

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

O.A. No. 1194/95.

Date: 24-4-1996.

Between:

1. B. Laxminarayana
2. N. Hanumantha Rao
3. Samsamuddin
4. S. Sambaiah

Applicants

And

1. The Director of Accounts (Postal),  
Andhra Circle, Hyderabad.

2. The Director General, Department  
of Posts, New Delhi.

3. Union of India, rep. by the Secretary,  
to the Department of Posts,  
New Delhi.

4. The Chief Post Master General,  
A.P. Circle, Hyderabad.

.. Respondents

Counsel for the Applicants: Sri K. Venkateswara Rao, Advocate

Counsel for the Respondents: Sri K. Bhaskara Rao, Addl. CGSC

JUDGMENT

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

Heard Sri K. Venkateswara Rao, learned counsel for the applicants and Sri K. Bhaskara Rao, Addl. CGSC for the respondents.

2. There are four applicants in this O.A. The 1st applicant joined as LDC on 6.7.1959 and was promoted as UDC on 6.4.1966. He passed Revenue Auditing Examination on 15.9.1972 and SAS (Part-I<sub>f</sub>) Examination on 22.11.1972. It is stated that both the U.D.C. and Junior Accountant posts are one and the same cadre. The applicant No.1 was promoted as Junior Accounts Officer (JAO for short) skipping the intermediate post of Senior Accountant on 25.3.1979. He was further promoted as Asst. Accounts Officer



on 1.4.1987 and as Accounts Officer on 6.3.1994.

The 2nd applicant was appointed as LDC on 10.10.1960 and was promoted as UDC/Junior Accountant on 13.9.1965. He passed Revenue Auditing Examination on 15.9.1972. He was promoted as Junior Accounts Officer on 24.5.1978 skipping the intermediate grade of Senior Accountant. He was promoted as Asst. Accounts Officer on 1.4.1987 and as Accounts Officer on 6.9.1993.

The 3rd applicant herein was appointed as LDC on 6.3.1959 and was promoted as UDC/Junior Accountant on 22.7.1966. He had passed Revenue Auditing Examination on 15.9.1972 and was promoted as Junior Accounts Officer on 16.2.1979 skipping the intermediate cadre of Senior Accountant. He was promoted as Asst. Accounts Officer on 1.4.1987 and as Accounts Officer on 6.9.1993.

The 4th applicant was appointed as Sorter on 18.3.1960 and was promoted as LDC on 6.9.1965 and thereafter he was promoted as UDC/Junior Accountant on 27.4.1966. He had passed Revenue Auditing Examination on 15.9.1972 and was promoted as Junior Accounts Officer on 3.4.1979 skipping the intermediate grade of Senior Accountant. He was promoted as Asst. Accounts Officer on 1.4.1987 and thereafter as Accounts Officer on 21.9.1992.

3. From the above, it is clear that all the four applicants herein were promoted directly from the post of Junior Accountant to Junior Accounts Officer without passing through the intermediate category of Senior Accountant.

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4. Ministry of Finance vide O.M.No.F.7(52)-E.III/78 dt. 5.5.1979 granted a special pay of Rs.35/- with effect from 5.5.1979 to those UDCs/Junior Accountants in the pay scale of Rs.330-560 if they perform onerous duties viz. handling cases of complex nature involving deep study and competence to deal with these cases.

~~As was stated earlier~~ this memorandum came into effect from 5.5.1979. The applicants herein were all promoted from the cadre of UDC/Junior Accountant to the cadre of Junior Accounts Officers earlier to their crucial date of 5.5.1979. It is also once again emphasised here that they have not passed through the intermediate cadre of Senior Accountant. It is stated for the applicants that they were given proforma promotion as Senior Accountant even though they have not held those posts of Sr.Accountant.

5. The applicants submit that their junior one Sri Syed Ahmed Hussain was drawing more pay than them with effect from 1.10.1983 in the cadre of Junior Accounts Officer and as the said Sri Syed Ahmed Hussain is junior to them, they are also entitled to step up their pay on par with the said Sri S.A.Hussain from that date when he was promoted as Junior Accounts Officer.

