

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1038 of 1992

DATE OF ORDER: 5th FEBRUARY, 1997

BETWEEN:

D.V.LOKESWARA RAO

.. APPLICANT

AND

1. Union of India represented by its
Secretary to Govt,
Ministry of Personnel,
New Delhi,
2. The Secretary to Govt. of India,
Ministry of Finance,
New Delhi,
3. The Registrar,
Central Administrative Tribunal,
Principal Bench, Faridkot House,
Copernicus Marg, New Delhi,
4. The financial Advisor & Chief Accounts Officer,
Central Admve. Tribunal, B2W4,
Curzon Hostels, Kasturiba Gandhi Marg,
New Delhi 110011,
5. The Registrar,
Central Admve. Tribunal,
Hyderabad Bench,
Hyderabad 500004.



.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. N.RAMA MOHAN RAO

COUNSEL FOR THE RESPONDENTS: Mr.N.R.DEVARAJ, Sr.CGSC

CORAM:

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE CHAIRMAN

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

ORDER

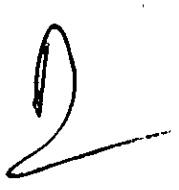
(PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.N.Rama Mohan Rao, learned counsel for the
applicant and Mr.N.R.Devaraj, learned senior standing
counsel for the respondents.

the C.A.T, Hyderabad Bench and to grant him the consequential benefits.

6. The main contention of the applicant in this OA is that he was drawing a pay of Rs.1430/- with effect from 7.8.89 and hence his pay in the absorbed cadre should be at that stage only and his pay cannot be refixed as UDC from the date of his joining and then built up till the date of his absorption. His case is a peculiar one and is not governed by any rules/memos for fixation of pay. The Office Memorandum of the Finance Department dated 20.1.70 is not relevant to this issue. Because of his refixation of pay following the memo of the Finance Department dated 20.1.70, he has been put to loss especially due to the fact that the personal pay granted to him will be worked out/cushioned when he was granted increments in future and that will mean reduction in his pay. Further, his pay fixation in the higher scale when promoted will also be affected as the fixation in the higher grade depends on the pay drawn by him in the lower grade and it will also affect him at the time of his retirement. The applicant further contends that his case should be considered under the normal rules under FR 22 and 23 fixing his pay when absorbed as UDC at that stage which he was drawing just prior to his absorption i.e, on 31.10.89 at the stage of Rs.1430/-.


7. A reply has been filed in this OA. The admitted facts as above were confirmed and not disputed. The main point in the reply for fixation of pay of the applicant is on the basis of the OM dated 20.1.70. The relevant portion



1(2)/E03(8)/69 dated 20.1.70 under the normal rules of Central Government. As per the above instructions, his pay was fixed at the stage of Rs.1380/- in the scale of pay of UDC (Rs.1200-2040) and he was given a personal pay of Rs.193/- so as to avoid drop in the emoluments which he would have otherwise drawn had he continued in his parent cadre with effect from 1.11.89.

4. Till 31.10.89, when he was in the service in the High Court of Andhra Pradesh as ASO, he was drawing a pay of Rs.1430 plus Rs.143/- DDA [Deputation (duty) Allowance] totalling Rs.1573/-. From 1.11.89 on his regular absorption as UDC in C.A.T., Hyderabad Bench, his pay was fixed in that cadre at the stage of Rs.1380/- plus Rs.193 personal pay to avoid drop in his emoluments. The applicant submitted representations for fixing his pay at the stage which he was drawing earlier to his absorption in the scale of pay of UDC on his absorption in the C.A.T., Hyderabad Bench with effect from 1.11.89, to the Hon'ble Chairman, C.A.T., New Delhi and also to R-4 by his representations dated 14.9.90 and 26.6.91 respectively (enclosed at Annexures 3 and 4 of the OA). He was informed by the impugned memo No.A-26011/1/90-Estt. dated 20.11.91 (Page 11 of the OA) that his representation has been reexamined and the pay already fixed is strictly in accordance with the rules and he was given protection in drop in emoluments and hence fixation needs no change.

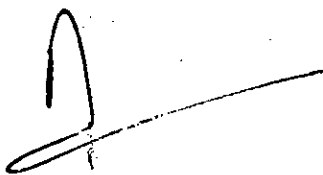
5. Aggrieved by the above, he has filed this OA praying for re-fixation of his pay at Rs.1440/- at least as on 1.11.89, the date of his absorption in the service of



9. The second contention is that on promotion, the applicant had an opportunity to revise his earlier option but as he did not choose to revise his option he was continued to be governed by the option exercised by him originally on joining C.A.T., on deputation. The option has to be exercised by the employee himself and there is no need to ask him to exercise the option by the Department. As the applicant has not exercised any option which will be beneficial to him on his promotion when he was promoted as ASO in his parent cadre, his pay on absorption in C.A.T. has been correctly fixed in accordance with the rules. The rival contentions lead to the question of relevant rules/O.Ms to be followed in the present case of pay fixation and in similar other cases.

