

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.481 of 1996

DATE OF JUDGEMENT: - 4th November, 1996

BETWEEN:

Ch.GOPALA KRISHNA

.. APPLICANT

AND

1. The Principal Accountant General (Audit-I), A.P,
Lakdikapool, Hyderabad 500063,
2. The Comptroller & Auditor General of India,
Bahadur Shah Zafar Marg, New Delhi 110002,
3. The Secretary,
Department of Personnel & Training Estt.,
Ministry of Personnel PG and Pensions,
Govt. of India, New Delhi 110 001.

... Respondents

COUNSEL FOR THE APPLICANT: SHRI PVP MRUTYUNJAYA RAO

COUNSEL FOR THE RESPONDENTS: SHRI G PARAMESWARA RAO FOR R1
and R-2.

Shri K.Ramulu for R-3

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

JUDGEMENT

(ORDER PER HON'BLE SHRI R.RANGARAJAN, MEMBER(ADMN.))

Heard Shri P.V.P.Mrutyunjaya Rao, learned counsel
for the applicant, Shri G.Parameswara Rao, learned standing
counsel for R-1 and R-2 and Shri Ramprasad on behalf of
Shri K.Ramulu, learned standing counsel for R-3.

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2. The applicant in this OA while working as Assistant Audit Officer reached the maximum of the scale of pay in that grade on 1.3.85. He was promoted as Audit Officer on 30.10.85. His pay in the grade of Audit Officer was fixed following FR 22-C in terms of DoP OM No.7/1/80-Estt.(Pay-I) dated 26.9.81. He opted to fix his initial pay in the higher post on the basis of FR 22-C straightway without any further review on accrual of the increment in the pay scale of the lower post. The above fixation was opted by him in view of the fact that he had already reached the maximum and the other method of fixation under this rule will not give him any further benefit. A Memo No.16/24/88-Estt(Pay-I), dated 28.6.90 was issued by Govt. of India, Department of Personnnel and Training giving fresh option for fixation of pay in the promoted cadre for those promoted between 2.1.85 and 31.12.85 and in whose case the date of next increment (DNI for short) in the lower post fell on or after 1.1.86. As per that Memo, Govt. of India decided that "an employee promoted after 1.1.85 but before 1.1.86 and whose date of next increment in the post falls on or after 1.1.86 may be allowed another option to get his pay fixed in the promoted post under FR 22-C, either from the date of promotion or date of next increment in the lower post falling on or after 1.1.86" (Annexure A-10 at Page 25 of the OA). The applicant gave fresh option opting to get his pay fixed in the promoted



post under FR 22-C from the date of next increment in the lower post which fell on 1.3.86. Initially his option was accepted and his pay was fixed accordingly. Later, the Department found that the fixation as above to the applicant herein was erroneous as he has reached the maximum of the pay in the lower scale and also he opted earlier at the time of his promotion to get his pay refixed straightway in the higher post on the basis of FR 22-C. A show cause notice was issued for refixing his pay once again alleging that he is not entitled for the benefit of OM dated 28.6.90. He replied to the show cause notice. It was finally informed to him by the impugned letter No.CC/CC 1/8-22/OA 883/95/161 dated 8.3.96 (Annexure A-1) the erroneous pay fixation of the applicant in terms of the OM dated 28.6.90 has to be rectified. It was also sought to recover the excess amount paid due to the alleged erroneous pay fixation by Office Order bearing No.21 (No.Prl.AG (AU).I/Bill.I/Genl./3.79(52.A)/VLol.II/95-96/87 dated 7/12.2.96 (Annexure A-2).

3. The first prayer in this OA is to set-aside the impugned order dated 8.3.96 (Annexure A-1) and the Office Order dated 7.2.96 (Annexure A-2) supra holding them as capricious/arbitrary and contrary to the Govt. of India OMs dated 1.2.87 ^{Adm} and 9.11.87 and Govt. of India OM No.16/24/88 dated 28.6.90.

