

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.517-of 1996

DATE-OF-ORDER:-17th-December,-1996

BETWEEN:

SUDARSHAN SINGH

.. APPLICANT

AND

1. The Secretary to the Govt. of India,
Ministry of Home Affairs, New Delhi,
2. The Govt. of India represented by the
Secretary to the Department of Personnel
& Training, New Delhi,
3. The Controller General of Accounts,
Loknaya Bhavan,
New Delhi.

.. Respondents

COUNSEL FOR THE APPLICANT: SHRI K.VENKATESWARA RAO

COUNSEL FOR THE RESPONDENTS: SRI N.R.DEVARAJ, Sr.CGSC

CORAM:

HON'BLE SHRI B.S.JAI PARAMESHWAR, JUDICIAL MEMBER

JUDGEMENT

ORAL ORDER (PER HON'BLE SHRI B.S.JAI PARAMESHWAR,
JUDICIAL MEMBER

Heard Mr.K.Venkateswara Rao, learned counsel for
the applicant and Mr.N.R.Devaraj, learned senior standing
counsel for the respondents.

2. The applicant was working as the Accounts
Officer, a Group 'B' post, under R-3. On 2.4.90 he was
appointed as Assistant Director, FCRA in the Ministry of

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Home Affairs. He held that post from 2.4.90 till the date of his retirement i.e., ^{on} 30.11.91.

3. When he was appointed as Assistant Director, FCRA in the Ministry of Home Affairs, his pay was fixed at Rs.3300/- in the scale of pay of Rs.2200-4000.

4. The applicant claims that his pay in the post of Assistant Director, FCRA should have been fixed in accordance with F.R.22(I)(a)(1) (Old FR 22-C). According to him, his pay should have been stepped up to Rs.3400/- in the lower scale and one increment should have been given and then ^{us} his pay should have been fixed at Rs.3500/- per month.

5. After the applicant ~~had~~ retired from service, O.M.No.F.6(82)-IC/91 dated 22.9.92 was issued creating promotional grade of Rs.2200-4000 for the Audit & Accounts Officers of the organised Accounts cadres, holding that the Audit & Accounts Officer in the scale of pay of Rs.2375-3500 should have a minimum of three years of regular service for promotion to the scale of Rs.2200-4000. As per this notification, the applicant claims that he was eligible to be promoted as Senior Accounts Officer on 1.7.88. Thus, he claims that on 2.4.90 he was deemed to have been holding the post of Sr.Accounts Officer and his pay must be deemed to have been fixed at Rs.3500/- on 1.7.88. The Department of Personnel & Training clarified by the letter dated 9.11.1993 that "Since the UPSC have

accepted that promotion from Group 'B' to Group 'A' even though there is no change in the scale of pay, amounts to assumption of higher duties and responsibilities, this Department agrees to the proposal for application of FR 22(1)(a)(1) (Old FR 22-C) for pay fixation on promotion from Senior AO (Rs.2200-4000 Group 'B') to JTS in IA&AS (Rs.2200-4000 Group 'A'). Pay will be so fixed on notional basis from 1.4.87 but the actual benefits will be with effect from 1.4.92". That means to say that the applicant would be getting only notional benefits since he had retired from service by then.

6. The respondents have filed their reply stating that on the appointment of the applicant as ^{the} Assistant Director, FCRA, he opted for fixation of his pay in the scale of pay of the post of Assistant Director, FCRA and, therefore, this case being of appointment to a higher scale, his pay had been fixed on application of normal rules i.e, FR 22(1)(a)(1) (Old FR 22-C) at the stage of Rs.3300/-, that he retired from service on attaining the age of superannuation with effect from 30.11.91 while drawing the pay at the rate of Rs.3400/-, that subsequent to his retirement, the OM dated 22.9.92 was issued conveying the decision that the Audit and Accounts Officer in the scale of pay of Rs.2375-3500 with a minimum of three years' regular service would be eligible for promotion to the scale of Rs.2200-4000, that in accordance with the said memo, promotion would be made after the due process of promotion by adopting the principle of seniority-cum-