6. It is stated that the said Sri Syed Ahmed Hussain had filed O.A.No.95/91 on the file of this Bench for fixing his pay in the cadre of Senior Accountant taking into account the special pay he was drawing while working as UDC/Jr.Accountant. As he was working as UDC/Jr.Accountant after issuance of the O.M. dt. 5.5.1979 he was ~~getting~~ granted Rs.35/- special pay and hence he contended in that OA that his pay fixation in the post of Sr.Accountant should be done taking into account the special pay of Rs.35/- granted to him. That OA was allowed and the pay fixation

35

of Sri Syed Ahmed Hussain was fixed in the cadre of Senior Accountant taking into account the special pay of Rs.35/- and that fixation was carried in the cadre of Junior Accounts Officer also and because of that the pay of the applicants was lesser than that of Sri Syed Ahmed Hussain on 1.10.1983.

7. Sri Syed Ahmed Hussain joined as LDC on 7.7.1989. He was promoted as UDC/Jr.Accountant on 29.10.1966 and as Sr.Accountant on 24.9.1982. He became Jr. Accounts Officer on 28.3.1983 and as Asst. Accounts Officer on 1.2.1989. From the above details, it is clear that on or after 5.5.1979 Sri Syed Ahmed Hussain was in UDC/Jr.Accountant cadre and hence he was given the special pay of Rs.35/- as he was performing the duties of complex nature in that post and when he was promoted as Sr.Accountant in the year 1982, his pay was fixed taking into account the spdcial pay also on the basis of the directions given by this Tribunal in OA 95/91.

8. The applicants submitted a representation to the Director General, Department of Posts for stepping up of their pay on par with their junior Sri Syed Ahmed Hussain from 1.10.1983 in the cadre of JAO from the date when Sri S.A.Hussain was promoted as JAO vide their representations dt. 9.12.1993 and followed up with further representations dt. 23.1.1995 (Annexure A.IV); but their claim for stepping up of pay was rejected by impugned order dt. 26.5.1995 bearing No.49/Admn.II/SA.V/AAO/Anomaly (Annexure A.I) stating that the CAT Judgment in OA No.95/91 is not applicable to only to the applicants in the said OA and not for the applicants herein.

9. Aggrieved by the above, they have filed this OA challenging the impugned letter dt. 26.5.1995 holding it as illegal, arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution of India and for a consequential direction to step up the pay of the applicants on par with their junior Sri S.A.Hussain from 1.10.1983.

10. Before various contentions are analysed, it is necessary to refer to the judgment of the Apex Court reported in 1996(1) SLR 773 - The Chief Commissioner of Income Tax (Administration), Bangalore Vs. V.K.Gururaj and Ors. 1 in C.A.No.2537-43 of 1996 dt. 22.1.1996. It was observed in that judgment that "UDCs who do not perform the special duties, though ~~as~~ seniors, do not ipso facto get the same pay on the parity of equal pay due to juniors getting higher pay - Tribunal was wholly incorrect in directing payment to all persons who did not discharge such duties". The above quoted judgment is short. The relevant facts and observations of the Apex court are worthy to <sup>be</sup> reproduced in this context.

"We have heard the learned counsel for the appellant. The Govt. in O.M.No.F5(52)E III/78 dt. 5.5.1979 have stated that special grant of pay of Rs.35/- per month to the UDCs in the non-secretariat administrative offices was provided. Out of the UDCs carrying the scale of Rs.330-560, 10% of the posts were earmarked with special grant of pay of Rs.35/- in the Secretariat and other places and they were directed to handle cases of complex nature involving deep study and competence. For dealing with such cases certain officers have been promoted to that 10% posts specified among the UDCs in the Secretariat as well as non-Secretariat administrative offices. They were being paid @ Rs.35/- p.m. as compensation for discharge of special duties. The respondents were not actually discharging those duties but being UDCs they claimed special pay of Rs.35/-. The Tribunal in the impugned order following its earlier decision dt. 9.10.91 made in OA 394/90 allowed the petition and directed payment. We have directed the counsel to find out whether any appeal has been filed against the said order. It would appear that no appeal has been filed against the said order. However, it being a question of law and