10. We have heard both the parties extensively at length in two sessions. On the basis of the records produced before us and after hearing both the sides, following observations are made:-

(i) The first contention of the respondents is that the pay fixation of the applicant is to be done in accordance with the OM dated 20.1.70. The learned counsel for the applicant submitted that this OM is not applicable in the present case as the OM is for fixation of pay when an employee is posted to an ex-cadre post. The post of UDC in C.A.T. being a cadre post, the OM quoted is inappropriate and has no validity for fixation of the pay of the applicant in the absorbed scale.



of the OM states that, "when a Government servant drawing emoluments in the ex-cadre post on the basis of his grade pay plus deputation (duty) allowance is absorbed in a Public Sector Undertaking/another Government Department in public-interest his pay on such absorption shall be fixed in the relevant scale of pay of the post as if the person concerned had elected to draw pay in the scale of the post from the date of his initial appointment on deputation/foreign service subject to the restrictions laid down in this Ministry's Office Memorandum No.f.10(24)-E.III/60 dated 9.3.1964. This would be further subject to the condition that the pay thus fixed is not more than the pay plus deputation (duty) allowance drawn immediately before permanent absorption. No arrears should, however, be paid on account of such fixation nor any adjustment made in the deputation allowance already drawn till the date of absorption. However, in cases where such fixation of pay on permanent absorption results in drop in the emoluments drawn by the Government servant concerned, the difference between the pay so fixed and pay plus deputation (duty) allowance drawn prior to absorption may be allowed as personal pay to be absorbed in future increases in pay."


8. In accordance with the above OM, the pay of the applicant was fixed in the scale of ex-cadre post from the date of initial deputation service to the grade pay and the pay then built up till the date of absorption. Drop in his emoluments due to the above fixation has already been made good by granting personal pay. Hence the applicant should have no grievance as the Govt. of India instructions have been fully followed in this case.

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comes into the cadre only after he is regularised. If he is on deputation occupying permanent/temporary post sanctioned, he is in the cadre.

In C.A.T, UDC posts were created even on temporary basis on the basis of the work load. When such posts are created, suitable employees taken from various sources were posted. The applicant is one of them posted on deputation from the High Court of Andhra Pradesh. Hence it cannot be said that he was posted against an ex-cadre post in the scale of pay of UDC on deputation and that he cannot be said to be in an ex-cadre post. He has come to the cadre of UDC in the CAT though on deputation prior to his regular absorption and that post gives him status of an employee posted against the cadre posts.

Even in the memo issued while creating temporary posts in the CAT, the posts thus created are not shown as ex-cadre posts. When a new organisation is formed and the man power is built up by taking employees from other organisations, then the normal process is to treat those posts by a specific order as ex-cadre posts for the purpose of deciding seniority, giving promotions etc. A classic example in this case is formation of Carriage Repair Shop of Tirupati of South Central Railway. A number of seniority cases in this unit have been agitated on this Bench. While examining those applications, we found that in the initial notification itself it has been stated that in order to facilitate fixation of appropriate seniority and granting promotion etc, the posts were treated as ex-cadre posts while taking employees from other units. Even




The learned counsel for the respondents submitted that all the posts in the C.A.T. Hyderabad Bench were sanctioned as temporary posts by the Memo dated 25.6.86. Till such time the applicant was working against that post, before regular absorption it has to be treated that he was occupying only an ex-cadre post. Only on his absorption he will be treated to have come to the cadre post and hence the memo dated 20.1.70 is to be followed in his case.

The learned counsel for the respondents was requested to show the stand taken by him as above in the reply statement. We further informed him that if such a stand is not taken in the reply and is submitted only at the time of hearing, then the applicant cannot objectively answer that in the rejoinder. A scrutiny of the reply revealed that the above stand was not incorporated in the reply.

When questioned further to show supporting rules in regard to the above submission of the learned senior standing counsel for the respondents, the learned counsel could not show any satisfactory ruling in this connection.

