

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.NO.470/93.

Date of Judgment: 13.3.1995

BETWEEN:

S/Shri

1. Nandigatla Venkataswamy
2. Namburi Venkata Subba Raju.
3. Indukuri Suryanarayana Raju.
4. Rady Sivaji
5. Gottumukkala Satyanarayana Raju
6. Thridanadam Saibaba
7. Pentapati Bullayya
8. Narala Setty Satyanarayana Murthy
9. Dunna Ekambareswara Rao
10. Verupanda Krishnamurthy
11. Jampana Krishnama Raju
12. Kanumuru Satyanarayana Raju

.. APPLICANTS

AND

1. Deputy General Manager (Personnel),
Naval Dockyard,
Visakhapatnam.
2. Manager (Personnel Service),
Naval Dockyard,
Visakhapatnam.
3. Admiral Superintendent,
Naval Dockyard,
Visakhapatnam.
4. Additional Controller of
Defence Accounts,
Naval Dockyard,
Visakhapatnam.
5. Flag Officer Commanding ~~xxxxxx~~
In Chief, Naval Dockyard,
Visakhapatnam.

... RESPONDENTS

COUNSEL FOR THE APPLICANTS: SHRI S.KISHORE

COUNSEL FOR THE RESPONDENTS: SHRI N.R.DEVARAJ

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

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O.A.NO.470/93.

JUDGMENT

Dt: 13.3.1995

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri S.Kishore, learned counsel for the applicants and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. These 12 applicants were promoted to the grade of HSK-I in the pay scale of Rs.1320-2040 with effect from 16.5.1989 from the post of HSK-II bearing the pay scale of Rs.1200-1800. Then their basic pay was fixed at Rs.1470/- as their juniors were promoted to HSK-I from HSK-II on 18.04.1990. They opted for fixation of their pay in HSK-I from the date of their promotion. Then the basic pay of those juniors was fixed at Rs.1470/- from October 1990 in the category of HSK-I. As the pay of these applicants in the category of HSK-I was less than that of their juniors in the same cadre, they made a representation praying for stepping up. The same was allowed in October 1992. But it is stated for the respondents that when the Audit Department examined these applicants are not entitled to stepping up, the impugned Note No.PES/3202/SU/HSK-I, dated 25.3.1993 was issued to the effect that the applicants are not entitled to stepping up and the order whereby the stepping up was allowed was cancelled and the amount paid in pursuance of the order allowing the stepping up is ordered

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to be recovered. The same is challenged in ~~renewed~~ this OA.

3. When this OA had come up for consideration before the Bench comprising Shri A.B.Gorthi, Member (Admn.) and Shri T.Chandrasekhara Reddy, Member (Judl.), the learned Administrative Member referred to the following:-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted should be the same;
- (b) The unrevised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical; and
- (c) The anomaly should be directly as a result of the application of the provision of F.R. 22-C in the revised scale.

(Vide C.C.S. (Revised Pay) Rules, 1986);

and held that the applicants ^{had} ~~are~~ not satisfied the clause (c) and as such they are not entitled to 'the stepping up. But the learned Judicial Member held that if the applicants had opted for fixation of their pay on promotion at the time of the next increment, they too ~~had~~ ^{had} benefit and ~~if~~ they were allowed to

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get the benefit for 1½ years, it is not just and proper to cancel the order ~~xxxx~~ whereby stepping up of the pay of the applicants was allowed. In view of the divergence of the views, this matter was referred under Section 26 of the Administrative Tribunals Act, 1985.

4. Before adverting to the respective contentions of the parties to this OA, it is just and convenient to refer to the relevant CMC.

