

Date of order: 25.02.2000

OA No.126/95

R.L.Vijay S/o Shri Niranjana Lal Vijay, retired Sr. Audit Officer O/o the Accountant General (Audit), Rajasthan, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary to the Government, Ministry of Finance, Department of Expenditure, New Delhi.
2. The Comptroller and Auditor General of India, Bahadur Shah Zafar Marg, New Delhi.
3. The Accountant General (Audit), Rajasthan, Bhagwandas Road, Jaipur.

.. Respondents

Mr. M.S.Gupta, counsel for the applicant

Mr. V.S.Gurjar, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

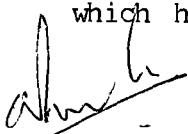
Per Hon'ble Mr. N.P.Nawani, Administrative Member

The applicant seeks stepping up of his pay equivalent to his junior, Shri S.C.Bhandari at Rs. 680/- as on 30.11.1975 but his request was rejected by the respondents vide their order dated 27.10.1994. Hence, this OA with a request to allow stepping up of his pay and setting aside the rejection letter dated 27.10.1994 (Ann.A1).

2. Briefly stated, the case of the applicant is that he is senior to Shri Bhandari in every respect as can be seen from the comparative statement at Ann.A2. He was confirmed in UDC cadre on 23.3.1959 whereas

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Shri Bhandari was so confirmed on 21.5.1964. He passed Revenue Audit Examination as UDC/Auditor, passed SAS Examination, promoted to the post of S.G. UDC/Auditor, promoted as Supdt./Section Officer and passed Revenue Audit Examination (for short RAE) earlier than Shri Bhandari. Vide circular letter dated 25.6.1980 from Accountant General, Indian Audit and Accounts Department (for short, AG, IAAD), the applicant alongwith others, was informed that his pay has been stepped up to Rs. 640/- w.e.f. 7.11.1974 with next increment (for short, NDI) as 1.11.1975. The applicant was getting an advance increment of Rs. 20/- on having passed the Revenue Audit Examination on 30.11.1973 and this advance increment was included in the pay of the applicant as on 30.11.1973 whereas Shri Bhandari passed the same examination on 30.11.1975 and as such his pay was fixed at Rs. 680/- on that date. All along Shri Bhandari was drawing less pay than the applicant till the promotion of Shri Bhandari as Section Officer (for short SO) on 7.11.1974 when both of them stated getting Rs. 640/-. This stepping up of pay did not take into consideration that the applicant had already passed RAE on 30.11.1973 was allowed advance increment of Rs. 20/-, Shri Bhandari passed the RAE on 30.11.1975 i.e. after 7.11.1974 and was allowed advance increment of Rs. 20/- from 30.11.1975. In other words, the element of advance increment by virtue of passing RAE by the applicant should have been excluded from the pay of the applicant on 7.11.1974. Since the applicant's junior Shri Bhandari passed RAE on 30.11.1975 and was given advance increment of Rs. 20/- from that date and thus the pay of junior has become more than the applicant's pay. The applicant's grievance is that no consideration of increment already sanctioned to the applicant by virtue of passing RAE earlier was given while stepping up was allowed w.e.f. 7.11.1974. The applicant was informed vide letter dated 17.11.1992 (Ann.A6) that his case for stepping up w.e.f. 30.11.1975 is under consideration but vide letter dated 24.12.1992 (Ann.A7) he was informed that it is not considered to process his case again in view of Memo dated 28.1.1980 under which he was informed that since he passed the RAE for Section Officers



after 1.1.73, his request for further stepping up of pay from 30.11.1975, the date from which his junior passed RAE is not covered by the provisions of Central Office letter No.2779-NGET/40-74 II dated 23.9.76.

3. The respondents filed a preliminary reply, followed by a comprehensive reply to which a rejoinder was filed by the applicant which is on record.

