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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A. NO. 228 of 1994
T.A. NO.

DATE OF DECISION 9.4.1996

Shri J.N. Bhattacharjee

(PETITIONER(S))

Shri J.L. Sarkar

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Shri G. Sarma, Addl. C.G.S.C.

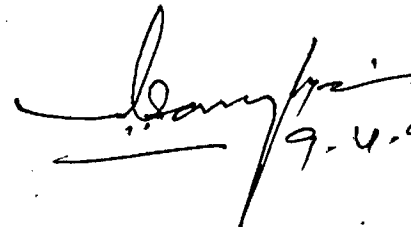
ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A)

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ? Yes.
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ? NO.
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Member (A)


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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.228 of 1994

Date of decision: This the 9th day of April 1996

The Hon'ble Shri G.L. Sanglyine, Member (Administrative)

Shri J.N. Bhattacharjee,
C/o M/s Devi Arts,
A.K. Azad Road,
Rehabari, Guwahati.

.....Applicant

By Advocate Shri J.L. Sarkar.

- versus -

1. Union of India,
Through the Development Commissioner,
Small Scale Industries,
New Delhi.
2. The Director,
Small Industries Service Institute,
Calcutta.
3. The Director,
Small Industries Service Institute,
Guwahati.
4. Accounts Officer,
Small Industries Service Institute,
Calcutta.

.....Respondents

By Advocate Shri G. Sarma, Addl. C.G.S.C.

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O R D E R

SANGLYINE. J. MEMBER(A)

Learned counsel Mr J.L. Sarkar appearing for the applicant had submitted rejoinder to the written statement with copy to the learned Addl. C.G.S.C., Mr G. Sarma, during the course of hearing. In his submission he has referred and relied on the decisions mentioned herein below in support of the case of the applicant in this application:

- i) SLJ 1992(1)(CAT) 190, Narayan Shankar Patel -vs- Union of India and others.
- ii) (1988)8 ATC 220, Raghunath Prasad Singh -vs- Secretary, Home (Police) Department, Government of Bihar and others.
- iii) SLJ 1994(3)(CAT) 378, Baidyanath Bandopadhyay -vs- Union of India and others.
- iv) SLJ 1995(2)(CAT) 229, Dilip Kr Mukherjee and others -vs- Union of India and others.

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- v) SLJ 1994(2) (CAT) 249, Shri S. Santhanam -vs- Union of India and others.
- vi) SLJ 1991(3) (CAT) 94, Bimal Kumar Chatterjee -vs- Union of India and others.
- vii) SLJ 1981(1) 104, Narayan Ramchandra Dhaulikar -vs- Union of India and others.
- viii) SLJ 1987(3) (CAT) 306, Nilkanth Shah -vs- Union of India and others.

He has also sought to rely on the order dated 5.9.1994 in O.A.No.214/90 of the Guwahati Bench.

^ and order dated 29.9.1995 in O.A.No.29/92. All these judgments and decisions will be referred to in the course of judgment in this O.A. if they are considered necessary for the disposal of this application.

2. The applicant was an Upper Division Clerk (UDC) with effect from 14.9.1959 in the Small Industries Service Institute (SISI), Guwahati, and he was promoted to Superintendent on adhoc basis on 11.4.1979 which was regularised with effect from July 1993. He was promoted as Assistant Director (Admn), a Group 'B' post with effect from 25.7.1991 and was posted to SISI, Calcutta, from which post he retired on 29.2.1992. One Shri S.N. Dey was a UDC in the SISI, Imphal and in the year 1972 he was given adhoc promotion as Superintendent in the Imphal office though he was junior to the applicant. On regular promotion to the post of Superintendent of both the applicant and Shri S.N. Dey, fixation of pay had been made and as a result of his earlier adhoc promotion the pay of Shri S.N. Dey was fixed at higher stage in the scale of pay of the post than that of the applicant. This anomaly in the fixation of pay was removed by stepping up the pay of the applicant in relation to the pay of his junior, Shri S.N. Dey, by order dated 7.2.1991 (Annexure-C) issued by the Director, SISI, Imphal, and by order dated 6/9-9-1991 (Annexure-D) issued by the Director, SISI, Calcutta. Consequently, the last basic pay of the applicant at the time of his retirement was Rs.2750. Two and half years after his retirement his pay was refixed resulting to reduction of pay from Rs.2750 to Rs.2375 vide order dated 6/9-9-1994 (Annexure-G). The applicant in this application is aggrieved with this order No.10261(12)/A-19011/118/91-Admn. dated 6/9-9-1994.

