

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A.NO. 160 of 1994.

Between

166
Dated: 6.2.1996.

G.Sanyasi Rao.

...

Applicant

And

1. The Chief Personnel Officer, South Central Railway,
Railnilayam, Secunderabad.

2. K. Venkateswarlu.

...

Respondents

Counsel for the Applicant : Sri. P.Rathaiah,

Counsel for the Respondents : Sri. C.V.Malla Reddy, Addl. C.

CORAM:

Hon'ble Mr. R.Rangarajan, Administrative Member

Contd:...2/-

JUDGEMENT

X As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

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The applicant is an Assistant Law Officer and R2 is Chief Law Assistant of S.C.Railway legal cadre. At the time of working as Chief Law Assistant an anomaly has arisen in regard to the pay ~~as on 1.10.86~~ vis-a-vis R2. ~~as on 1.10.86~~ case which are not disputed are as follows:-

2. The applicant who initially belonged to Signaller cadre was appointed as Law Assistant (L.A. for short) on 1.4.80 in the grade of Rs.550-750. At the time of his promotion as Chief Law Assistant on 1.10.85 he was drawing a basic pay of Rs.650/- in the cadre of Law Assistant. On account of his promotion his pay was fixed at the stage of Rs.700/- in the pay scale of Rs.700-900 on and from 1.10.85. When the 4th Pay Commission scales of pay came into existence from ~~he opted for new scale from 1.10.86~~ 1.10.86, i.e. the date of increment in the earlier scale of pay of Rs.500-900. His pay as on 1.10.86 was fixed at Rs.2180/- in the scale of pay of Rs.2000-3200. As on 1.10.87 his pay was raised to Rs.2240/- and as on 1.10.88 his pay was further raised to Rs.2300/- granting him increment as per the scale of pay.

3. R2 belonged to Stenographer cadre and he was appointed as Law Assistant on 1.2.84 in grade of Rs.550-750. His pay in that grade was fixed as Rs.650/- on appointment as Law Assistant. On 1.2.85 his pay was fixed as Rs.675/- and on 1.2.86 as Rs.700/-. He opted 4th Pay Commission scales of pay Rs.1600-2660 from 1.2.86. Hence his pay was refixed on the new scales of pay at the stage of Rs.2060/-. On 1.2.87

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his pay was fixed as Rs.2120/- . He was promoted as Chief Law Assistant in the scale of Rs.2000-3200 during November 1987 but he opted to come to this higher grade of Chief Law Assistant from 1.2.88 i.e. the date of increment in the lower grade in 3rd Pay Commission scale of pay. On that basis as per FR 27 which is same as Rule 1316 of the Indian Railway Establishment Code Vol. II his pay was fixed in the 4th Pay Commission scales of pay as Rs.2300/-.

4. As on 1.2.88 the pay of the applicant was Rs.2240/- and the pay of R2 was Rs.2300/- in the scale of pay of Rs.2000-3200. The applicants pay was raised to Rs.2300/- as on 1.10.88 and R2 pay also remained same as Rs.2300/- as on 1.10.88. But on 1.2.89 the pay of R2 was raised to Rs.2375/- as his date of increment in the grade of Rs.2000-3200 fell on that date. But the applicant's pay on 1.2.89 was Rs.2300/- . The applicant also attained the stage of Rs.2375/- on 1.10.89 i.e. after 8 months. Thus the applicant though senior to R2 was drawing less pay than R2 from 1.2.89 onwards.

5. In view of the above fixation of pay in the cadre of Chief Law Assistant the applicant submitted a representation dated 25.2.93 (A-2) for stepping up of his pay to the level of his junior R2 from 1.2.89 onwards. But the representation was rejected by the impugned order dated 12.4.93 on the ground that R2 was drawing more pay than the applicant from the time of entry of R2 in the cadre of Law Assistant and hence the stepping up of pay is not permitted.

6. Aggrieved by the above he has filed this OA for setting aside the impugned order No.P(C)535/Law Assistants dated 12.4.93 declaring it as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India and for consequential direction to R1 to fix his pay equal to his

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junior (R2) from the date of R2 is drawing more pay than him.

7. The contention of the respondents in rejecting the case of the applicant is as follows:-

(1) The applicant and R2 were appointed as Law Assistants from different sources i.e. applicant is from the cadre of Signaller and R2 is from the cadre of Stenographer. Hence, the comparison of the pay in the cadre of Law Assistant is not in order. This contention ~~at~~ is submitted for respondents is in consonance with 2(a) of G.O.I. Orders under FR 22(c) vide Memo.No.G.I., OM No.F.7 (47)-E.III(A)/74, dt.6-1-75.

(2) The pay of the applicant as Law Assistant at the time of his entry in legal cadre is lower than the pay of R2 who also entered the legal cadre as Law Assistant.

8. Para 2(a) of Govt. of India orders under FR 22(c) reads as below:-

"Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted should be identical and in the same cadre".