4. The respondents have taken a preliminary objection that the OA is hopelessly barred by limitation since the representation of the applicant was decided as far back as 28.1.1980 (Ann.A7) and he was again intimated the same position on 24.12.1992. The alleged grievance of the applicant relates to the period 30.11.1975 to 31.12.1985. Pay of the applicant was fixed at par with his junior Shri Bhandari w.e.f. 1.1.1986 and remained equal till retirement and, therefore, his pensionary benefits remain unaffected. It was contended that OA deserves to be dismissed being barred by limitation. Coming to merits, it has been stated by the respondents that the anomaly caused in the pay of the applicant with reference to pay of his junior Shri Bhandari w.e.f. 30.11.1975 was on account of grant of advance increment to the latter on his passing RAE for Section Officers, which was not removable under the rules/clarifications contained in the Govt. of India, Ministry of Finance letter No.A-11014/3/74-EGI dated 13.9.1976 and the anomaly ceased to exist when pay of Shri Bhandari and the applicant was fixed at par under the Revised Pay Rules introduced w.e.f. 1.1.1986. It was contended that the averment that the anomaly had arisen due to arbitrary and capricious operation of rules is wrong. It is also wrong for the applicant to aver that this is causing loss in pensionary benefits, which is a continuous wrong, is false and without any substance. It has also been contended by the respondents that stepping up of pay of the applicant to bring it at par with that of Shri Bhandari w.e.f. 7.11.1974 was done as per rules/orders and it was allowed

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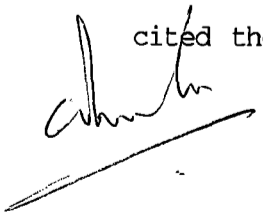
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to the applicant w.e.f. 7.11.1974 under FR-27 with reference to his junior with a view to remove the genuine anomaly. The letters referred to and relied upon by the applicant dated 23.8.1994 and 20.9.1994 have no relevance to the controversy. As per relevant provisions contained in Govt. of India, Ministry of Finance letter dated 13.9.1976, stepping up of pay of seniors w.r.t. pay of their juniors is permissible only when having passed the RAE, were allowed advance increment in the pre-revised scales prior to 1.1.1973 while the juniors in the revised scale of pay after 1.1.1973.

5. The applicant has also averred in his rejoinder that his representation dated 9.1.1980 could not have been considered by the CAG on 10.12.1979 and also claimed that Govt. of India's letter dated 13.9.1976 did not lay down that the cases of stepping up of individual who passed RAE after 1.1.1973 will not be considered. It was also stated that after 1.3.1984, Audit and Accounts were separated and while the applicant opted for Audit and was transferred to AG(Audit), Shri Bhandari remained with AG (A&E) and thus their cases were not comparable on 1.1.1986 and same criteria of stepping up could not be applied in two different independent offices. Emphasis has also been laid that the case of the applicant was for the first time referred to CAG on 23.8.1994 and the impugned reply (Ann.A1) was issued on 27.10.1994 and the OA cannot, therefore, be considered as time barred.

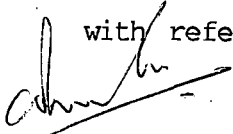
6. Heard the learned counsel for the parties and examined the material on record.

7. As far as the question of OA being hopelessly time barred as strongly contended by the respondents, the limitation is not strictly applied in cases relating to the pay fixation since it is considered a recurring cause of grievance. The learned counsel for the applicant has cited the judgment of the Apex Court in the case of M.R.Gupta v. Union of



India, reported in 1996 LAB IC 599, in support wherein the Apex Court has held that non-fixation of initial pay, being a recurring wrong, question of limitation does not arise. It was also, inter alia, observed by the Apex Court that "so long as the employee is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to the Rules." In the case in hand, even if the Audit and Accounts functions of the AGs were separated and the applicant opted for Audit and his junior remained in Accounts and thus they were with different AGs, the fact remains that both the applicant and his junior ~~was~~ stated drawing the same pay w.e.f. 1.1.1986 and the applicant continued to get his pay at par with his junior till he retired. The present case is, therefore, distinguishable on facts and circumstances. Further the applicant had made the first representation was decided as far back on 28.1.1980 and it was after 12 years that he started sending reminders on the plea that he had not received the reply dated 28.1.1980. Such a behaviour appears unusual, any person will keep on sending reminders if he does not receive a reminder within a reasonable time. In any case, he could have approached this Tribunal, if he had not received a reply after lapse of 6 months as provided. We would, however, not like to dismiss this OA just on the ground of limitation in the interest of justice.

