

(A3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD.

O.A.NO.519 of 1994.

Between

Dated: 14.9.1995.

T.V.Thiagarajan

...

Applicant

And

1. Council for Scientific & Industrial Research (CSIR),
Anusandhan Bhawan, Rafi Marg, New Delhi.

2. Central Grievance Committee, CSIR, Anusandhan Bhawan, Rafi
Marg, New Delhi.

3. Director, Centre for Cellular & Molecular Biology, Uppal
Road, Hyderabad.

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Respondents

Counsel for the Appellant

Counsel for the Respondents : Sri. C.B.Desai, SC for CSIR.

CORAM:

Hon'ble Mr. R.Rangarajan, Administrative Member

Contd:...2/-

O.A.No.519/94.

Date: 17-9-1995.

J U D G M E N T

X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

Heard Sri Vilas V.Afzalpurkar, learned counsel for the applicant and Sri C.B.Desai, learned Standing Counsel for the respondents.

2. The applicant in this OA was appointed to the post of Section Officer (Audit & Accounts) on promotion with effect from 22.4.1981 under the control of R-3 vide CSIR O.M.No.1/7/80/DI dt. 1.4.1981. On his promotion as Section Officer (Audit & Accounts), his pay was fixed in the said post at Rs.550/-, the minimum of the pay in the pay scale of Rs.550-25-750-EB-30-900. It is stated for the applicant that in terms of office order No.3 dated 12.11.1981, the scale of pay of Section Officer (Audit & Accounts) was revised from Rs.550-900 to Rs.650-960 and the pay of the applicant was fixed at Rs.650/- with effect from 24.11.1981 vide O.M.No. 1/622/81/NIO dated 24.11.1981. It is the case of the applicant that as he was already working as Section Officer from 22.4.1981, he ~~was~~ entitled for the next increment (which is the first increment in the case of the applicant after he was promoted as Section Officer (Audit & Accounts)) from 1.4.1982, but instead he was given the next increment only from 1.11.1982 i.e. from the date of re-fixation of his pay in the grade of Rs.650-960. The applicant further submits that he was given annual increment after a period of 20 months instead of after 12 months. He had submitted a representation to R-1 on 31.12.1991 but the same was rejected under the

proceedings No.8(115)/7/81-EI dated 9.4.1992. He also submitted another representation to R-2 on 3-7-1992 but the same was also negatived by proceedings dated 23.11.1993.

3. Aggrieved by the above rejection he has filed this OA for a declaration that he is entitled to his annual increment as Section Officer (Audit & Accounts) with effect from 1.4.1982 in the revised pay scale instead of from 1.11.1982 and for a further direction to grant all consequential benefits such as arrears with interest at 18% per annum.

4. The respondents in their reply affidavit filed on 13.6.1994 submit that the governing body of CSIR of which CCMB is a constituent unit, upgraded all the existing posts of Section Officer(Audit & Accounts) from the grade of Rs.550-900 to the grade of Rs.650-30-740-35-880-EB-40-960 from 19.9.1981. The governing body also redesignated the post of Section Officer (Audit & Accounts) as Section Officer (Finance & Accounts) with gazetted status with effect from 19.9.1981 in terms proceedings No.33(89)/81-EI dt. 12.11.1981 (Annexure-R.I). It is also stated that the redesignated post was given higher duties and responsibilities. It is further averred that the incumbents who were upgraded to the scale of Rs.650-960 from that of Rs.550-900 were granted fixation of pay in the higher scale following FR 22-C instead of FR 23 in terms of Circular No.2(14)/82-Finance dated 22.11.1982 (Annexure R.2). The statement showing the additional duties/responsibilities/power delegated to the Section Officer(Finance & Accounts) were also

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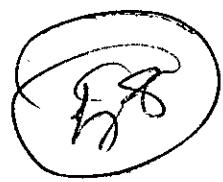
circulated as Annexure-A to the letter dt. 22.4.1982. The respondents further submit that due to the upgradation of the posts, the applicant was promoted to the higher grade with higher responsibilities fixing his pay in the higher grade under FR 22-C with effect from 22.11.1981. In the normal course the applicant is entitled to the increments only 12 months after his promotion i.e. from 1.11.1982. The respondents further emphasise that as the applicant was promoted to the higher grade with effect from 22.11.1981, he is entitled for next increment only from 1.11.1982 and not from 1.4.1982. It is further reiterated by the respondents that the higher posts involve discharging higher responsibility and hence fixation of his pay under FR-22.C and drawing of next increment from 1.11.1982 is in order.

5. The issue to be decided in this OA is whether it is a case of promotion in the upgraded post for the applicant and whether his fixation of pay under FR 22-C and drawing of his next increment one year after fixation of his pay in the grade of Rs.650-960 is in order or not?

