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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 858/96.

Dt. of Decision : 09-10-96.

N. Kameswara Sarma

... Applicant.

Vs

1. The Director General,
Dept. of Posts,
New Delhi.

2. The Director of Accounts,
(Postal), Office of the
Post Master General,
Hyderabad.

.. Respondents.

Counsel for the Applicant : Mr. K. Venkateswara Rao

Counsel for the Respondents : Mr. Vijay Kumar, Addl. CGSC.

CORAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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ORDER

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

Heard Mr.K.Venkateswara Rao, learned counsel for the applicant and Mr.Vinod Kumar, learned counsel for the respondents.

2. The applicant in this OA joined as LDC on 24-6-59 under R-2 and was subsequently promoted as UDC on 22-7-66. The post of UDC and Junior Accountant carries the same scale of pay. The applicant was given a special pay of Rs.35/- while he was working as UDC/JA for performing complex nature of job w.e.f. 5-5-79 to 7-6-81 with a break in between. He was sent on foreign service to A.P.Khadi and Village Industries Board w.e.f. 7-6-81. In the mean time his junior, Mr.N.V.Subba Rao, who was also getting the special pay of Rs.35/- while working UDC/JA, was promoted to the cadre of Sr.Accountant w.e.f. 1-7-82. The applicant was also promoted from 1-7-82 to the post of Sr.Accountant on the basis of

"next below rule" by office order No.O.O.No:216/Admn.I.EA.I.Spl.Pay dated 6-11-92 (Annexure-IV).

The applicant came back from foreign service on 8-6-85. While promoting the applicant under the next below rule w.e.f. 1-7-82 the pay of the applicant in the cadre of Sr.Accountant was fixed notionally on the basis of FR 22 (C). The special pay drawn by him was not taken into account at that time for fixation of his pay as Sr.Accountant notionally w.e.f. 1-7-82. On the basis of the above fixation his actual pay was drawn and paid to him from the date i.e., from 8-6-85 when he joined back on 8-6-85. The applicant submits that his pay was less than that of his junior Mr.N.V.Subba Rao in the cadre of Sr.Accountant. It is further stated that the anomaly had taken place because of the fact that the pay fixation of his junior when promoted as Sr.Accountant w.e.f. 1-7-82 was done taking into account the special pay drawn by him while working as UDC/JA. Whereas in the case of the applicant such fixation was not done taking into account the



special pay and hence an anomaly had arisen. The applicant submitted a representation for stepping up of pay on par with his junior from the date he joined back the department after termination of his foreign service. That representation was rejected by the impugned order No.26/Admn.II/SA.V/JA/Spl.Pay dated 27-5-96 (Annexure-I) for the reasons that the stepping up of pay is not permissible in terms of Government of India, Ministry of Finance, O.M.No.7(75)-E.III/94 Dated 1-12-94 (Annexure-III).

3. Aggrieved by the above, he has filed this OA for setting aside the impugned order No.26/Admn.II/SA.V/JA/Spl. Pay dated 27-5-96 (Annexure-I) and for a consequential relief for stepping up of his pay on par with his junior Mr.N.V.Subba Rao.

4. The main contention of the applicant in this OA are as follows:-

i) The applicant was promoted following the principle of "next below rule". Relying on the Government of India orders No.30 at Page-83 of FRSR Swamy's Compilation 12th Edition 1994, the applicant submits that he is entitled for all the benefits that had accrued to his junior. This includes the fixation of pay in the higher grade taking into account the special pay at the time of his promotion as was done in the case of his junior.

ii) The foreign service should not cause hardship to the employee when he returns back to the department. As his pay was less than the pay of his junior when he joined back to the department as Sr.Accountant he was put to hardship due to monetary loss. Hence, the foreign service resulted in harsh treatment to him and not beneficial to him.

iii) The case of the applicant was rejected by the impugned proceedings dt. 27-5-96 on the basis of the OM of the Finance Ministry dated 1-12-94. The applicant had joined back the department much earlier to the issue of this memorandum dt. 1-12-94. Hence, his case cannot be covered by this memorandum.



5. A reply has been filed in this connection. The various contentions raised by the applicant is analysed taking into account the contentions made by the respondents in the reply.

