

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 816 of 2003

Jabalpur, this the 17th day of December 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Abdul Sayeed Khan, S/o. late Shri
Rehmat Khan, aged about 61 years,
R/o. House No. 2704, Anand Nagar,
Adhartal, Jabalpur (MP).

... Applicant

(By Advocate - Shri Munish Saini)

V e r s u s

1. Union of India, through the
Secretary, Ministry of Defence,
New Delhi.
2. The Director General of Ordnance
Services, Master General of Ordnance
Branch, Army Head Quarter,
New Delhi 110 011.
3. The Officer-in-charge, ADC Records,
Trinungherry, Post Secundrabad,
500 015.
4. Shri R.S. Verma, aged about 60 years,
R/o. H. No. 330, Khalasi Line Chhoti
Qmti, Jabalpur (MP).

... Respondents

(By Advocate - Shri K.N. Pethia)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has
claimed the following main reliefs :

"8.1 direction to the respondents to grant special pay
of Rs. 35/- (enhanced Rs. 70/-) to the applicant since
1.10.1985 i.e. the date on which the applicant was promoted
to the post of Office Superintendent Grade-II,

8.2 direction to the respondents to step up the pay
of the applicant at par with respondent No. 4, and
consequently to grant all arrears resulting from such
refixation of pay."

2. The brief facts of the case are that the applicant was
initially appointed as Lower Division Clerk in the year 1962 in
the Central Ordnance Department, Jabalpur. The applicant was
promoted as Upper Division Clerk in the year 1979. Thereafter,
he was promoted on the post of Office Superintendent Grade-II.

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In the year 1997 the applicant was further promoted to the post of Office Superintendent Grade-I and has retired on superannuation on 31.12.2002. On the date of superannuation the applicant was getting pay in the payment of Rs. 5500-9000/- and his basic pay was Rs. 7250/-. The Ministry of Finance, Department of Expenditure vide office memorandum dated 1.9.1987 clarified that the special pay of Rs. 35/- as proposed to be paid vide OM dated 5.5.1979 shall be taken into account for fixation of pay on promotion. No specification of posts of UDCs was ever done by the department so as to attach special pay of Rs. 35/- for doing more hardous nature of work, and neither the UDCs senior to the applicant or his colleagues were given the benefit of special pay of Rs. 35/- which was later on decided to be added in the basic pay of the incumbent who was getting the same. Later on vide OM dated 7.12.1988 the special pay was raised from Rs. 35/- to Rs. 70/-. The attachment of special pay of Rs. 35/- to the posts as required by the OM was not done prior to 1.1.1986 and as the applicant was promoted as Assistant on 1st October, 1985, there was no occasion for him to be given the special pay. On coming to know the anomaly which has crept, the applicant made representations. No reply was given to the applicant. But later on vide order dated 5.4.2003 the claim of the applicant to give special pay of Rs. 35/- was rejected while his juniors were given the said benefit. The applicant has been wrongly denied the benefit of stepping up of pay at par with his juniors. Hence, he is challenging the arbitrary action of the respondents, by way of filing this OA.

3. Heard the learned counsel for the parties and perused the records carefully.

4. The learned counsel for the respondents argued that the present Original Application is hopelessly barred by limitation is as the prayer of the applicant for grant of special pay/with



effect from 1.10.1985 and the instant OA has been filed by the applicant on 12.11.2003 i.e. after a lapse of about two decades. Thus, this Original Application is liable to be thrown out on the ground of limitation as the application is barred by limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

5. In reply the learned counsel for the applicant argued that he has mentioned in para '3' of the Original Application that the Original Application is within limitation as prescribed under Section 21 of the Administrative Tribunal Act, as pension is a recurring cause of action.

6. With regard to the preliminary objection of the respondents that the Original Application is barred by limitation, we find that the matter relates to grant of special pay notionally which will effect the pensionary benefits of the applicant and such matters have continuous cause of action as per the judgment of the Hon'ble Supreme Court in the case of **M.R. Gupta Vs. Union of India & Ors.**, 1995(5) SLR 221.