6. The above issue can be decided only on the basis of various circulars/letters issued by the CSIR which is a scientific body for CCMB.

6. On the basis of recommendations of Sidhu Committee for career development of administrative staff of CSIR, the post of Section Officer (Audit & Accounts) which was in the pay scale of Rs.550-900 was upgraded to the grade of Rs.650-960 by letter dt. 12.11.1981 (Annexure R-1). The incumbents of the upgraded posts were given the gazetted

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a cadre/department and that upgradation of posts along with upgradation of status cannot be called promotion and hence option admissible under C.M.

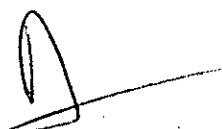
dated 26.9.1981 cannot be allowed in such cases."

In the present case the post of Section Officer (Finance & Accounts) which is a Group-B post in the Finance/Accounts cadre as can be seen from Annex.II

line and that the upgradation cannot be called as promotion submits the applicant. The applicant discharges the duties and responsibilities as applicable to him earlier to the upgradation with some modification/addition on administrative grounds and ~~scale fix~~ ~~scale fix~~ should be fixed on the higher grade following FR 23 and not FR 22.C and that he should be granted increment from 1.4.1982 in the higher scale of pay.

The respondents submit that the post of Section Officer (Audit & Accounts) was in Gr.III - Class-II ~~Cadre~~ and it was in the non-gazetted cadre. For this they produce the part-IV Accounts cadre-grades and scales of pay prior to the upgradation of Accounts cadre. They also produce the relevant ~~noting~~ noting dated 16.3.1982 initiated by Finance and Accounts Officer (F) to show that the upgraded post is a Gazetted cadre with higher responsibilities. The respondents also state that additional duties and responsibilities to the holders of the upgraded posts was indicated in letter dt. 22.4.1982 (Annexure R-2).

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8. The first point to be considered in this OA is whether the applicant was promoted in the upgraded post in the higher scale or his pay was revised to give him the higher scale of Rs.650-960 from the earlier scale of Rs.550-900 in the normal course. The office order No.3 dt. 12.11.1981 clearly indicates that the existing scale of Rs.550-900 was upgraded to Rs.650-960. The above office order does not say that the pay scale of Section Officer (Audit & Accounts) is revised to Rs.650-960. It clearly states that the earlier post of Section Officer (Audit and Accounts) in the pay scale of Rs.550-900 is upgraded to Rs.650-960 for career development of administrative cadre of CSIR on the basis of the recommendations of Sidhu Committee with effect from 19.9.1981. Normally career development schemes are meant for promotion to avoid stagnation in the lower grade. Career development would also mean to give better status to the administrative staff. In view of the above, it has to be presumed that the upgraded post is given the Gazetted status, probably to give a better designation commensurate with the duties and responsibilities attached to the post, the post of Section Officer (Audit & Accounts) was redesignated as Section Officer(Finance & Accounts). As the upgradation in this case is ~~also~~^{an} exercise for career development and also given the Gazetted status, the posting of the officials in the upgraded posts, who were earlier called Section Officer, has to be treated only as promotion and not as a mere re-fixation of pay in the higher scale. It is also seen



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that the duty list includes 11 additional duties and responsibilities. The higher responsibilities added cannot be merely called as inconclusive or indecisive as the above responsibilities given to the holders of the upgraded posts are general supervisory responsibilities, financial and other powers which they were not having earlier. Though, the respondents could not produce the list of responsibilities and powers attached to the pre-upgraded designation ((Section Officer (Audit & Accounts - Rs.550-900) the fact of additional powers and responsibilities entrusted to them is confirmed by noting of the CSIR H.Q. file, which was initiated by Shri Hemraj (Finance (Accounts Officer -F) dated 18.3.1982 and approved by the Chief (F).

Though the post is shown in Grade-III, both in the pre-upgraded and post-upgraded Accounts cadre, the very fact that the post of Section Officer (Finance and Accounts) is given the Gazetted status by an approved office order which status was not conferred to the pre-upgraded post of Section Officer (Audit & Accounts) by any office order, the upgraded post has to be held as higher in status compared to the post of Section Officer (Audit & Accounts).

post as a promotion as stated above, his pay has to be necessarily fixed in the higher post in accordance with the provisions of Ministry of Finance O.M.No.1(4)-E.III (9)/65 dt. 9.11.1965. The above O.M. of Finance Ministry is incorporated as Government of India's order No.4(Pay).



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The above order as extracted from Swamy's Compilation of FRSR (9th Edition) is reproduced below.