4. The applicant reached the maximum of his pay in the lower grade of Assistant Audit Officer on 1.3.85.

Initially he chose fixation of his pay in the promoted cadre under FR 22-C straightway from the date of his promotion. This would mean that the applicant's date of increment in the promoted post was 1st October of every year. However due to his modified option in terms of the OM dated 28.6.90, his date of increment fell on 1st March of every year in the promoted cadre. It is stated that the applicant stagnated in the higher cadre of Audit Officer and he was eligible for stagnation increment from 1.3.95 in view of the fact that he had given his option in terms of the OM dated 28.6.90. But the respondents decided to revise his pay in the higher grade in terms of his earlier option submitted at the time of his promotion only i.e, for fixation of his pay under FR 22-C straightway from the date of his promotion. His date of increment on that basis fell on 1st October of each year. In that view, the applicant's stagnation increment is reported to be given only from 1.10.95. But as the applicant had retired on superannuation from service on 30.6.95, he was not eligible for stagnation increment.

5. He filed O.A. in this Tribunal for granting him stagnation increment with effect from 1.3.95 in the cadre of Audit Officer. That OA 883/95 was disposed of on 25.10.95 directing the respondents to obtain final orders of the competent authority within a period of three months



from the date of communication of that order. It is stated that the respondents decided that the applicant is entitled for stagnation increment only from 1.10.95 in view of the fact that he chose to come to the higher pay scale from the date of his promotion in the year 1985 and there is no increment stage in the lower grade for the applicant as he had reached the maximum of his pay in the lower grade on 1.3.85.

6. In view of the above, the second prayer in this OA is for a direction to R-1 to release the stagnation increment due to the applicant on 1.3.95 along with the pensionary benefits due thereon on that basis with interest @ 18% per annum.

7. A reply has been filed on behalf of R-1 and R-2. No reply has been filed on behalf of R-3 though a number of adjournments were given at the request of the learned standing counsel for R-3 to file reply. In spite of repeated adjournments, R-3 failed to file reply. It is a sad state of affair, as the main party concerned in this case is Department of Personnel who has been impleaded as R-3 in this OA. The learned standing counsel for R-3 submitted on 23.10.96 that the reply given on behalf of R-1 and R-2 may be adopted for R-3 also. Though I feel that R-3 should have filed reply, in view of the above submission of the learned standing counsel for R-3, I have disposed of this case on the basis of the records available.

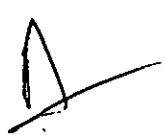
8. The main contention of the respondents in this OA for rectifying the alleged erroneous fixation of pay made



in the case of the applicant in terms of letter dated 28.6.90 are three fold. They are as follows:-

(i) The applicant has opted for fixation of his pay in the higher post on the basis of FR 22-C straightway on the date when he was promoted. Hence he is not eligible for the revised fixation once again in terms of the letter dated 28.6.90. The options will be given only to those who have not opted finally at the time of promotion as above. Further, the applicant having reached the maximum of the pay scale in the lower grade as Assistant Audit Officer cannot claim for fixation of his pay from the date of next increment in the lower scale as there is no such date existed in the case of those official who reached the maximum of the scale of pay in the lower grade;

(ii) It was decided by the Govt. of India in case of a Govt. servant similarly placed who was promoted to the higher post in 1985 while drawing the pay at the maximum of the pay scale of lower post, that he would get his pay fixed under FR 22-C right from the date of his promotion and he is not eligible for option in terms of O.M. dated 28.6.90. Such Govt. servant has, therefore, no option to get his pay fixed under FR 22(1)(a)(i) on the date of promotion and under FR 22-C from the date of increment in the lower post because at the time of promotion he has no date of increment in the lower post. The date of stagnation increment also is governed by actual date of promotion to the higher post (the office notes in this



connection have been enclosed to the reply filed for R-1 and R-2 dated 20.9.91 at Page 2);


(iii) There are a number of cases similar to the case of the applicant in the R-1 and R-2 organisation. Hence if refixation is allowed on the basis of his option in terms of the letter dated 28.6.90 in the present case similar demands will come from simimilarly placed others and hence, the expenditure on this count to be incurred by the Government will be heavy. So the erroneous fixation done in the case of the applicant has to be rectified to avoid extra expenditure.

9. The above contentions are examined.

10. The first contention is that the second option in terms of the Govt. of India OM dated 28.6.90 cannot be given to the applicant herein as he has already given option to fix his pay straightway ~~under FR 22-C straightway~~ under FR 22-C in the higher grade at the time of his promotion in the year 1985. If so, the circular dated 28.6.90 should clearly indicate that the officials who have opted earlier to come to the higher scale of pay when promoted during the period 1.1.85 to 1.1.86 are not eligible to opt as per the memo dated 28.6.90. There is no such indication in this memo. Hence the said memo has to be treated as applicable to those employees also who have opted earlier when they were promoted, as was done by the applicant in this OA.