Sub Clause (4) of FR 9 defines the cadre as "cadre means the strength of a service or a part of a service sanctioned as a separate unit". Temporary post is defined as "a post carrying a definite rate of pay sanctioned for a limited time" (Page 25 of the Swamy's Compilation of FR SR, Part-I 1993). From the above definition of the cadre, it is reasonable to assume that a cadre comprises of a group of employees appointed against permanent/temporary posts. This definition does not appear to mean that an employee



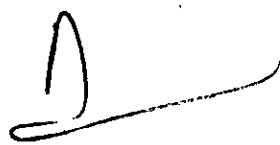
play in asking him to exercise the option. For this, the respondents rely on para 2 of the OM dated 20.1.70. The relevant portion which was emphasised by the learned standing counsel for the respondents reads as, "the option once exercised is final except that a fresh option is allowed if such an employee receives proforma promotion in his parent department under Next Below Rule.....". The learned standing counsel for the respondents emphasised the word "allowed" in the memo reproduced above to state that it is the responsibility of the applicant to submit his option and that if he does not submit his option revising his earlier option as may be beneficial to him, the Government cannot fix him in the scale which will be beneficial to him and that the Government had followed the rule as prescribed in the memo dated 20.1.70.

From the above submissions, the point for consideration is "manner of option" to be exercised. Whether the option should be exercised on his own by the applicant or the respondents should ask for option from him. The respondents' counsel relied on Para 4.2 and 4.3 of the Appendix 5 of FRSR - Part-I General Rules (Page 432 of Swamy's Compilation incorporating orders upto July 1993) which relates to "Exercise of option". As per para 4.2, "the borrowing authority should obtain the option of the employe within a period of one month from the date of joining the ex-cadre post". The respondents' counsel submitted that in accordance with that para, the respondents have asked the applicant to exercise his option for fixation of his pay when he joined as UDC on deputation on 1.8.86. He further submitted that in terms of para 4.3, "the option" once exercised shall be final. However the

in these notifications, there is no mention in regard to the pay fixation treating them as ex-cadre posts. The posts were treated as ex-cadre in that organisation for the purpose of fixation of seniority, promotion etc, at a later date. In the memo issued for creation of temporary posts for CAT, Hyderabad Bench, there is no mention in regard to treating those temporarily created posts as ex-cadre even for any purpose. Hence it cannot be said at this late stage that the posts created for CAT are ex-cadre posts without any proper indication of that fact in the initial memo issued for creation of these posts.

Hence we are of the opinion that the submission of the respondents that the applicant was working in an ex-cadre post does not appear to be reasonable. In that view, the applicability of the memo dated 20.1.70 on the basis of which his pay was fixed on regular absorption in CAT as UDC with effect from 1.11.89, is to be reexamined. As no further material available in this connection is placed before us by the respondents' counsel to further probe into this aspect of the case, we feel that this point requires further detailed examination at the highest level before applying this memo in pay fixation in the present case of the applicant herein.

(ii) The second contention of the respondents is that the applicant had not exercised his option revising the earlier option when he was promoted as ASO in his parent cadre. The respondents further submit that it is the responsibility of the applicant to exercise his option and that the respondents' organisation has got no role to



Training, Estt. (P.II) vide their note dated 31.10.89 (Page 5 of the file No.A.26011/1/90-Estt produced by the respondents) that the pay of the applicant has to be fixed on absorption in accordance with the OM dated 20.1.70. Hence it cannot be said that the respondents are not aware of the promotion of the applicant as ASO in the parent Department. The note initiated by the Deputy Controller of Accounts as above clearly indicates that there is a drop in the emoluments of the applicant if the OM dated 20.1.70 is followed and hence the method to be followed for fixation of pay has been requested from DoP. The DoP confirmed that the ruling of the Ministry of Finance dated 20.1.70 has to be followed. Even at this stage, even if the applicant has not given any revision of the option, there is no need to wait for the applicant to submit his option. He should have been asked either formally or informally in regard to his option which does not appear to have been done. Further, the Note of the Deputy Controller of Accounts does not point out that the memo dated 20.1.70 is for ex-cadre post and whether the UDC post in the CAT, Hyderabad can be treated as an ex-cadre post. When the full position has not been brought out to the Department of Personnel, the Department of Personnel has given this ruling without going into the full implication of this case. Further also the applicant had submitted a number of representations in regard to his pay fixation as indicated by him as above. It is also seen from the correspondence that his case was favourably recommended. In the back ground of the above material, it is to be considered whether the failure of the applicant, if at all it can be called as a failure, to give his revised option when he was promoted as ASO in his



employee may revise the option under the following circumstances.....". Based on this, the learned standing counsel for the respondents submitted that it is the responsibility of the employee to revise his earlier option if he comes under one of the conditions laid down in that rule. It is not for the respondents to ask him whether he desires to revise his option when he was promoted as ASO in his parent cadre. As the applicant did not exercise any option, the respondents have no legal binding to ask him to exercise the option at the time of his promotion as ASO in his parent cadre. He also relies on the Govt. of India circular No.1/4/84-Est.(P-II) dated 26.12.84 to state that it is the responsibility of the applicant to exercise the option.