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3. The pay of the applicant was fixed at Rs.2600 as on 1.1.1991 as a Superintendent vide order dated 7.2.1991 and on promotion to Assistant Director his pay was fixed at Rs.2675 p.m. by order dated 6/9-9-1991 mentioned above. The applicant in this application contends that the fixation of pay according to these two orders are correct, while the fixation of pay by the impugned order dated 6/9-9-1994 is not correct. According to him Shri S.N. Dey was promoted to the post of Superintendent in the SISI, Imphal in the year 1972 by depriving the applicant as the applicant was not informed by the respondents as no option was taken from him for expressing his willingness or otherwise for accepting adhoc promotion as Superintendent in Imphal. It is the established practice of the department to circulate among candidates inviting option from them as had been done in 1978 during which year the applicant also made his option. But in 1972 they had appointed Shri S.N. Dey on promotion on adhoc basis to the post of Superintendent keeping the applicant in the dark. The applicant was also aggrieved because the refixation of pay made in 1994 was done without allowing him opportunity to explain in the matter of fixation of his pay. The earlier orders of fixation of his pay had been done by the competent authorities of the department according to rules and the facts of his case, but by the order of 1994 his pay and pensionary benefits had been reduced arbitrarily and whimsically behind his back. Mr J.L. Sarkar pointed to the contents of the order dated 6/9-9-1994 itself to show that this order was whimsical and arbitrary because it contains no reason why the previous orders of fixation of pay of the applicant was cancelled or superseded. that

Mr J.L. Sarkar further submitted the view emerging from the various decisions of the Benches as cited by him is that when the junior draws more pay than the senior because of adhoc officiation of the junior in higher post the senior is entitled as per rules and law to have the benefit of stepping up of his pay at par with the pay of his compared junior. This was exactly the reason why the fixation of pay was made by the order dated 7.2.1991. Mr J.L. Sarkar has further pointed out that the respondents have sought to rely on the O.M. No.4/7/92-Estt.(Pay-1) dated 4.11.1993 issued by the Department of Personnel and Training and he submitted that this O.M. cannot have any relevance in the case of the applicant as it cannot have retrospective effect.

4. Mr G. Sarma, the learned Addl. C.G.S.C., supported the written statement and resisted the contentions of Mr J.L. Sarkar. He submitted that the applicant is not entitled to the benefit of stepping up of pay at par with Shri S.N. Dey because the applicant all along knew that Shri S.N. Dey was officiating in a higher post but he did not raise objection to the adhoc promotion or offered himself for appointment. Further, he submitted that the respondents had superseded the previous fixation of pay of the applicant by the impugned order dated 6/9-9-1994 as they have detected the mistake in the fixation of his pay. The respondents are within their rights to correct their own mistake.

5. Shri S.N. Dey was allowed adhoc promotion to the post of Superintendent in the SISI, Imphal continuously from 12.12.1972 to 31.3.1975 and again from 11.5.1978 to 28.2.1984. The first period consisted of four but continuous spells. For the period from 12.12.1972 to 11.12.1973 he was allowed officiation by letter No.A-32016/12/73-Admn(NG) dated 29.10.1973, the period from 12.12.1973 to 31.3.1974 by order dated 4.3.1974 of even number, the period from 1.4.1974 to 30.9.1974 by order dated 19.6.1974 of even number and the period from 1.10.1974 to 31.3.1975 by order dated 17.1.1975 of even number. For the second period from 11.5.1978 to 28.2.1984 he was allowed adhoc promotion vide order dated 15.4.1978 and 29.9.1978 of even number. It is, therefore, apparent that in each occasion the orders of adhoc promotion were issued only after Shri S.N. Dey had functioned in the post of Superintendent. There is no record or evidence to show that the applicant was offered adhoc promotion to the post of Superintendent in SISI, Imphal, or that he had forgone or refused such offer in any of the occasions. Therefore, there is force in the contention of the applicant that he was kept in the dark about the adhoc promotion of Shri S.N. Dey to the post of Superintendent in the office of SISI, Imphal. Thus the applicant was deprived of his opportunity to have his adhoc promotion. This action of the respondents cannot be justified and the applicant deserves the benefit of stepping up of pay. It was only on 18.9.1978 that the applicant was informed and given an opportunity to make option for adhoc promotion to the post of Superintendent. He had made his option for posting at Calcutta, Indore and Ranchi. The applicant cannot be blamed for not opting for Imphal because the letter dated 18.9.1978 does not restrict that the option should be for Imphal only, but it provides that