9. The respondents counsel submit that as they belonged to the cadre of Signaller and Stenographer before coming as Law Assistant they cannot be considered as belonging to the same cadre. But the anomaly had taken place when they were working as Chief Law Assistants i.e. when they were promoted to the cadre of Chief Law Assistants from the lower cadre of Law Assistants. Hence, it cannot be said that they belong to different cadre. There is no



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doubt that both of them belong to legal cadre right from the date they joined as Law Assistants. When they were promoted as Chief Law Assistants they should be construed as belonging to the same cadre namely legal cadre, though they hail from different sources at the time of appointment as Law Assistants. The comparison of the pay has to be done only at the time when they were in the ~~scales~~ of pay of Chief Law Assistant. Comparing the pay at the level of Law Assistant may not be correct as their pay fixation is on the basis of their pay in the earlier cadres. But when they become Chief Law Assistants and there is an anomaly in their pay due to pay fixation of R2 under FR 22(c) (Rule 1316 of Indian Railway Establishment Code Vol.II) the pay of the senior has to be stepped up. The anomaly in this has arisen directly as a result of an application of Rule FR 22(c) when R2 was promoted as Chief Law Assistant. Hence, I am of the opinion that all the 3 conditions mentioned in para 2 of Govt. of India's orders under FR 22(C) referred to above has been fulfilled.

10. The applicant relies on the judgement of Ernakulam Bench reported in 1994 (26) ATC 641 (Krishna Pillai & Ors Vs. UOI & Ors) wherein it was held as follows:-

"Difference in pay and allowances would result from a variety of reasons. A junior may receive an ad hoc promotion. A junior may receive special pay. There could be other reasons as well. In all cases (except where reduction is by way of disciplinary proceedings) a senior will be entitled to have his pay stepped up to the level of the pay received by his junior due to fortuitous circumstances".

11. Thus from the above it is clear that irrespective of the reasons if a junior is drawing more pay than his senior, the senior is entitled for stepping up of his pay on par with his junior. Thus judgement has become final as no SLP was filed against this judgement.

12. The applicant also relies on the decided case of M.L. Narula vs. UOI and Ors. (ATR 1986 CAT 161). In that case the Division Bench presided over by Sri Justice K. Madhava Reddy, the then Chairman of C.A.T. "allowed the relief of stepping up of pay under FR 27 on the broad ground of discrimination irrespective of fulfilment of the 3 conditions in the Govt. of India, Ministry of Finance O.M.No.F.2(10)-E.III/62, dt.6.3.62" which is incorporated in para 2 of Govt. of India orders under FR 22(c).

13. In view of the above also the applicant is entitled for stepping of pay on par with his junior R2 to avoid discrimination.

14. No other contention has been raised by the respondents. Hence, a direction has to be given to R1 to step up the pay of the applicant on par with his junior R2 from the date R2 was drawing more pay than the applicant in the cadre of Chief Law Assistant. It is needless to say that the pay of the applicant when promoted as Asst. Law Officer will be fixed on the basis of the revised pay in the cadre of Chief Law Assistant as directed above.

15. In the result, the following direction is given:-

The pay of the applicant has to be stepped up on par with his junior R2 in the cadre of Chief Law Assista

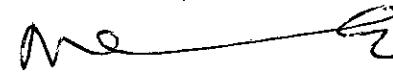


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from the date when R2 was drawing more pay than the applicant in the said cadre. The pay fixation of the applicant in his promotion as Asst. Law Officer has also to be revised on that basis. Consequential arrears of pay and allowances on that basis has to be given to the applicant on the basis of revision of his pay as indicated above.

16. The O.A. is ordered accordingly. No costs.



(R. Rangarajan)
Member (A)

Dt. 6-2-1996

Open Court Dictation

sd/kmv


Deputy Registrar (Judl.)

Copy to:-

1. The Chief Personnel Officer, South Central Railway, Railnilayam, Secunderabad.
2. One copy to Sri. P.Rathaiah, advocate, CAT, Hyd.
3. One copy to Sri. C.V.Malla Reddy, Addl. CGSC, CAT, Hyd.
4. One copy to Library, CAT, Hyd.
5. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD.

HON'BLE SHRI A. B. GORIYI : MEMBER (A)

HON'BLE SHRI

DATED: 6/2/98

ORDER/JUDGMENT

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

IN
160794

O.A. NO.

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

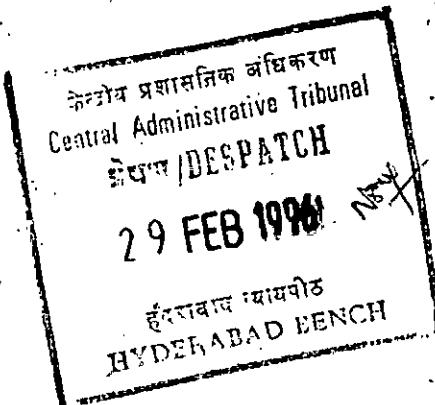
DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

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