As the applicant has not been given his option to revise his earlier option when promoted as ASO in his parent cadre, his pay was fixed in accordance with the OM dated 20.1.70, doesnot appeal to us. Further the paras 4.2 and 4.3 have to be read together and not in isolation. If such a reading is done, then it may mean that 4.3 is supplementary to para 4.2. In that case a responsibility may cast on the respondents also to obtain the option from the applicant for his pay fixation when promoted as ASO in his parent unit.

The Deputy Controller of Accounts of Central Administrative Tribunal, New Delhi himself has taken up his *(application)* case with the Department of Personnel in regard to fixation of his pay vide his note No. DCA/AT/Ref/ATD/13/88 dated 16.10.89. It was confirmed by the Deptment of Personnel &



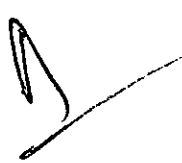
the learned standing counsel for the respondents could not state exactly what is the governing rule for pay fixation of the applicant. He merely repeated that the OM dated 20.1.70 is applicable.

11. We do not express any opinion at this stage. But we want to go on record to state that if there is no rule prescribed and if the O.M. dated 20.1.70 issued for fixation of pay is not applicable in this case, then the normal rule of pay fixation is to be adopted. This general rule needs no further elaboration. Whenever there is no rule, recourse to adhere to the normal rule is an established practice. Normal rule for pay fixation is to take note of the last pay drawn and on that basis further fixation of pay in the absorbed cadre has to be done. As the applicant was promoted as ASO in the High Court of Andhra Pradesh before his absorption, fixation of the pay of the applicant in the absorbed cadre on the basis of his last pay drawn in the High Court of Andhra Pradesh may be appropriate. But the view expressed may have to be further examined in the light of our observations made as above by the competent authority.

12. The last contention made by the learned senior standing counsel for the respondents is that the applicant is neither a Central Government servant nor a State Government servant and he belongs to an organisation namely High Court of Andhra Pradesh and it has got its own rules and regulations. If so, his ^{initial option} ~~absorption~~ under FR 9(25) itself is to be questioned as this FR may not be applicable in view of the above submission. Be that as it may, the

parent cadre, cannot be condoned even at this late stage. In all fairness if an employee fails to give any option as per the rule, the Department should take care to ask him his option and in case he fails to give option, that may be shown against the employee. No employee will fail to give option if he knows the rule well if that is going to stand to his disadvantage. In the present case, as the applicant is going to be affected monetarily, it is to be considered by the respondents' organisation whether he can be given a fresh opportunity to give his option and on that basis fix his pay on his regular absorption as UDC. If that is not in order, an acceptable cogent reason for the same should be indicated without standing on the formality of rejecting his case on some technical grounds.

(iii) The learned counsel for the applicant submitted that his pay fixation is governed by FR 22 and 23 and especially as per FR 23, his pay has to be fixed on the basis of the pay drawn by him in the lower grade giving him option to come to the higher scale of pay either at the time of his promotion or any subsequent increment date in the old scale. As per that rule, the learned counsel for the applicant submitted that his pay as ASO is to be reckoned on which his pay while on regular absorption of UDC has to be decided either on the date of his regular absorption or on any subsequent increment date in the old scale. The learned counsel for the respondents submitted that this rule is applicable only in the case when an employee is promoted from a lower grade to higher grade in the normal course in his department and this rule is not applicable in the case of the applicant herein. However,



a copy of this order suitably. In case his case is rejected, a detailed speaking order should be issued to him within that stipulated period.

15. In case the applicant is going to be aggrieved by the reply to be given by R-1, then he is free to resort to such action as available to him in law.

16. The OA is ordered accordingly. No order as to costs.

प्रमाणित प्रतिलिपि
CERTIFIED TO BE TRUE COPY

[Signature]

न्यायालय अधिकारी 6-2-97.

COURT OFFICER

केन्द्रीय प्रशासनिक अधिकरण

Central Administrative Tribunal

हैदराबाद न्यायपीठ

HYDERABAD BENCH

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| केस नम्बर | CA/638/97 |
| CASE NUMBER | CA/638/97 |
| निर्णय का तारीख | 5-2-97 |
| Date of Judgement | 5-2-97 |
| प्रति तय्यार किया गया दिन | 6-2-97 |
| Copy Made Ready on | 6-2-97 |
| <i>[Signature]</i> | |
| जनरल अधिकारी (न्य विक्) | |
| Section Officer (J) | |