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11. The applicant should have foreseen a situation similar to the present one when he gave option and should have opted suitably when he was promoted in the year 1985, submits the learned counsel for the ^{respondent} ~~applicant~~. When the Department itself cannot foresee the circumstances similar to the present case and include appropriate stipulation in the OM dated 28.6.90, it is too much to expect from the applicant to foresee a different situation ^{even before} ~~when~~ the IVth Pay Commission recommendations are accepted and implemented. At that time when the applicant was promoted in the year 1985 there was nothing in sight in regard to the recommendations of the IVth Pay Commission. The recommendations of the IVth Pay Commission were submitted much later in October 1986 and was accepted thereafter. Hence if the applicant has not foreseen what would happen when the IVth Pay Commission scales of pay were introduced and gave option as per the circumstances prevailing in October 1985 when he was promoted, it cannot be said that the applicant had erred. His option to come over to the scales of pay of the higher post under FR 22-C in October 1985 should not be quoted against him to dismiss his second option given by him in terms of the OM dated 28.6.90. If the respondents have included in O.M. dated 28.6.90 that the second option is not permitted to those who have already given the earlier option at the time of promotion, there may be a case for the respondents to reject the request of the applicant. In the absence of any such stipulation in the memo dated 28.6.90, the respondents



cannot refuse to accept his second option in terms of that memo. Hence the first contention of the respondents is not tenable.

12. The respondents secondly contend that in terms of the notes in the case of another similar Govt. servant, the second option to fix his pay in terms of the OM dated 28.6.90 was rejected. That rejection is equally applicable in case of the present applicant, submits the learned counsel for R-1 and R-2. This submission cannot be termed as valid. When the revised memo dated 28.6.90 was issued to better the pay fixation of the employees who were promoted in between 1.1.85 and 1.1.86 and, the date of their next increment in the lower scale fell after 1.1.86, there is no reason to deny such concession to those who have reached the maximum scale of pay in the lower grade and promoted in between 1.1.85 and 1.1.86 whose DNI fell after 1.1.86. Even today, as ascertained from the learned counsel for the respondents R-1 and R-2, no clarification is issued as contemplated in the office notes dated 20.9.91 at page 2 of the annexure to the reply. This clarification still in the office file and is not made public. This differentiation made in pay fixation in the promoted cadre between those who reached the maximum in the lower scale and those who had not reached the maximum in lower scale, is invidious. This is not a rational differentiation. The applicant, though reached the maximum of the pay scale in the lower grade, was promoted in between 1.1.85 and 1.1.86 and denying him the benefit of pay fixation in terms of the



revised memo dated 28.6.90 is not only irrational but also arbitrary violating the equality clause enshrined in the Constiution of India.

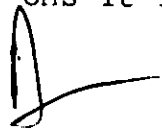
13. The respondents further submit that there is no date of next increment in the lower scale for the applicant as he has reached the maximum of his pay in the lower scale. This appreciation does not appear to be in order. If there is no date for increment in the lower scale when an employee reached the maximum in that scale, why his stagnation increment was paid after a lapse of two years on the date on which he reached the maximum of the scale in that grade? This definitely implies that the date of next increment does not get erased even in the case of the employees who have reached the maximum in the scale of pay but such of those employees will not be entitled for any increment after a lapse of one year of the reaching ~~to~~ the maximum of the scale in that grade. After the lapse of one year, that date has to be treated as a date of "no increment or zero increment". A similar view has also been taken by the Central Administrative Tribunal, Bombay Bench reported in 1996(2) SLJ 491 (N.M.Jadhav v. Union of India and another) wherein it was held that "a person of maximum pay does not lose his date of next increment even if amount of increment may be zero". In that view, the applicant in this OA cannot be said to have no date of next increment but the date 1.3.86 should be treated as a date of "zero" increment. In that view, the applicant is perfectly right if he opts to come to the higher scale from 1.3.86 by his second option in terms of the memo dated 28.6.90 when such

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an option was extended to him. Hence the second contention as put forth by the respondents cannot also be termed as legally valid. Hence this contention is also rejected.