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fitness, that the post in the scale of pay of Rs.2200-4000 was in the functional promotion grade, the benefit of FR 22(I)(a)(1) would be admissible on appointment in the said scale, that the classification of the post of Audit & Accounts Officer will, however, remain the same i.e, Group-B even after promotion to the scale of Rs.2200-4000, that these orders had retrospective effect from 1.4.92. However, the benefit of fixation of pay on notional basis in the promotion scale of Rs.2200-4000 was to be allowed with effect from 1.4.87 or from the first of the month following the month in which the officer completed three years' regular service as Audit/Accounts Officer in the scale of Rs.2375-3500, whichever is later, subject to the availability of posts in the promotional grade. It is stated that no arrears of pay was admissible for the period prior to 1.4.92, that in pursuance to the said orders, the Principal Accounts Office, Ministry of Personnel, Public Grievances & Pension issued order No.224/93 dated 26.10.93 (Annexure R.III) allowing notional fixation of pay and revision of pension in respect of the applicant with retrospective effect in the promotional grade of Rs.2200-4000, that the date of effect in his case was 1.7.88, that the enhanced pension/family pension was to be payable with effect from 1.4.92 and no arrears of pay and pension was payable to him for the period prior to 1.4.92, that the Department furnished Annexure R.III to the applicant, that in response, he opted as follows:-

- (a) On promotion as Senior Accounts Officer in the pay scale of Rs.2200-4000, the applicant

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exercised option for fixation of pay with effect from 1.7.88 at stage in pay scale of Rs.2200-4000 immediately above pay drawn by him in scale of Rs.2375-3500 and later in scale of Rs.2200-4000 in terms of FR 22(I)(a)(1) (Old FR 22-C) with effect from 1.4.89, i.e, date of next increment in scale of pay of Rs.2375-3500;

(b) He further requested that his pay may be refixed again in the post of Assistant Director (FCRA), a Group-A ex-cadre post, (which is now in identical scale as that of Senior Accounts Officer, Group-B), and raise his pension, family pension, gratuity and commutation value of pension accordingly."

It is further stated that the request of the applicant in terms of of FR 22-C on his appointment to Group-A post of Assistant Director (FCRA) in the Ministry of Home Affairs in the pay scale of Rs.2200-4000 on deputation basis with reference to pay drawn in Group-B post in the pay scale of Rs.2200-4000 in his parent office is identical to the requests received from some other officers who were similarly appointed from the Indian Audit & Accounts Department of the post of Assistant Director (FCRA) on deputation basis and who had also been appointed in their parent office to the post of Sr. Accounts Officer in the pay scale of Rs.2200-4000, a Group-B post, with retrospective effect, that the nodal Department in their case had given ruling that the benefit of FR 22-I(a)(1) old FR 22-C is not permissible in a case where the pay scale of

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both the parent cadre post and the deputatin posts are identical irresperctive of classification of the posts, that the Department further clarified that the old FR 22-C would have applied in case of deputation to a post in an identical scale as the condition of higher duties and responsibilities for application of FR 22-C does not get fulfilled with the scale being identical, that after receipt of this ruling of the Department of Personnel & Training, the applicant was informed accordingly vide OM dated 3.5.94 (Annexure R.IV), that there was no case for revision of pay or pensionary benefits of the applicant with retrospective effect, that the applicant had retired on 30.11.91 and in terms of ^{the} Orders, no arrers were admissble for the period prior to 31.3.92, that, therefore, no payment of arreras was involved, that the applicant was informed of the position in detail by the Ministry vide OM dated 15/16.12.93 (Annexure R.V), that in the meanwhile similarly placed officers had also agitated the issue, that their representations were examined in consultation with the Department of Personnel & Training, that the said Department reiterated the earlier opinion and informed that old FR 22-C was not permissible where the scales of pay of both parent cadre post and the deputation post were identical notwithstanding their classification, that the Department also informed that in such cases the pay shall not be fixed under FR 22-C as the condition of higher duties and responsibilities does not get satisfied with the scales being identical, that in such cases the pay shall be fixed under FR 22 I(a)(2), which provides as follows:-

"When the appointment to the new post does not involve such assumption of

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duties and responsibilities of greater importance, he shall draw as initial pay, the stage of time scale which is equal to his pay in respect of old post held by him on regular basis, or, if there is no such stage next above his pay in respect of the old post held lby him on regular basis;

