

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

CIRCUIT COURT AT GWALIOR

Original Application No. 6 of 1999
Original Application No. 7 of 1999

Gwalior, this the 25th day of April 2003

Hon'ble Shri R.K. Upadhyaya -- Member (Admnv.).
Hon'ble Shri J.K. Kaushik -- Member (Judicial).

1. Original Application No. 6 of 1999

O.P. Rathore, S/o. Shri Govind Das
Rathore, Aged 38 years, Occupation
Service, Presently posted as the Clerk
Grade I, All India Radio, Gwalior,
Resident of Tapu Mohalla Naya Bazar,
Gwalior. ... Applicant

2. Original Application No. 7 of 1999

S. Kannan, S/o. Shri P. Shivraman,
Aged 42 years, Occupation Service
Presently posted as Clerk Grade I,
Akashwani, Gwalior, Resident of B-1,
Radio Colony, Gandhi Road, Gwalior. ... Applicant

(By Advocate - Shri J. Sharma for both the applicants)

V e r s u s

1. Union of India,
through the Secretary, Ministry
of Information and Broadcasting,
Government of India, New Delhi.
2. The Director General, All India
Radio, New Parliament Street,
New Delhi.
3. The station Director, All India
Radio, Bhopal.
4. Shri R.L. Odia, Clerk Grade I, Post
at All India Radio, Gwalior. ... Respondents
in both the
cases

(By Advocate - Shri P.N. Kelkar for official respondents in
both the cases)

O R D E R

By J.K. Kaushik, Member (Judicial) :-

Shri O.P. Rathore and Shri S. Kannan have filed
original applications No. 6/1999 and 7/1999 respectively

praying therein almost identical relief for seeking a direction to the respondents to refix the salary of the applicants after removing the anomaly in the same and fix the same at par with the private respondent with payment of arrears thereof alongwith interest of 18%. The question of law involved in these applications is the same and it is considered expedient to decide the same with a common order.

2. Both the applicants were initially appointed to the post of Clerk Grade-II and they were confirmed on the same. Both of them got their further promotion to the post of Clerk Grade-I with effect from 27/10/1989 and 03/07/1989 respectively.

2.1. The further relevant facts of the case are that respondent No. 4 Shri R.L. Odia in both the original applications is junior to the applicants on the post of Clerk Grade-II as well as on the post of Clerk Grade-I. The respondent No. 4 was allowed adhoc promotion to the post of Clerk Grade-I prior to the regular promotion allowed to the applicants, despite the fact that both the applicants were senior to respondent No. 4. The applicants case for promotion on adhoc basis to the post of Clerk Grade-I was completely ignored. A gradation list came to be issued and as on 1st October 1997 the applicants were getting salary of Rs. 4,500/- whereas the private respondent was given the basic salary of Rs. 4,700/-. The applicants were ignorant of the gross discrimination and they came to know only regarding the position when the revised fixation was done.

2.2. Detailed representations were made in the matter but the same came to be rejected. The applicant's/ ^{have} raised his claim on multiple grounds and/ ^{have} submitted that the relevant rules for making adhoc promotions were totally ignored and an injustice has been caused to the applicants. Their representations ^{have} been rejected by passing a non-speaking order

and without assigning any reason. They have also referred to a judgment of Jodhpur Bench of the this Tribunal in OA No. 280/1992 annexing a copy thereof as Annexure A/8. to the original application.

3. A detailed counter reply has been filed on behalf of the respondents. The respondents have taken a preliminary objection regarding maintainability of the original application and have submitted that the original application is hopelessly time barred in as much as the same has been filed after about a period of 11 years since the respondent No. 4 was given adhoc promotion locally with effect from 29/09/86 without offering promotion to them which resulted in the higher pay to the private respondent. Number of cases have been cited in support of this preliminary objection. The main defence of the respondents as set out in the reply is that at a particular station there was heavy load of work which had become un-manageable due to shortage of staff. The third respondent decided to promote the senior most Clerk Grade-II purely on adhoc basis in office itself in the existing vacancy till such time regular incumbent was posted after DPC and due to administrative reasons he was continuing on adhoc basis till 24/11/1989 as Clerk Grade-I, whereafter he was promoted on regular basis and this resulted higher pay fixation to the private respondent. It has also been submitted that the applicants did not make any grievance against the continued adhoc promotion of the private respondent at relevant time and only explanation forth coming ^{is} that they were ignorant of the facts. The applicants as well as the private respondents have been working at All India Radio, Gwalior atleast from 1989. Further the seniority list also was circulated vide letter dated 15/02/1989 wherein it was clearly mentioned against the name of the private respondent that he was officiating as Clerk Grade-I on adhoc basis.

Thus it is difficult to believe the version of the applicants.

It has also been averred that the requisite three conditions of the provisions of the stepping up of the pay have not been fulfilled by the applicant. A reference has also been made to the OM dated 04/11/1993 which provides the detailed instruction on the subject and a copy of which is filed at Annexure R/2.