"Applicability when status is also changed:

It has been decided that F.R.23 will equally apply in cases where a revision of pay is accompanied by change in status of the post. In such cases, the post virtually continues as before. Where, however, a revision of pay is concurrent with a specific change in the duties and responsibilities attached to the post, the old post will be deemed to have been substituted by a different post. In such cases the individual will be treated as having been appointed to a higher or lower post, as the case may be, and pay will be fixed under the relevant rules, and not under F.R.23."

As the revision of pay in this case is concurrent with the specific change in duties and responsibilities attached to the post, the old post is deemed to have been substituted by a different post. In that case, FR-23 will not apply but FR 22-C will have to be applied as the applicant is promoted to a post carrying duties and responsibilities of greater importance than those attached to his earlier post held by him. Hence, the submission of the respondents that the applicant's pay is fixed in the upgraded scale following FR 22-C is well founded.

10. The applicant relies on the second para of the letter dt. 1.11.1983 of CSIR (enclosed to the additional rejoinder) to state that the promotion of the applicant to the upgraded post is in the normal line and that the upgradation of the post along with upgradation of status cannot be called as promotion



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and hence fixation of his pay under FR 22-C is incorrect and it should be done following only FR-23. The office order No.3, dated 12.11.1981 clearly stated under clause-(5) that the post of Section Officer (Finance & Accounts) shall be in the "common ³ cadre". In the additional counter affidavit, the respondents state that the upgradation of post along with upgradation of status cannot be called as promotion in normal line. Hence, they justify the fixation under FR-22.C. In the earlier paragraphs, the reasons for treating the posting in upgraded post as promotion has been elaborately discussed. It was also said in the earlier paragraphs that the higher responsibilities added to the upgraded post gives both supervisory responsibilities and other financial powers to the holders of that upgraded posts. Hence, the submission of the respondents that the promotion is not in the normal line and that the fixation under FR-22.C is in order cannot be rejected.

11. The applicant submits that the revised duty list was issued only on 22.4.1982 whereas the upgradation order was issued by office order dt. 12.11.1981. As the duty-list with added responsibilities was~~s~~ss issued about 6 months after the issue of the upgradation order, the issue of duty list on 22.4.1982 is an after-thought and such duty list was not contemplated while upgradation order dt. 12.11.1981 was issued. From the notings produced by the learnedcounsel for the respondents, it is apparent that the revised duty list was under contemplation even earlier and it fructified only by issue of the letter dt. 22.4.82. Just because there was

delay in issuing the duty list for Section Officer (Finance & Accounts), it cannot be said that the upgradation is only revision of pay scales and that the applicant duties are not covered by the duty-list issued on 22.4.82. There is no denial of the facts that the revision of duty list was under contemplation earlier and probably due to administrative exigencies/delay it could not be issued along with upgradation order. Merely because the duty list is not issued along with upgradation orders, the applicant cannot take shelter under the delay to contend that his duties are not covered by the duty list and he is governed only by the old duty list in the pre-upgraded posts. He is governed by the duty list issued on 22.4.1982 and as per that duty list, he has been given increased powers commensurate with the Gazetted status of that post. Hence, this contention cannot hold water.

12. The applicant relies on the judgment of the Apex court reported in 1991 16 ATC 1942 - Union of India and another Vs. Shan Pade sidantha and Ors. X to state that the applicant need not wait for 12 months for fixation of his pay in the new scale for earning increment in the revised scale. He also relies on the O.M.No.A.26017/37/89-Ad.II.A dated 1.1.1993 issued by Government of India, Ministry of Finance, (Department of Revenue). The above said O.M. was issued in view of the decision of the Apex court in the case referred to above. The respondents submit that the judgment of the apex court quoted above can be differentiated from the facts of this case.

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I have perused the judgment. The case relates to fixation of pay of Inspectors of Central Excise at Calcutta. The earlier pay scale of Rs.425-800 of the Inspectors of Central Excise were revised to Rs.500-900 with effect from 1.1.1980. Their pay was fixed in the revised scale at Rs.500/- being the minimum in the revised scale. It was, however, ordered that they would be entitled to the next increment not ~~is~~ on their normal date of increment in the lower scale, but on completion of 12 months of service in the revised scale i.e. with effect from 1.1.1981. This direction was issued by office memorandum dt. 9.1.1984. The validity of this OM was challenged in the CAT, Calcutta Bench. The Calcutta Bench set aside that memorandum and held that the next increment should be given in the new scale on the due date in the old scale. The above direction of the Calcutta Bench is the above reported case. From the above narration, it is clear that when the revision of pay scale had taken place without any upgradation of post and also without entrusting higher duties and responsibilities to that post, the increment in the new scale should be given as on the due date in the old scale. But, in this case, the post of Section Officer (Audit and Accounts) had been upgraded and the scale was revised from Rs.550-900 to Rs.650-960. The present case is not one of mere revision of pay scales. It is also seen that additional responsibilities and duties by way of general supervisory powers and other financial powers were added to the upgraded posts. Hence, the present case is not comparable to the above quoted case of mere revision of pay of Inspectors of Central Excise. Hence, the O.M. of G.I.M.F., dated 1.1.1993 is also not applicable in this case.