5. A point was raised by the staff side in the 25th Ordinary Meeting of the National Council (JCM) that on the basis of the existing provisions, the promotion of a junior person to the higher post, after accrual of his increment in the lower post, gives rise to anomaly in the pay of a person senior to him, who though promoted earlier had not drawn at any time the pay ~~xxxxxx~~ less than that

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of his junior in the lower post. To avoid such an anomaly, the O.M.No.7/1/80-Estt.(P.I), dated 26.9.1981 was issued whereby the employees are given an option for fixation of their pay on promotion as under:-

"(a) Either his initial pay may be fixed in the higher post on the basis of FR 22-C straightaway without any further revision on accrual of increment in the pay scale of the lower post, or

(b) His pay on promotion may be fixed initially in the manner as provided under FR 22(a)(i) which may on the date of accrual of next increment in the scale of pay of the lower post.

If the pay is fixed under (b) above, the next date of increment will fall due on completion of 12 months qualifying service from the date of promotion. His pay is refixed on the second occasion."

7. But it is also stated therein that the option of fixation of pay on the date of promotion and the option once exercised shall be final. As the ^{the} O.M. dated 26.9.1981 was given effective from 1.5.1981, it was noticed that as the promotees prior to 1.5.1981 were not given option to have their pay fixed on promotion on the next date of increment, the

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promoted prior to 1.5.81
pay of some of the promotees, was found to be less than the pay of their juniors who were promoted subsequent to 1.5.1981. Thereupon, O.M.No.F-4/4/82-Estt.(P-I), dated 25.5.1983 was issued. It lays down that stepping up of the pay of the senior has to be allowed if he satisfies the following conditions:-

(a) Both the senior and junior employees should belong to the same cadre and the posts in which they have been promoted on regular basis should be identical in the same cadre.

(b) The scale of pay attached to the lower and the higher posts in which they are entitled to draw pay should also be identical and;

(c) The anomaly should have arisen directly ~~xx~~ due to refixation of pay of the junior person promoted on or after 1.5.1981 in the higher post, on his date of next increment in respect of the lower post in terms of para 2(b) of the OM dated 26.9.1981. In other words it should be ensured that there could have been no anomaly, had the pay of the junior person on promotion, been fixed under the normal rules (viz), under FR 22-C, direct. Also, the senior person should not have been in receipt of less pay than the junior even in the lower post from time to time.

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8. It is not in controversy that the applicants herein were not drawing less pay than that of their juniors in the lower cadre. If the applicants also opted for fixation of their pay on the date of next increment just as their juniors opted as per the OM dated 26.9.1981, the anomaly would not have arisen. The rules which were referred to by the learned Administrative Member have no bearing for consideration of the relief claimed in this OA, for the anomaly had ~~arisen~~ not arisen on the basis of the fixation of the pay on revision of pay scales which had come into effect on 1.1.1986. ~~Due clause 10,~~ of CCS (Revised Pay) Rules, 1986 referred to by the learned Administrative Member is similar to clause (c) of G.I., M.F., O.M.No. F.2(78)-E.III(A)/66, dated 4.2.1966 which makes the provision for stepping up of pay of a senior on promotion drawing less pay than his junior for removal of the anomaly. The said OM refers to the following conditions which have to be satisfied for having the benefit of stepping up:-

(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;

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(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 FR 22-C. For example, if even in the lower post the juniors officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance, will not be invoked to step up the pay of the senior officer.

9. It may be noted that by ~~xxx~~ 4.2.1966, the date of the OM referred to ~~above was issued~~, no option was given to the promotee for having ~~xxx~~ his pay fixed in the promotion ~~...~~

10. As such, the only illustration that was given in the above OM is that the senior is not entitled to stepping up, ~~even~~ even in the lower post the junior officer ~~had~~ drawn a higher rate of pay than the senior by virtue of

11. The learned Administrative Member rightly observed that the anomaly in the case of the applicants had not ~~arisen~~ arisen directly ~~arisen~~ as a result of the application of ~~...~~

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12. But can it be stated that stepping up cannot be allowed even ^{when} ~~if~~ the anomaly is not as a result of application of FR 22-C. The cases had arisen where the pay of the junior was found to be more on regular promotion than the pay of the senior on regular promotion, when the junior was given adhoc promotion while the senior was not given such adhoc promotion or where the date of adhoc promotion of the junior was ~~earlier~~ ^{later} than the senior, even when the pay of the senior was more or equal than that of the junior by the date of the adhoc promotion of the junior. Such an anomaly is not due to the application of FR 22-C. But it is held by this Bench and various other Benches that stepping up has to be ~~xx~~ ordered in such cases even though there is no O.M./ Circular issued to that effect, for it would be otherwise arbitrary and thus violative of Article 14 of the Constitution of India.