6. Order No.30 of Govt. of India under Rule FR 22 was perused. The operative portion of the decision is that "the protection under the next below rule in respect of any one vacancy occurring in the regular line may go to the next seniormost fit officer serving outside the cadre who is not independently protected in respect of pay, increment or pension by belonging to one or other of these types." From this it is evident that the protection of special pay is not envisaged in this rule, though the applicant submits that the fixation in the higher grade is to be done taking into account the special pay also. The applicant further submits that the pay includes special pay also under FR 9 and hence when it reads pay, it should be taken to mean pay and special pay. The special pay in this case was given for performing complex nature of duties. It is evident that the applicant is away from the post of UDC/JA right from 1981 onwards. Hence, he cannot be said that he had performed the duties of complex nature which entitles him to get the special pay at the time of his proforma promotion. In a recent judgement of the Supreme Court reported in 1996 (1\$LR 773 (Chief Commissioner of Income Tax (Administration) Bangalore Vs. V.K.Gururaj and Others) it is observed that an employee is not entitled for special pay if he is not actually performing the duties attached to the post which carries the special pay. A logical conclusion of the above observation is that an employee who was not getting the special pay cannot also ask for higher fixation taking into account the special pay also when he is not in receipt of the special pay in the lower grade at the time of promotion. In this case the applicant has not performed these

duties and responsibilities attached to the posts which carries the special pay. Hence, in view of the judgement of the Supreme Court referred to above the applicant cannot legitimately ask for fixation of his pay in the Sr.Accountant cadre taking into account the special pay also. Under these circumstances the pay as per order No.30 of Govt. of India's instruction under Rule 22 has to be read as pay without special pay as he was not getting the special pay at the time of his proforma promotion and the time when he joined back the department.

7. The applicant has to fulfil the conditions laid down under Govt. of India orders No.23 "removal of anomaly by stepping up of pay of senior on promotion drawing less pay than his junior" to obtain stepping up on par with his junior. The present case does not fulfil those conditions of the Govt. of India in that the applicant was away on foreign service at the time of his promotion under the next below rule, on 1-7-82.

8. The next contention of the applicant is that it is harsh to him if his pay was fixed less than that of his junior when he joined back in the department. I do not consider this contention very valid. The applicant enjoyed the benefit of that office while in foreign service probably with higher pay than he would have drawn if he had remained in the parent department. It is a boon to him.

9. The applicant submits that the rejection of his case based on the letter from the Min. of Finance dt. 1-12-94 is not applicable to him as it was issued much after his joining in the year 1985. But this letter is to be construed as a clarification to the previous letters as the special pay was granted right from the year 1979 onwards. A clarification letter even if it is issued late cannot be treated as a fresh letter but should be taken as continuation of the previous orders. Further counting of the special pay for fixation in the higher grade when promoted was engaging the attention of the Government for a number of



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years due to demands raised by the staff unions and others. The government came to a decisive conclusion after intense deliberation and benefit of that decision was given to those who were promoted earlier to 1-12-94. If that be the case, the applicant cannot have any grievance. If the applicant submits that the letter of 1-12-94 will have only prospective effect then the claim of the applicant for fixation of his pay taking into account special pay of Rs.35/- cannot be sustained. The very fact that he claims fixation of pay taking into account the special pay of Rs.35/- given to his junior, clearly shows that the applicant wants to enjoy the benefit of the circular as well as challenge the circular on the basis of issue of the O.M. dated 1-12-94. Such contradictory contentions cannot be accepted.

10. In view of what is stated above, I find no merits in this OA. Hence, the OA is dismissed. No costs.

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(R.RANGARAJAN)
MEMBER (ADMN.)

Dated : The 09th October 1996.
(Dictated in the Open Court)

SPR

Amma 2000
D-R (J)

O.A.NO.858/96

1. The Director General,
Dept. of Posts,
New Delhi.
2. The Director of ~~Rekta~~ Accounts,
(Postal), O/O The Postmaster General,
Hyderabad.
3. One copy to Mr.K.Venkateswar Rao, Advocate, CAT, Hyderabad.
4. One copy to Mr.Vinod Kumar, Addl.CGSC,
CAT, Hyderabad.
5. One copy to library, CAT, Hyderabad.
6. One duplicate copy.

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED: 9.10.96

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

in
O.A. NO. 858/96

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

YLKR

II COURT