Provided that where the minimum pay of the time scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay"

It is further stated that on appointment on regular basis to such a new post, other than to an ex-cadre post on deputation, the Govt. servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post, that the applicant in his application dated 24.8.95 (Annexure R.VI) had invited the attention to the Dept. of Personnel & Training U.O.Note dated 20.12.93, ^{and} that, however, the decision quoted by him is available in the Dept. of Personnel & Training UO dated 9.11.93 (Annexure R.VII). It is further stated that the applicant was appointed as Asistant Director by transfer on deputation and not by promotion and, therefore, in his case, the rules or orders applicable for appointment on deputatin from a post in

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identical scale to the another post in an identical scale shall apply and not the rules or orders in respect of promotion from a Group-B post in an identical scale to a Group-A post in an identical scale. The pay fixation of the applicant who was appointed as Assistant Director by transfer on deputatin basis was required to be done in terms of FR²²I(a)(2). It is stated that the applicant insisted that his pay should have been fixed in the post of Assitant Director in terms of FR 22 I(a)(1) (old FR 22-C), that his request could not be acceded to in view of the position already explained as above. Thus the respondents contend that the applicant is not entitled to fixatin of his pay as prayed by him.

7. The point for consideration is whether the applicant was appointed as Assistant Director (FCRA) in the Ministry of Home Affairs on transfer by promotin or on transfer by deputation. The learned standing counsel for the respondents submitted that it was neither a case of ex-cadre post nor it was a case of transfer by promotion and that a person cannot be posted to another Department on promotion. Further he sumitted that R-2 in his clarificatory note dated 9.5.93 had stated that the O.M. dated 22.9.92 is applicable to the case of promotion and ^{Explained as} not to the case of deputation. The Department has not specifically answered the case of the applicant whether it was a case of promotion on deputation or promotion on transfer. As a reply to this contention, the learned counsel for the applicant brought to my notice the

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Annexure-3 and contended that it is a clear case of appointment and it is not a case of deputation.

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8. Accordingly, it is proper to direct R-2 to consider whether the applicant was appointed as Assistant Director on 2.4.90 on transfer by promotion or on transfer by deputation and take a suitable decision and refix the pay of the applicant. In case it is a pure case of fresh appointment, ~~In case it is a case of fresh appointment,~~ the pay of the applicant shall be fixed as per FR 22(1)(a)(1) (Old FR 22-C).

9. R-2 shall decide the issue within a period of two months from the date of receipt of a copy of this order and the decision taken shall be intimated to the applicant.

10. With these observations, the OA is disposed of. No order as to costs.

(Registry to send a copy of the OA along with this order).

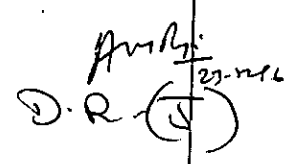


(B.S. JAI PARAMESHWAR)
JUDICIAL MEMBER

17/12/96

DATED: - 17th December, - 1996
Dictated in the open court.

vsn


D.R. (S)

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O.A.NO.517/96

Copy to:

1. The Secretary to the Govt. of India,
Min. of Home Affairs, New Delhi.
2. The Secretary to the Dept. of Personnel & Training,
New Delhi.
3. The Controller General of Accounts, Loknaya Bhawan,
New Delhi.
4. One copy to Mr. K. Venkateswara Rao, ~~Advocate~~ Advocate, CAT, Hyderabad.
5. One copy to Mr. N. R. Devraj, Sr. CGSC, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One duplicate copy.

for one copy to Mr. N. C. J. Parameswar (M) (2)

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(5)

21/1/97

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APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

THE HON'BLE SHRI B.S. JAI PARMESHWAR:
M(J)

DATED: 17/12/96

ORDER/JUDGEMENT

R.A./C.P/M.A.No.

G.A.NO. 517/96ⁱⁿ

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

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*Cop of A was already
received by me
[Signature]*

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
दिल्ली / DESPATCH
1 JAN 1997
हैदराबाद बेंच
HYDERABAD BENCH