14. The third contention is not warranted. When an employee is legally due for certain benefits, it cannot be denied even if ^{Government} ~~they~~ incur extra expenditure. In this connection, the observations of the Apex Court reported in AIR 1993 SC 81 (Gopal Krishna Sharma v. State of Rajasthan) is very relevant. It was observed in the above reported case that "financial burden should not stand in the way of the employer to deny to the employees what is due to them in law". In view of the above, I do not see any need to further go into this contention. This contention has to be rejected outright.

15. A survey of the various instructions issued right from 1981 is relevant in this case. As per the memo dated 28.6.90 two options were given to the employees who were promoted to the higher grade to get their pay fixed. The first option as per that OM is to get the pay fixed in the higher grade straightway under FR 22-C on the date of promotion. The second option as per the said OM is to get the pay fixed initially in the manner as provided under FR 22(1)(a)(i) and revising the pay on the basis of FR 22-C on the date of accrual of the next increment in the scale of pay of the lower post. Similar provision exists in the Govt. of India circular dated 9.11.87. Hence it has to be concluded that provision of OM dated 28.6.90 is only a reiteration of earlier instruction. When a similar interpretation is done in the present OM dated 28.6.90, it is not taken in the earlier OMs it is not clear why a narrow



view should be taken in the present case. In my opinion in terms of memo dated 28.6.90 giving second option is equally applicable even to those who have reached the maximum of the scale of pay in the lower grade and were promoted between 1.1.85 and 1.1.86 and their date of next increment in the lower scale fell after 1.1.86.

16. The second prayer of the applicant in this OA is that he should be given stagnation increment in the higher grade of Audit Officer with effect from 1.3.95 as it is stated that he has stagnated for two years at the maximum of the scale of pay of Audit Officer on 1.3.95. As I already observed that if an employee even if he has reached the maximum, the date of next increment does exist and because of that, the option of the applicant to come over to the higher scale of pay in the grade of Audit Officer in terms of the memo dated 28.6.90 is to be honoured. In that view it has to be held that the date of increment in the higher grade of Audit Officer for the applicant will fall on 1st March of each year. If the applicant had stagnated for two years in the grade of Audit Officer for two years ending on 1.3.95, the respondents cannot ignore his claim for payment of stagnation increment on that date. His date of increment for the reasons state above cannot be treated as 1st October. In that view, the submission of the respondents that the stagnation increment will fall only on 1.10.95 and the applicant is not entitled for stagnation increment as he has retired on 1.6.95 cannot also be countenanced. If the applicant has stagnated two years in the maximum of the scale of pay of the Audit Officer as per

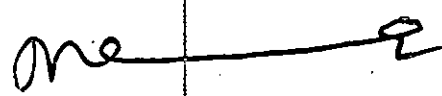


his second option given in terms of the memo dated 28.6.90 as on 1.3.95, he is entitled for stagnation increment on 1.3.95.

17. In the result, in view of the foregoing discussions, the impugned order No.CC/CCI/8-22/OA 883/95/161 dated 8.3.96 and No.Prl.A.G.(Audit-I)/Bills I/Genl/379(52A)/Vol II/95-96/21 dated 7/12.2.96 are set-aside. The pay fixation already effected on the basis of his option given by him in terms of the OM dated 28.6.90 stands good and his pay fixation already done ~~need~~^{should} not be revised.

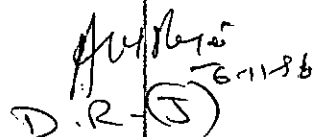
18. The applicant is entitled for stagnation increment in the cadre of Audit Officer if he has stagnated for two years in that scale as on 1.3.95. Fixation of his pension and other final settlement dues when he retired on 30.6.95 are to be done on the basis of the pay drawn by him on 30.6.95 granting him stagnation increment on 1.3.95 if he had stagnated for two years in the pay scale of Audit Officer as on 1.3.95.

15. The OA is ordred accordingly. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 4th November, 1996

vsn


D.R. (J)
6/11/86

O.A.NO.481/96

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A.P., Lakdikapool, Hyderabad - 500 063.
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3. The Secretary,
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HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

Ran R.R. Rangarajan
DATED: 4.11.96

ORDER/JUDGEMENT
R.A./C.P./M.A.NO.

in

D.A.NO. 481/96

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