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an employee can make a choice of any of the places mentioned in the letter. However, it is seen that the applicant was given adhoc promotion in the post of Superintendent with effect from 11.4.1979. It is not, however, indicated either in the application or in the written statement about the place where the applicant was given this adhoc promotion. The fact remains that Shri S.N. Dey, a junior of the applicant, got earlier adhoc promotion to the post of Superintendent than the applicant and after both got regular promotion to the post of Superintendent Shri S.N. Dey by virtue of his long officiation in the post of Superintendent on local adhoc arrangement had earned higher fixation of pay than the applicant. The question, therefore, is whether in such circumstances a senior is entitled to have the benefit of fixation of pay at par with his compared junior in the higher post where both have earned regular promotion. I agree with the submission of the learned counsel Mr J.L. Sarkar that in the various judgments of different Benches of the Central Administrative Tribunal on this issue, cited by him, the answer has been given in the affirmative. It is noted in the case of Baidyanath Bandopadhyay -vs- Union of India, 1994(3) SLJ (CAT) 378, it has been mentioned that the SLP filed before the Hon'ble Supreme Court in the case of V. Vivekananda -vs- Union of India was dismissed. In that case the benefit of stepping up of pay of the senior at par with the pay of the junior due to adhoc promotion of a junior was allowed to the senior. Therefore, it is not open to the respondents to contend that the benefit of stepping up of pay is not admissible in the case of the applicant. In the case reported in 1994(3) SLJ (CAT) 378 itself, the benefit of stepping up of pay was allowed under similar circumstances. As already mentioned the principle laid down in various decisions of the Benches of the Central Administrative Tribunal is that a senior is entitled to stepping up of his pay at par with the pay of his junior who receives higher pay due to his adhoc promotion. This principle is, with respect, applicable in the case of the applicant. The contention of the respondents that no anomaly in pay has arisen when a junior draws more pay than his senior because of the former enjoying benefit of adhoc promotion cannot, therefore, be acceptable. The respondents have revised the fixation of

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pay of the applicant vide order dated 9.9.1994 resulting into reduction of the pay of the applicant with effect from 16.8.1985 onwards till the date of his retirement and also consequential reduction in his retiral benefits.

This order does not contain any reason why such revision in the fixation of pay had been undertaken except ^{a reference} to the letter dated 11.7.1994 issued by the Development Commissioner (SSI), New Delhi. Thus the order dated 9.9.1994 is not a speaking order. The respondents did not even enclose a copy of the letter dated 11.7.1994 in support of the written statement or produce the same at the time of hearing. It appears that in the year 1991, the applicant was working under the Director, SISI, Imphal as Superintendent and the Director had stepped up the pay of the applicant with reference to the pay of his junior, Shri S.N. Dey, who was then working in SISI, Silchar, vide his order dated 7.2.1991 for two times. This basis was followed by the Director, SISI, Calcutta, vide his order dated 6/9-9-1991 while making fixation of pay for the applicant on his promotion as Assistant Director (Admn). Thus while the earlier orders of fixation of pay of the applicant have a basis, the fixation of pay vide the impugned order dated 6/9-9-1994 has no basis and does not disclose the reason in support of the revised fixation of pay. This revised fixation of pay of the applicant vide the impugned order mentioned above was done unilaterally by the respondents without allowing the applicant any opportunity to explain his case or even informing him in advance about the action to be taken though such action of the respondents has a very adverse affect on the pay and allowances of the applicant and may even result in recovery of amounts already drawn by him since 16.8.1985. It was also done long after the retirement of the applicant and will have effect on his retiral benefits. This arbitrariness of the respondents in issuing the aforesaid impugned order cannot be allowed to exist. The respondents have stated in the written statement that the revised fixation of pay vide order dated 9.9.1994 was carried out in terms of the clarification in O.M.No.4/7192-Estt(Pay)-1 dated 4.11.1993 issued by the Department of Personnel and Training. Mr J.L. Sarkar had correctly pointed out that this office memorandum was considered by the Calcutta Bench of the Central Administrative Tribunal in Baidyanath Bandopadhyay -vs- Union


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of India reported in 1994(3) SLJ (CAT) 378 and that it was held therein that this O.M. cannot have retrospective effect. On perusal of this O.M. indeed it does not show that it has any retrospective effect. The respondents cannot, therefore, invoke this O.M. for revising the fixation of pay of the applicant who had retired long before this O.M. was issued and when the anomaly itself had occurred much earlier than his retirement.

6. In the light of the views taken in the foregoing paragraph it is held that the order of fixation of pay of the applicant, namely, No.10261(12)/A-19011/118/91-Admn dated 06/9-9-1994 (Annexure-G) is not sustainable and it is hereby set aside and quashed. Further, it is directed that the order of fixation of pay, No.A.20054/84/8817 dated 7.2.1991 (Annexure-C) and order No.6558(7)/A-19011/118/91-Admn dated 6/9-9-1991 (Annexure-D) are restored. The respondents are directed to allow the various retiral benefits to the applicant on the basis of pay fixed vide the aforesaid order dated 7.2.1991 and 6/9-9-1991 within one month from the date of receipt of this order. They shall also pay interest at the rate of 12% per annum, which is considered to be a reasonable rate, on the amount of Death-cum-Retirement Gratuity (DCRG) and Commutation of pension or part thereof, the payment of any had been delayed, with effect from the due dates of payment to the date of submission of this O.A., namely, 7.12.1994.

7. The application is allowed. No order as to costs.


(G. L. SANGLYINE)
MEMBER (A)