents and upgraded the post and allowed the applicant to draw senior scale of pay with effect from 28-8-1987. Merely because the respondents have recommended his case for senior scale of pay, the applicant cannot contend that there is discrimination that he is entitled to draw senior scale of pay with effect from 14-11-1975. The respondents have recommended for upgradation of the post and for sanction of senior scale of pay to the applicant. The applicant was promoted on ad-hoc basis and all the time he acted on the ~~junior~~ senior scale of pay ~~except for a short time~~. The respondents have not allowed any person working against the junior post the senior scale of pay.

The persons who worked against the junior post as were allowed to draw the difference of pay as personal pay because they were holding the post of senior scale of pay and they were regularised much earlier to the applicant.

Ex Office Order S.I.O. 22 (No.1/17011/3/87-Admn. 1/2170 dated 30-9-1987 reads as follows:

"Consequent upon the creation of the post of Office Superintendent in the scale of Rs.1600-2660 and abolition of the post of Office Superintendent in the scale of Rs.1400-2300, communicated vide DGE&T letter cited above Sri S.R.Chouhan, holding the post of Office Superintendent(Junior) in the scale of Rs.1400--2300(Rs.425-700 pre-revised) is allocated with the scale of Senior Office Superintendent in the scale of Rs.1600--2660 with effect from the creation of the post at this Institute i.e., 28-8-1987F.N.

As he was already carrying out the Senior Office Superintendent with a junior scale of Rs.1400-2300, but for want of allocation of senior scale of Office Superintendent in the scale of Rs.1600-2600 at this Institute, the present allocation of senior scale made to him is not to be regarded as promotion; but the benefit of allocation of senior scale to him has to be given to him by fixing his pay in the senior scale, under F.R.22(c)."

The respondents clearly stated in their counter that the Director of App. Training, DGE&T., Ministry of Labour, representing their Ministry had pointed out by letter No. 1.26011/1/87/TA.II(Vol.II) dated 14-12-1987 that the said order dated 30--9--1987 issued to the applicant was irregular and also further pointed out that the case of the applicant should have been taken to D.P.C., as per the Recruitment Rules. The contents of the said

To:

1. The Director of Training, O/o Director General of Employment & Training, Ministry of Labour, Government of India, New Delhi-110 001.
2. The Director, Advanced Training Institute, Government of India, Vidyanagar, Hyderabad-500 007.
3. One copy to Mr.V.Venkateswara Rao, Advocate, 1-1-230/33, Jyothi Bhavan, Chikkadpally, Hyderabad.500 020.
4. One copy to Mr.N.Bhaskara Rao, Addl.CGSC,CAT,Hyderabad.
5. One spare copy.

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letter read as follows:

"The action taken by the Director, ATI., Hyderabad (2nd respondent) in regard to appointment of Sri S.R.Chouhan, Office Supdt., against the senior scale of the Office Supdt., is not justified until and unless his case is ^{ed} considered and clear by D.P.C. However, Sri Chouhan may continue to draw his present salary against the post of senior scale Office Supdt., for a period of six months or till he is cleared by D.P.C., whichever is earlier under intimation to Surplus Cell. He cannot be allowed fixation of pay under F.R.22-(C)".

In view of the above, the post of Office Superintendent in the scale of Rs.1400-2300 was abolished and created a new post in the scale of Rs.1600-2660 with effect from 28.8.1987 F.N., and the applicant was posted in the newly created post on senior scale of pay with effect from 28.8.1987 F.N. According to the respondents, the 2nd part of the order is irregular and the fixation of pay of the applicant under F.R. 22(C) is irregular. Till the post is upgraded the applicant was drawing junior scale of pay. As the post is upgraded, the petitioner was put in that post which carries senior scale. It is not a promotion to the petitioner. So he is not entitled to the senior scale from 14.11.1975.

In view of the above discussion, we feel that the applicant has not made out a case for granting the relief prayed. There are no merits in the application. The application is dismissed. No costs.

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(J.NARASIMHA MURTHY)
Member (Judl.)

R. Balasubramanian
(R.BALASUBRAMANIAN)
Member (Admn.)

Dated: 20 June, 1990.

DRS
For DEPUTY REGISTRAR (J)
5/1/90