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and since the matter is of perennial problem applicable to several places, we are of the considered view that the failure to file an appeal in one case does not have the effect of following in all other cases. It is seen that payment of Rs.35/- p.m. to UDCs discharging special duties of ~~onerous~~ nature, is personal pay so long as they discharge the same. Therefore, other UDCs who do not perform the special duties, though seniors, do not ipso facto get the same pay on the parity of equal pay due to juniors getting higher pay. Under these circumstances we are of the view that the Tribunal was wholly incorrect in directing payment to all the persons who did not discharge such duties assigned to the 10% special posts of UDCs carrying special pay of Rs.35/- per month."

11. From the above decision of the apex court, it may be deduced that those who do not perform onerous duties in terms of O.M. dt. 5.5.1979 of Ministry of Finance, are not entitled for getting special pay of Rs.35/-. Extending this logic, it has to be further stated that in case those employees who are not eligible to get the special pay of Rs.35/-, cannot also claim fixation of pay when promoted to higher grade taking into account the <sup>then</sup> special pay of Rs.35/- allowed to juniors.

12. The main contention of the applicant in ~~not~~ praying for stepping up of pay is as follows:-

The Supreme Court judgment referred to above is only in regard to granting of special pay to those employees who do not perform the onerous duties in terms of OM of Ministry of Finance dt. 5.5.1979. It does not debar the respondents to step up their pay on par with their juniors if the juniors who got special pay were promoted to higher grade and because of their getting special pay, their pay in the higher grade was fixed taking into account the special pay also. The learned counsel for the applicant further submitted that the Supreme Court judgment should be read only for granting of special pay in the grade of UDC and should not be extended

in the cases where the stepping up of pay is asked for in higher grades on par with their juniors, if the pay of the juniors was fixed in the higher grade taking into account the special pay also. As stated earlier, ~~that~~ when the apex court has clearly stated that those employees who do not perform the onerous duties are not entitled for granting of special pay, it is anybody's guess how far they are entitled for fixation of pay in the higher grade taking into account the special pay also. The juniors, by virtue of their having obtained the special pay in the lower grade were fixed in higher stage of pay when promoted to the higher grade. When the applicants herein were not granted special pay, there can be no case for them for fixation in higher grade on par with their juniors because of the reasons mentioned above. The judgment of the Supreme Court cannot be read in isolation for granting of special pay only but it has to be considered on the basis of its full ramifications even when promoted to the higher grades. Sri Syed Ahmed Hussain got higher pay fixation when promoted to the Junior Accounts Officer grade with effect from 1.10.1983 because of his getting special pay in the cadre of UDC/Jr.Accountant. When the applicants had not got that special pay, they are not entitled for claiming higher pay fixation on par with the juniors when their junior has got higher fixation in higher grade because of getting special pay in the lower grade.

In view of what is stated above, I find no substance in ~~this~~ contention.

13. The second contention of the applicants is that the department themselves have agreed for stepping up of pay senior UDCs not in receipt of special pay on promotion terms of Govt. of India letter dt. 1.12.1994 bearing O/7(75)-E.III/94 (Annexure A.v). In view of the above,

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Government cannot now refuse to step <sup>up</sup> ~~off~~ the pay of the applicants, as a contract has been entered with the Employees Union (National Council of JCM).