4. A short rejoinder has been filed on behalf of the applicants almost reiterating the facts mentioned in the original application.

5. We have heard the learned counsel for the parties and have carefully gone through the pleadings as well as the records of this case.

5.1. As would be evident from the pleadings of the parties that the facts of this case are not at dispute. Before adverting to the factual aspect of this case it would be peripheral expedient to dispose of the ~~XXXXXXX~~ issue i.e. the objection relating to the limitation. The subject matter of the original application relates to fixation of the pay and which gives a recurring cause of action. It comes to our mind that this issue has already been settled by the Hon'ble Supreme Court in the case of M.R. Gupta Versus Union of India reported at AIR 1996 SC 669, wherein their lordships have categorically held that the matter of pay fixation gives rise to recurring cause of action. However the relief may be restricted. Thus this issue does not remain res-integra and therefore the preliminary objection stands repelled and is not sustainable.

5.2. Now adverting to the merit of the case the learned counsel of the applicants has strenuously argued that while granting the promotion on adhoc basis to the junior to the

applicants the case of the applicants were totally ignored and due to extending a special favour and continuing the private respondent on adhoc basis the pay anomaly has arisen. This is not the case of the respondents that the applicants have refused the promotion or there was any fault on the part of the applicant. They were rather fully eligible for grant of the said promotion.

5.3. On the contrary the learned counsel for the respondents has invited our attention to Annexure R/2 wherein the existing instruction had been issued for stepping up of the pay in case of anomaly. Basically there are three conditions. The applicants have fulfilled the condition No. A & B but they have not fulfilled the condition No. C in as much as the pay anomaly has not arisen as a result of which application of F.R. 22-C and the case of higher fixation due to adhoc promotion/ does not constitute in anomaly for stepping of the pay. The instruction further indicate that if a senior joins the higher post later than junior for whatever reasons and whereby he draws less pay than junior in such cases senior cannot claim stepping up of pay at par to the junior. Thus this is not a case of pay anomaly at all besides the fact that the claim of the applicants in the present Original Applications are not regarding grant of adhoc promotion to them from the retrospective date.

5.4. We have considered the rival contentions raised on behalf of the parties. The admitted position of the case is that the so called difference in the pay fixation/ has arisen due to the adhoc officiation of the private respondent and the applicants/ have never claimed grant of promotion on adhoc basis at par with their junior. Even in the present applications there is no such prayer. So the question of legality or otherwise grant of adhoc promotion to the private

18
respondent

and denial of same to the applicants cannot be examined in this original application. Now on the preliminary argument of the parties relating to the position of law that whether junior person who is put to officiate on adhoc basis against a short term vacancy would constitute a pay anomaly for stepping up of the pay or not. At the very outset the learned counsel for the applicant was at difficulty to countenance his argument and could not satisfy us^{as} to how it was a case of pay anomaly. It was pointed out by this Bench of this Tribunal that the issue relating to the stepping up of the pay on the pretext of adhoc officiation of the junior came up for adjudication before the Hon'ble Supreme Court in the case of Union of India Versus R. Swaminathan reported in AIR 1997 SC 3554 where their lordships has categorically held that grant of higher pay fixation to the junior on account of adhoc officiation would not constitute a pay anomaly.

The relevant portion of the judgment is extracted as under (last about 15 lines of para 10) :

"The difference in the pay of a junior and a senior in the cases before us is not a result of the application of Fundamental Rule 22(1)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past. Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is those two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping up of the pay of the seniors".

The learned counsel for the applicants has un-successfully tried to persuade that the aforesaid judgment is distinguishable on facts in as much as in that case the seniors refused adhoc promotion and his case is in fact squarely covered by judgment of the Jodhpur Bench in Narendra Singh's case supra. We are not impressed and find ourself unable to subscribe ^{laid} n with his submissions. The statement of law^{down} by the Hon'ble Supreme Court in the aforesaid case clearly shows

* 7 *

that no anomaly can be said to have risen as a result of grant of adhoc promotion. As regards the refusal or otherwise it does not make any difference. As regards the case of Narendra Singh's supra on which heavy reliance have been placed by the learned counsel of the applicant, the applicant cannot improve his case or get any support from the same since the Hon'ble Supreme Court has settled the complete controversy. Thus we are of the firm view that there has been absolutely no illegality or arbitrariness in turning down the case of the applicants for stepping up of pay and there is no necessity to thinker with the order of rejection passed by the respondents regarding the claim of the applicants.

6. In the conspectus of the aforesaid discussion, the law laid down by the Hon'ble Supreme Court and the instructions on the subject, the original applications are devoid of merit and have no force. The same are hereby dismissed with no order as to costs.

Sd/—
(J.K. KAUSHIK)
MEMBER (J)

Sd/—
(R.K. UPADHYAYA)
MEMBER (A)