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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 1028/96

Date of order: 13.4.98

BETWEEN

N.S. HARISHCHANDRA RAO

.. Applicant

A N D

1. The Director General,
Research & Development,
Defence Research & Development,
Organisation, DHQ PO,
New Delhi - 110 011.
2. The Secretary,
Department of Personnel &
Training, North Block,
New Delhi - 110 001.
3. The Union of India,
represented by the
Secretary, Ministry of Defence,
DHQ PO., New Delhi - 110 011. .. Respondents

Counsel for the applicant : Party-in-Person

Counsel for the respondents: Mr. K. Bhaskara Rao,
CGSC

Coram:

Hon'ble Shri H. RAJENDRA PRASAD, MEMBER (A)

O R D E R

(Per Hon'ble Shri H. Rajendra Prasad, Member (A))

1. Heard the applicant in person and Mr. K. Bhaskara Rao, the learned Standing Counsel for the respondents.
2. The applicant is aggrieved on account of what he terms an anomaly in his pay and that of Sri A. Venkateswarlu in the grade of Scientist 'B'. This OA has been filed praying for stepping-up

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of his (the applicant's) pay on par with that
officer who
is not, however, a party to this OA.

BRIEF FACTS:

3. The applicant joined the Defence Research & Development Organisation (DRDO) in 1969, and is working now as Scientist 'D' in Defence Electronics Research Laboratory (DERL), Hyderabad. He submits that his junior in the grade of Scientist 'B' has been drawing more pay, and compares his emoluments with those of Sri A. Venkateswarlu who is now Scientist 'C'. According to the applicant he (the applicant) and Sri A. Venkateswarlu were working together as Junior Scientific Officers (JSOs) and were in the same scale of pay (Rs.650-1200; Pre-revised). The applicant submits that while working as JSO he was appointed to the post of Scientist 'B' as a direct recruit and his pay in the grade of Scientist 'B' was fixed at Rs.1,100/- in the scale of Rs.700-1300 (Pre-revised). The date of his annual increment was on 1-6-1986. He states that while working as temporary Scientist 'B', his junior, Sri A. Venkateswarlu, was promoted as Scientist 'B' w.e.f. 2-1-1986, and on promotion, his pay was fixed at Rs.1,150/- (in the scale of Rs.700 - 1300 (pre-revised) after the accrual of the next increment in the lower post on 1-7-1986.

4. The recommendations of the IV Pay Commission came into effect from 1-1-1986. Accordingly the pay of the applicant was revised and fixed at Rs.3,200/-, whereas that of Shri A. Venkateswarlu was fixed at Rs.3,300/- w.e.f. 1-7-1986. Thus, the applicant contends that an anomaly has arisen in

his pay and that of Sri A. Venkateswarlu. Particulars of the pay and emoluments drawn by the applicant and that of Sri A. Venkateswarlu are indicated in detail in Annexure-1 to the O.A.

5. The applicant submitted a representation on 12-5-1995 for stepping-up of his pay on par with that of Sri A. Venkateswarlu. His request was turned down by order No. RD/Pers-7/4132-A/ Gp-II/Grievances dated 23-2-96 (Annexure -A 14). In para-3 of the said order, it has been stated as follows :

"3. DO P&T have rejected the case on the ground that where a person is promoted from lower to a higher post, his pay is fixed under F.R. 22-C and he is likely to get more pay than a direct appointee whose pay is fixed under different set of rules. In such cases the senior direct recruit cannot claim pay parity with the junior promoted from a lower post to higher post as seniority alone is not a criteria for allowing stepping up."

(The letter of appointment of the applicant to the post of Scientist 'B' is at Annexure A-4, at page 31, of the OA.)