The respondents in their reply statement have stated in para-14 that the above said order of Govt. of India is applicable to UDC promoted to the non-functional grade of Senior Account before 5.5.1979 and thereby drawing less pay than his junior promoted after 5.5.1979. As the applicants herein were promoted as Junior Accounts Officer directly from the cadre of Jr.Accountant before 5.5.1979 without passing through non-functional grade of Sr.Accountant they are not entitled for stepping up of pay in terms of Govt. of India letter dt. 1.12.1994. The Govt. of India letter dt. 1.12.1994 is an executive order and not statutory one. In view of the judgment of Supreme Court dt. 22.1.96 referred to above, it is for the department to reconsider ~~the issue and revise the letter of 1.12.1994~~ <sup>if so advised</sup> in the light of the judgment of the Supreme Court. In any case, the judgment of the Supreme Court is binding on everybody and even if a contrary decision has been taken by the department earlier, the same cannot be held to be in force if ~~contrary~~ <sup>such decision</sup> ~~is taken~~ <sup>is revised</sup> by the Supreme Court. Further, the judgment of the Supreme Court being the recent one, it holds <sup>the</sup> ~~good~~ <sup>good</sup> ~~field~~ and no other executive order can be quoted to grant the relief asked for in this OA.

14. The learned counsel for the applicant submitted that the Tribunals have given relief in other cases also as prayed for in this OA and hence those decision are necessarily to be taken note of in this O.A. When a decision of the Apex court is given, the decision of lower courts do not ~~only~~ <sup>only</sup> ~~have~~ <sup>pale into</sup> significance. Hence, it is necessary to follow the directions given by the Apex court.

(SC)

15. The learned counsel for the applicant further submitted that the letter of the department dt. 1.12.1994 was not brought to the notice of the Supreme Court and if it had been brought to the notice of the Supreme Court, the decision of the Supreme Court, would have been different. A perusal of the judgment will clearly state that the Supreme Court ~~has~~ has noted the initial OM of Govt. of India dt. 5.5.1979 and on that basis the direction is given as indicated above. Even if the letter of Govt. of India dt. 1.12.1994 was brought to the notice of the Supreme Court ~~might have~~ the Supreme Court ~~most probably would have~~ set aside that ~~direction given~~ ~~in view of the~~ letter, in view of the ~~direction given~~ in the above referred apex court judgment. The contention for the applicants that Supreme Court would have favoured the applicants if the departmental instructions dt. 1.12.1994 were brought to the notice of the Supreme Court is too much to presume. ~~decided~~ The ~~conclusion~~ in that judgment ~~will~~ definitely show that the Supreme Court is not in favour of granting Rs.35/- special pay to those who have not performed the duties of onerous nature. Hence, the Supreme Court would not have given any orders for stepping up of their pay to those who have not got the special pay of Rs.35/- in the grade of JA/UDC.

16. The learned counsel for the applicants submitted that this case may be referred to the Division Bench for deciding the issue as an important question of law is involved. It is an admitted fact that this is a Single Member Bench case. When the ~~most~~ important question of law was resolved by the Supreme Court, I do not think any other decision can be taken by a Division Bench. The Division Bench cannot go against the decision of the Supreme Court. Hence, no useful purpose will be served by referring this case to Division Bench. Hence, this contention of the applicants is also rejected.

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17. In view of what is stated above, I see no merits in this OA and hence this OA is dismissed. No costs.

( R. Rangarajan )  
Member (Admn.)

Dated 24th April, 1996.  
Dictated in the open court.

Grh.

*Anshu*  
Dy. Registrar (J)  
GSP

contd.

42

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O.A.NO.1196/95

Copy to:

1. The Director of Accounts (Postals)  
Andhra Circle, Hyderabad.
2. The Director General,  
Dept. of Posts,  
New Delhi.
3. The Secretary,  
Dept. of Posts,  
Union of India,  
New Delhi.
4. The Chief Postmaster General,  
A.P. Circle, Hyderabad.
5. One copy to Mr.K.Venkateswar Rao, Advocate,  
CAT, Hyderabad.
6. One copy to Mr.K.Bhaskar Rao, Addl. CGSC,  
CAT, Hyderabad.
7. One copy to Library, CAT, Hyderabad.
8. One duplicate copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : MCA

DATED: 24.6.96

ORDER/JUDGEMENT

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

1194/95

D.A. NO. ~~1196/95~~

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED —

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDERS AS TO COSTS

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