7. As regards the merits of the case, the learned counsel for the applicant argued that no specification of posts of UDC's was ever done by the department so as to attach the special pay of Rs. 35/- for doing more arduous nature of work neither the UDC's senior to the applicant nor his colleagues were given the benefit of special pay of Rs. 35/- which was later on decided to be added in basic pay of the incumbent who was getting the same. Later on vide memorandum dated 7.12.1988 the special pay was raised from Rs. 35/- to Rs. 70/-. The attachment of special pay of Rs. 35/- to posts as required by the office memorandum was not done prior to 1.1.1986 and the applicant was promoted as Assistant on 1st October, 1985. Hence there was no occasion for him to be given the special pay. On coming to know of the anomaly, which has been crept on such an action of the respondents, the applicant made representation. Vide order dated 5.4.2003 the representation of the applicant was rejected and the applicant was getting lesser pay than his juniors. He has also



drawn our attention towards the judgment of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. P. Jagdish and Ors. 1997 LAB. I.C. 1281.

8. In reply the learned counsel for the respondents argued that the anomaly in the pay scale has been pointed out by the applicant basically due to the grant of special pay of Rs. 70/- to the respondent No. 4 and subsequent pay fixation made on promotion to the next higher grade after taking element of special pay. It is mentioned in para-C of para 23 of the FR 22C that the anomaly should be directly as a result of application of FR 22C. 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 senior officers. Hence, the applicant is not entitled for the rehiefs claimed.

9. After hearing the learned counsel for both the parties and on careful perusal of the records we find that the Hon'ble Supreme Court in the case of P. Jagdish (supra) held as under :

“6. So far as the first question is concerned, it is to be seen that a special pay of Rs. 35/- per month is attached to certain identified posts in the category of Senior clerks and, therefore, only those who would be posted against those identified posts can claim the said special pay. The respondents who had already been promoted to the higher category of Head Clerks cannot claim that special pay even on notional basis merely because their juniors in the cadre of Senior Clerks were given that special pay on being posted against those identified posts carrying the special pay. It is an additional pay attached to the post and any incumbent who occupies the post can only claim the same. The claim of the respondents on this score, therefore, is not sustainable in law and the Tribunal has rightly rejected the said claim of the respondents.

7. So far as the second question is concerned it depends upon the applicability of the principle of stepping up. Admittedly, the respondents had been promoted earlier to the category of Head Clerks and some of their juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs. 35/- per month on being promoted to the post of Head Clerks later than

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the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier 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 the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On re-fixation of the pay of the senior officer by applying the principle of stepping up, the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of the re-fixation of pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being seniors to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondent. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be steeped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. In fact the Tribunal by the impugned order has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications. This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reason that the respondents had not attached in the lower cadre. But by reason of promotion the promotee-juniors who worked on the said posts, in fact, performed the hard duties and earned special pay. Directions, to pay arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though direction to step up the pay on notional basis is consistent with Article 39 (d) of the

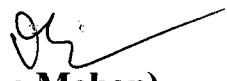
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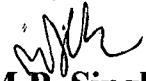
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Constitution, it would be applicable only prospectively from the date of the promotion and the fixation of the scale stepping up of the scale of pay would be prospective to calculate future increments on the scale of pay in promotional post only prospectively. The appeal is dismissed but in the circumstances there would be no order as to costs."

10. According to the principles laid down by the Hon'ble Supreme Court in the aforesaid case, we are of the considered opinion that the present case is squarely covered with the aforesaid judgment of the Hon'ble Supreme Court. The decision so laid down by the Hon'ble Supreme Court in the aforesaid case shall mutates-mutandis applicable to the present case.

11. Accordingly, the Original Application stands disposed of in the aforesaid terms. No costs.

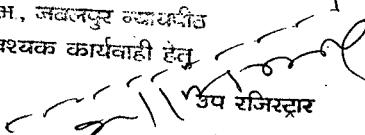

(Madan Mohan)
Judicial Member

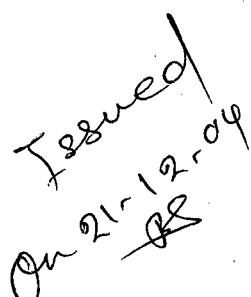

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकन सं. ओ/व्या.....जबलपुर, दि.....
प्रतिलिपि आठवें दिन:-
(1) सचिव, उच्च न्यायालय लार एवं न्यायालय, जबलपुर
(2) आवेदक श्री/श्रीमती/कु.....के लाइसेन्स
(3) पत्न्यर्थी श्री/श्रीमती/कु.....के कार्यालय
(4) बैंगलोल, कोपराज, जबलपुर न्यायालय
सूचना एवं आवश्यक कार्यकारी हैं।

2005/84/Decis, 03/03/2005
K.N. Pathak, 03/03/2005


उप संचालक


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