6. This OA has been filed with a prayer for setting aside the order dated 23-2-1996 (Annexure-A 14) and to direct the respondents to rectify the anomaly by suitably revising his pay by stepping it up to a figure equal to the pay fixed for his junior, Sri A. Venkateswarlu, in the higher post, i.e., in the grade of Scientist 'B' at Rs.3,300/- w.e.f. the date such junior started to draw the said pay, i.e., 1-7-1986, in terms of the provisions of letter No.G.I., M.F., O.M. No.F.2(78)-E.III(A)/66 dated 4th February, 1966

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(Annexure-A2) and letter of DOP&T No.4/7/92-Estt.(Pay-I) dated 4-11-1993 (Annexure-A3), and also based on the merits of the case.

7. The respondents dispute some of the service particulars given by the applicant and contend that the deemed junior, Sri A. Venkateswarlu, was in fact senior to him; that the applicant joined the service in May, 1972, having been recruited as Senior Scientific Assistant (SSA) on 8th May of that year, whereas Sri Venkateswarlu joined a similar post on 30th July, 1970; that, therefore the applicant was not senior to Sri Venkateswarlu in the cadre of SSA. Similarly, in the next higher post (JSO) the applicant was promoted on 2-3-1981, whereas Sri A. Venkateswarlu was promoted earlier on 2-7-1980; that as Scientist 'B' the applicant joined the post as a direct recruit on 24-6-1983. The applicant was drawing more pay in the post not because he was the senior but because he had entered the grade earlier than Sri A. Venkateswarlu. The applicant was junior to the said Venkateswarlu throughout until he was appointed as Scientist 'B' by direct recruitment. They further submit that one of the conditions for stepping-up of the pay is that even in the lower post the junior officer should have been drawing a higher pay from time to time than the senior by virtue of grant of advance increments, or on any other account, and that this provision can not otherwise be invoked to step-up the pay of any officer; that the applicant's claim that he was senior to Sri A. Venkateswarlu

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till he was appointed as Scientist 'B' is factually incorrect and disputed. Actually, the applicant who happened to be the junior to Sri A. Venkateswarly upto 23-6-1983 became senior only on 24-6-1993, on account of his appointment by direct recruitment as Scientist 'B'. On stepping-up of pay, DOP&T issued a clarificatory O.M. dated 4-11-1993. In a context like the present one the comparison of a direct recruit with that of a promotee for the purpose of stepping-up of pay has been duly clarified as under :

" Where a person is promoted from lower to a higher post his pay is fixed with reference to the pay drawn by him in the lower post under FR 22-C and he is likely to get more pay than a direct appointee whose pay is fixed under different set of rules. For example a UDC on promotion to the post of Assistant gets his pay fixed under FR 22-C with reference to the pay drawn in the post of UDC, whereas the pay of Assistant (Direct Recruit) is fixed normally at the minimum under FR 22-B(2). In such cases, the senior direct recruit cannot claim pay parity with the junior promoted from a lower post to the higher post as seniority alone is not a criteria for allowing stepping up."

The situation contained in the clarificatory letter dated is only illustrative. As a matter of fact, the Rules provide for the fixation of pay of direct recruits even when they are already in Government service. The relevant clause is as under :

"Notwithstanding anything contained in these rules, the following provisions shall govern the pay of a Govt. servant who is appointed as a probationer in another service or cadre, subsequently confirmed in that service or cadre :

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(a) During the period of probation he shall draw pay at the minimum of the time scale or at the probationary stages of the time-scale of the service or post, as the case may be, provided that if the presumptive pay of the permanent post on which he holds a lien or would hold a lien had his lien not been suspended, should at any any time be greater than the pay fixed under this clause, he shall draw the presumptive pay of the permanent post;

(b) On confirmed in the service of post after the expiry of the period of probation, the pay of the Govt. servant shall be fixed in the time scale of the service or post in accordance with the provisions of Rule 22 or Rule 22-C, as the case may be."