8. As regards the merits of this case, to begin with, it appears that with regard to the subject of "Anomalies in pay arising in pay fixation as a result of passing the Revenue Audit Examination by the juniors after 1.1.1973 and the seniors before 1.1.1973", the governing instructions are contained in Govt. of India, Ministry of Finance, Department of Expenditure letter No. A-11014/3/74-EGI dated 13.9.1976, conveying the Presidential sanction to stepping up of the pay of the senior Auditor (including selection grade Auditors) and Section Officers who were allowed advance increments in the pre-revised scales prior to 1.1.1973, with refernece to the pay of their juniors in the revised scales in the

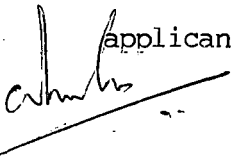


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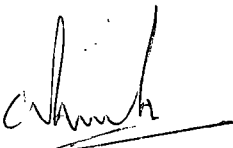
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same cadre who were granted advance increments in the revised scales of pay consequent upon their passing the Revenue Audit Examination after 1.1.1973. However, at one place the respondents stated that the anomaly was on account of grant of an advance increment to his junior on his passing RAE for Section Officers which was not removable under rules/clarifications contain in Govt. of India letter dated 13.9.1976. The said letter talks of "Section Officers who were allowed advance increments in the pre-revised scale before 1.1.1973" and the applicant, who was in SO's cadre, passed RAE after this date i.e. on 30.11.1973 as per Ann.A2, the stepping up of pay of senior Section Officer is to be done with reference to the pay of their juniors in the revised scales of pay consequent upon their passing the RAE after 1.1.1973. The respondents at another portion of their reply state that stepping up of pay was allowed to the applicant w.e.f. 7.11.1974 under FR-27 with reference to his junior with a view to remove the genuine anomaly. Of course, both the applicant and Shri Bhandari appear to have passed the RAE after 1.1.1973 but we are not able to appreciate if this obstacle is one which cannot be surmounted with sympathetic application of mind. It does appear incongruous that the applicant should draw less pay than his junior, Shri Bhandari, when the applicant was admittedly senior to Shri Bhandari and had passed the RAE on 30.11.1973, whereas Shri Bhandari had passed the said examination on 30.11.1975. That both the applicant and Shri Bhandari were drawing the same pay w.e.f. 1.1.1986 is, to our mind, not very material to the controversy.

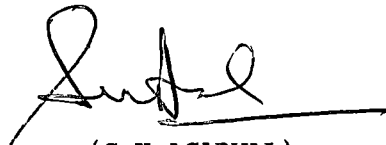
9. We are, therefore, of the opinion that the question of stepping up of pay of the applicant requires to be re-examined by the respondents in terms of the relevant rules, instructions etc. but at the same time, viewing the matter sympathetically. Our attention has been drawn to a note dated 23.8.1994 from CAG's office to Ministry of Finance suggesting sympathetic consideration for refixation of the anomaly raised by the applicant in this OA.



10. This OA is accordingly disposed of with a direction to the respondents to re-examine sympathetically the request of the applicant for stepping up of his pay at Rs. 680/- as on 30.11.1975 equivalent to his junior, Shri S.C.Bhandari in accordance with concerned rules, instructions etc. This may be done as expeditiously as possible and the applicant can be informed through a detailed, reasoned letter the result of such re-examination within one month of the completion of such re-examination. A copy of the OA and its Annexures be sent to respondent No.3 with the copy of this order. No order as to costs.


(N.P.NAWANI)

Adm. Member


(S.K.AGARWAL)

Judl. Member