

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 740 of 2000

Jabalpur, this the 20th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Govind Prasad Khare, Son of Late
A.P. Khare, Aged 48 years, Personnel
No. 701120/NIE, Upper Division Clerk,
Gun Carriage Factory, Jabalpur (MP). ... **Applicant**

(By Advocate - Shri A.K. Tiwari on behalf of Shri S. Yadav)

V e r s u s

1. Union of India, through its
Secretary, Ministry of Defence,
New Delhi.
2. Ordnance Factory Board, through
its Chairman, 10-A, Auckland
Road, Calcutta.
3. General Manager, Gun Carriage
Factory, Jabalpur (MP).
4. Shri H.L. Yadav, 701252/2438,
Gun Carriage Factory, Jabalpur.
5. Shri S.K. Banerji, 701885/183,
Gun Carriage Factory, Jabalpur. ... **Respondents**

(By Advocate - Shri Harshit Patel on behalf of Shri
S.C. Sharma for official respondents)

O R D E R (Oral)

By M.P. Singh, Vice Chairman -

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

"(i) to step up the pay of the applicant vis a vis
respondents No. 4 and 5 in the grade of UDC from
the date when respondent No. 4 and 5 are promoted
to grant the arrears.

(ii) to fix the seniority of respondent No. 5
below the applicant as per mandate of this Hon'ble
Court."

2. The brief facts of the case as stated by the
applicant are that the applicant is working as Upper

Division Clerk since 1.8.1987 and his grievance is that

his juniors respondents Nos. 4 and 5 are ^{being} given higher pay than him. According to him, the respondents No. 4 and 5 were junior to the applicant and were assigned the work of Assistant Cashier on the basis of their experience with effect from 1.8.1984. However on the conversion of the post of Assistant Cashier to that of Upper Division Clerk the respondents erroneously assigned the seniority over the applicant to the respondents Nos. 4 and 5 who were juniors. The aforesaid action of the respondents placing junior over and above the seniors was challenged in OA No. 605/1992, wherein the Tribunal vide its order dated 30th July, 1996 has held that the respondent No. 4 since has gained fortuitous advantage of seniority over the applicant, the anomaly was resolved by granting respondent No. 4 seniority in the UDC cadre from a date he would have got promotion to the cadre in the normal channel as LDC. The applicant and his immediate junior were promoted as UDC on 1.8.87, ^{he is} since ~~they are~~ senior to respondents No. 4 and 5 ^{he &} ~~the applicant~~ has claimed stepping up of his pay with reference to the pay of respondents No. 4 and 5 in the grade of UDC. Since the respondents have not stepped ^{up} the pay of the applicant, he has filed this Original Application claiming the aforesaid reliefs.

3. The respondents in their reply have stated that the applicant was promoted only on 1.8.87 in the normal line of promotion from LDC to UDC. While respondent No. 4 has been holding the post of UDC with effect from 1.8.84. Thus the applicant cannot claim stepping up of pay.

FR 22(I)(a)(1) under Government of India, DOP&T instructions provides as such :

"(i) If a senior forgoes/refuses promotion leading to his junior being promoted/appointed in the higher post earlier, junior draws higher pay than the senior. The increased pay drawn by the

earlier than the senior cannot be therefore an anomaly in strict sense.

(ii) If a senior joins the higher post later than the junior for what so ever reasons whereby he draws less pay than his junior in such cases senior cannot claim stepping up of pay at par with junior.

(iii) Where a person is promoted from lower to higher post and his pay is fixed with reference to the pay drawn by him in the lower post under FR 22-C and he is likely to get more pay than a direct appointee, in such cases the direct recruit senior cannot claim pay parity with the junior promoted from a lower post to a higher post as seniority alone is not a criteria for allowing stepping up."

The respondents have further stated that the applicant joined the cadre of UDC on 1.8.87, whereas the respondent No. 4 had already served in the higher pay for three years. They have also submitted that the pay of the respondent No. 4 has been brought down at par with the applicant's pay which matter is subjudice in OA No. 491/2000. For the reasons stated above the applicant is not entitled for higher scale of pay, and the OA is liable to be dismissed.

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

5. The learned counsel for the applicant states that OA No. 491/2000 has been decided in which the respondents have categorically made a statement that the pay of the applicant in that OA which was earlier reduced, has been restored by passing fresh orders. Therefore the private respondent No. 4 who is junior to the applicant has started drawing higher pay and since the applicant is senior to the private respondent No. 4, he should also be allowed to draw higher pay, with reference to the pay of the private respondent No. 4. The learned counsel for the applicant further submitted that the private respondent No. 4 was not drawing more pay than the pay of the

Rajmunda
उप निरीक्षक 3/04