8. During the period of his probation, the applicant was required to draw the minimum pay of the time scale in Scientist 'B' grade. On confirmation in the service, after the expiry of probation, the pay of the Government servant had to be fixed in the time scale of the service or post in accordance with Rule 22 of Rule 22-C, as the case may be. The respondents further submit that the applicant's pay, on his appointment as Scientist 'B', should have been fixed properly under FR 22-B. The fixation which was done under FR 22-C was, however, an irregularity. Hence in these circumstances, the applicant is not entitled to the stepping-up of pay on par with that of Sri A. Venkateswarlu and that the applicant cannot meaningfully or validly compare his emoluments with that of Sri A. Venkateswarlu in the grade of Scientist 'B'.

9. It is to be stressed that the applicant was appointed by direct recruitment in the grade of Scientist 'B', whereas Sri A. Venkateswarlu was promoted to the said post. In the lower post Sri A. Venkateswarlu had earned due increments.

It is noted that the applicant was appointed as Scientist 'B' (Annexure -A4) from 24-6-1983. At that time his pay was fixed at Rs.1,100/- under FR 22-C vide item No.I(b), in Daily Order Part II No.0-70 dated 9-8-85. Sri A. Venkateswarlu was promoted to the post of Scientist 'B' on 2-1-1986 and his pay was fixed at Rs.3,100/- under FR 22(a) (i) vide Item No.I, Daily Order Part II No.0-20 dated 11-3-1988. Between 24-6-1983 and 2-1-1986 Sri A. Venkateswarlu ^{had} earned increments in the lower post. Therefore, his pay came to be naturally more on promotion to the post of Scientist 'B' when his pay came to be fixed. The respondents are correct in maintaining that the applicant was directly recruited in the post of Scientist 'B' whereas Sri A. Venkateswarlu was promoted to it. It would be incorrect for the applicant, a direct recruit, to compare his pay with that of a promoted officer. When the applicant was appointed to the post of Scientist 'B', he drew the pay fixed for him till 1986, when Sri A. Venkateswarlu was promoted. Even after the promotion of Sri Venkateswarlu he slumbered over his rights upto 12-2-1995, i.e., for nearly a decade. It is only after a long lapse of time that he came up with a grievance that his pay is required to be stepped-up with that of Sri A. Venkateswarlu.

10. Stepping-up of pay is regulated by the application of FR 22-C. Under FR 22-C the conditions to be fulfilled for stepping up of pay are detailed as under :

" In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely :-

(a) Both the junior and senior officers should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre;

(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 junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay."

11. Admittedly the applicant was a direct recruit as Scientist 'B' during June, 1983. Sri A. Venkateswarlu was promoted during March, 1988. The applicant, when directly appointed to the post of Scientist 'B' (vide order dated 24-6-1983) was given the pay of Rs.1,100/- During these very 5 years Sri A. Venkateswarlu had also duly earned increments in the lower post. It was for this reason that when Sri A. Venkateswarlu was promoted to the post of Scientist 'B', his pay came to be fixed at Rs.3,100/- The difference in the pay of the two was due to increments earned by Sri A. Venkateswarlu. That surely cannot be questioned nor can it be a ground for ...9/-

stepping-up of the pay.

12. The Full Bench of this Tribunal in O.A.No.1412 of 1993 and batch cases, considered the circumstances under which a senior ~~can~~ ^{could} claim stepping-up of pay when his junior is drawing more pay. In paras 7 to 9 the Bench observed as follows :

"7. If a junior gets a higher pay, that does not mean that the senior also should necessarily get it without a foundation for such a claim in law. Fortuitous events are part of life. Fixation of pay is generally with reference to an individual. Various reasons may account for the grant of a higher pay to a junior. For example undergoing a vasectomy operation or achieving excellence in sports or belonging to a certain community or even a wrong fixation of pay may bring about a situation where a junior gets a higher pay. If a junior is granted a higher pay for any of those reasons, that will not confer a corresponding right in a senior to get the same. If, for example, wrong fixation of pay in the case of a junior is to bring about a corresponding fixation in the case of a senior by applying the principle of equality, that would be an instance of using Article 14 to perpetuate illegality. If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a junior. He cannot acquiesce in a wrong, and make a gain from that wrong by a comparison. Without disguise the attempt of the senior, is to get the benefit of a higher pay, by comparison. Without challenging the wrong, he cannot claim a remedy from a wrong. Such collateral reliefs are alien to law. The decision of the Supreme Court in Chandigarh Administration vs. Jagjit Singh (1995) 1 SCC 745 supports this view.