13. It is urged ~~that~~ even in the case of the applicants, ^{if} ~~though~~ if their claim for stepping up is not allowed, it will be arbitrary and thus there will be an infraction of Article 14 of the Constitution of India.

14. It is true that if the applicants had also availed the benefit of option as per the

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their pay would not have been less than the pay of those who were promoted later to the category of HSK-I. But if by mistake or ignorance or laxity, when the applicants had not availed that option, can they be deprived of the benefit of stepping up when it was noticed that the pay of the ~~senior~~ junior was found to be more than that of his senior in the promotion cadre ie., HSK-I in this case merely on the ground that the applicants had not chosen to exercise that option while juniors are prudent enough to exercise that option? If the applicants exercised option to have their pay in HSK-I fixed ^{their}

enhanced pay even from the date of that ~~xx~~ next increment, while in the case of stepping up, they will get it only from a later date ie., the date on which the pay of the junior ^{or regular promotion} was fixed in the higher post. Thus, the applicants do not get any extra advantage by waiting to claim ~~xx~~ ^{for} stepping up, instead of exercising the option to have their pay in the higher ^{post} ~~pay~~ fixed on the date of their next increment.

15. If the pay of a senior who was promoted earlier to the junior is found less than the pay of the junior in the higher post, when the pay of that senior is

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To

1. The Deputy General Manager(Personnel),
Naval Dockyard, Visakhapatnam.
2. The Manager(Personnel Service),
Naval Dockyard, Visakhapatnam.
3. The Admiral Superintendent, Naval Dockyard,
Visakhapatnam.
4. The Additional Controller of Defence Accounts,
Naval Dockyard, Visakhapatnam.
5. The Flag Officer Commanding in Chief,
Naval Dockyard, Visakhapatnam.
6. One copy to Mr.Sri S.Kishore, Advocate, 3-6-369/12
Road No.1, Himayatnagar, Hyderabad.
7. One copy to Mr. N.R.Devrai, Sr. CGSC Gen. ...
... .., Cal. Hyd.
9. One spare copy.

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equal or more than the pay of his junior in the lower post, whether it will not be arbitrary and thus violative of Article 14 of the Constitution of India, if stepping up is not allowed when he had not declined the promotion post offered earlier? Senior should not be deprived of the claim for stepping up merely because he had not exercised option, and there would not have been anomaly if he had exercised such an option. The Tribunal can take cognizance of the fact that one will not exercise such exercise of option is beneficial to him. But if oversight or if he is not conscious of the benefit in exercising the option, one may not exercise option. Hence, failure to exercise such an option cannot be held against a senior promotee if he otherwise satisfies the conditions to have the benefit of ~~stepping~~ stepping up.

16. ... conclusion of the learned Judicial Member, though for different reasons.

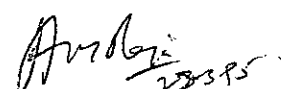
17. In the result, the impugned Note No.PES/3202/SU/ HSK-I, dated 20.3.1995

ordered accordingly. No costs./


(V.NEELADRI RAO)
VICE CHAIRMAN

DATED: 13 March, 1995.
Open court dictation.

vsn


Deputy Registrar (5)

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE- CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN: M (ADMN),

DATED - 13 - 3 1995.

ORDER/JUDGMENT:

M. A. / R. A. / C. A. No.

O. A. No.

in

670/93

T. A. No.

(W. P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as w/

Dismissed for

Ordered/Reje

No. order

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