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13. The learned counsel for the applicant brought to my notice the Office Memorandum No. EST-VI(2) dated 28/30.4.1982 issued by R-3 whereby the applicant was confirmed in the post of Section Officer (Finance and Accounts) ~~fraxx~~ on completion of the period of probation from 22.4.1981 to 21.4.82. On the basis of the Memorandum the applicant's counsel contended that as the applicant was confirmed in that post after completion of one year from the date when he was promoted to the pre-upgraded post of Section Officer (Audit & Accounts) he is entitled for grant of increment from the due date in which his increment is due in the pre-upgraded scale.

The respondents in their additional counter have stated that "it is necessary to mention here that completion of probation and grant of annual increments are two separate and independent issues. Annual increment need not necessarily be granted at the time of allowing the incumbent to complete probation".

It may be necessary to have certain number of years of service after confirmation in the lower grade before considering an employee for promotion to the higher grade. It may be possible that keeping the above recruitment rule in view, the applicant would have been ~~assisted~~ after completion of one year from the due date of promotion in the pre-upgraded scale. If that is so, it is to the advantage of the applicant. However, whether the above confirmation will also entail him to get increment from that date of confirmation is to be decided only on the

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basis of the departmental rules/O.Ms./Instructions etc. No such rule or instruction or OM to that effect was produced by the applicant's counsel. I see force in the submission of the respondents that completion of probation and grant of annual increments are two separate and independent issues. In view of the above, I find no merit in this contention.

14. The respondents contend that the applicant enjoyed the increment in the revised scale from 1.11.1982 without any protest and for the first time, he made a representation only on 31.12.1991 and hence, the claim

The applicant in the rejoinder submits that his representation dated 31.12.1991 was disposed of by proceedings dt. 9.4.1992. He made a further representation to the Chairman, Central Grievance Committee, CSIR, New Delhi on 3.7.1992 which was disposed off by the impugned proceedings dt. 23.11.1993. Immediately thereafter he filed this OA on 21.4.1994 i.e. within the time prescribed Under Sec.21 of the A.T.Act. He also relies on the judgment of the Apex court reported in 1979 (1) SLR 757 (Madras Port Trust Vs. Hymanshu International) wherein it was held that "Government or Public authority should not ordinarily take up the plea of limitation to defeat the just claim of a citizen."

It is not necessary to go into this contention of limitation as the case has been dealt on merits and in the view expressed by me as above, it is not necessary to go further into this contention.

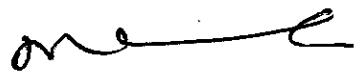


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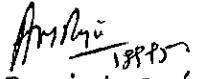
15. From the above analysis, I come to the conclusion that the applicant is entitled to his annual increment only from 1.11.1982 and not from 1.4.1982 as claimed by him.

16. In the result, this OA is dismissed as having no merit. No costs.


(R. Rangarajan)
Member (Admn.)


Dated 14th Sep., 1995.

Grh.


Deputy Registrar (Judl.)

Copy to :-

1. Council for Scientific and Industrial Research (CSIR), Anusandhan Bhawan, Rafi Marg, New Delhi.
2. Central Grievance Committee, CSIR, Anusandhan Bhawan, Rafi Marg, New Delhi.
3. Director, Centre for Cellular and Molecular Biology, Uppal road, Hyd.
4. One copy to Sri. Vilas V. Afzalpurkar, advocate, CAT, Hyd.
5. One copy to Sri. C.B. Desai, SC for CSIR, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

R. Ranga Rao
HON'BLE MR. ~~A. B. GORTHI~~, ADMINISTRA-
TIVE MEMBER.

HON'BLE MR.

~~JUDICIAL MEMBER.~~

ORDER/JUDGEMENT:

DATED: *14/9/* 1995.

~~M.A./R.A./C.A. NO.~~

~~O.A. NO.~~ *519/ay*

~~T.A. NO. (W.P. NO.)~~

ADMITTED AND INTERIM DIRECTIONS ISSUED:

ALLOWED.

DISPOSED OF WITH DIRECTIONS.

~~DISMISSED.~~

DISMISSED AS WITHDRAWN.

DISMISSED FOR DEFAULT.

~~ORDERED/REJECTED.~~

NO ORDER AS TO COSTS.

RSR/-

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No Spare Copy