8. Ultimately the question boils down to this, what is the right of the senior and where does he find that right. Certainly he does not find that right in any law. The law governing the subject is F.R.22-C which is now F.R.22(1)(a)(i). Incidentally this rule is not challenged. It follows that only those anomalies that are directly referable to that rule, are amenable to the curative process thereunder namely stepping up, and no other. Equity does not offer a cause of action, as we have already pointed out. Discrimination arises only vis-a-vis law. Difference on facts - often non actionable facts, does not give rise to a cause of action in law. The Supreme Court of India in comparable circumstances held (State of A.P. and others vs. G.Sreenivasa Rao and others, (1989) 10 ATC 61, that difference per se, is not discrimination.

9. In this context, it is necessary to notice a submission made on behalf of applicants. It was submitted that some of the orders of the Tribunal granting stepping up of pay on considerations of equity have been 'upheld' by the Supreme Court by rejecting the SLPs. We

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cannot assent to the submission that the rejection of a Special Leave Petition is affirmation of the legal principle decided in the order sought to be appealed against. Authority is legion for this proposition, and if it is required it is found in *Alpna V. Mehta vs. Maharashtra State Board of Secondary Education and another, AIR 1984 SC 1827, C.S.I.R. vs. KGS Bhat, (1996) 7 SCALE 893*. The Supreme Court has made it clear that even when the Tribunal makes an error, the jurisdiction under Article 136 is not invoked unless there is a question of general public importance or overriding considerations of justice. The contention of applicants has to be noticed only to be rejected."

and the facts of the case

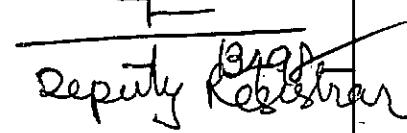
13. In the light of these views, it is felt that there is no ground for stepping-up of the pay of the applicant on the basis merely that his junior Sri A. Venkateswarlu is drawing more pay than him. The respondents have clearly brought out that Sri A. Venkateswarlu earned his increments in the lower post and that, resultantly, he came to draw more pay than the applicant. Therefore, I am persuaded that the applicant does not have a valid or admissible claim for stepping-up of his pay to that of Sri A. Venkateswarlu.

14. For the reasons stated above, I find no merits in this OA and the same is liable to be dismissed. Accordingly the OA is dismissed. No order as to costs.


(H. RAJENDRA PRASAD)
Member (A)

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Deputy Registrar

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sisation, DHQ PO, New Delhi-11.

- The Secretary, Dept. of Personnel and Training,
North Block, New Delhi-1.
- 3. The Secretary, Ministry of Defence,
Union of India, DHQ PO, Union of India,
New Delhi-11.
- 4. One copy to Mr. N. S. Harishchandra Rao, Party-in-person
18-2 Labs' quarters, Kanchanbagh, Hyderabad-58.
- 5. One copy to Mr. K. Bhaskara Rao, Addl. CGSC. CAT Hyd.
- 6. One copy to HHRP.M. (A) CAT. Hyd.
- 7. One copy to DR(A) CAT. Hyd.
- 8. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR. H. RAJENDRA PRASAD : MCA

DATED: 17 -4-1998

ORDER/JUDGMENT

M.A.No.

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No Interim directions issued

Disposed of with directions

Dismissed.

No order as to costs.

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

21 APR 1998

Despatch

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REGISTRATION/APPAL SECTION