

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA-306/2014

Order Reserved on 07.08.2015
Order Pronounced on: 15.10.2015

**Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

K.K. Miglani
S/o Late Shri C.D. Miglani
AC-1/137-A, Shalimar Bagh,
Delhi-110088.

-Applicant

(Applicant present in person)

Versus

1. Union of India through
Secretary of the Govt. of India
Dept. of Telecom Sanchar Bhawan, New Delhi.
2. Union of India through
Secretary to the Govt. of India
Ministry of Personnel & Training
North Block, New Delhi. -Respondents

(By Advocate: Shri Subhash Gosain)

O R D E R

Per Sudhir Kumar, Member (A):

The applicant of this O.A. was a Member of the Central Secretariat Service (CSS, in short) in the Senior Selection Grade (SSG, in short) at the level of Director-Govt. of India, and retired from that designation of Director from the Department of Telecommunications, Govt. of India on 31.07.2012. At the level of Section Officer in CSS, with effect from 20.02.1982, the applicant was placed in the pay scale of Rs.650-1200/-, while one of his junior Shri G.B. Singh, who was so promoted as Section Officer later, w.e.f. 27.02.1982. The said Shri G.B.Singh became eligible

for a higher salary than the applicant w.e.f. 01.08.1983 in the Section Officer's grade, when he was allowed stepping up of his pay with reference to one of his juniors. The pay of the said Shri G.B. Singh, who had superannuated on 30.09.2010, was later on again stepped up, because of which he became entitled to more pay than the applicant before us with retrospective effect from 01.08.1983, and was even granted such arrears of pay for the period from 01.08.1983 to the date of his superannuation on 30.09.2010. The applicant is aggrieved by this, and hence this OA.

2. The applicant has claimed that he came to know about the anomaly of his pay with reference to that of his junior the said Shri G.B. Singh only in the year 2012, approximately two years after the retirement of the said Shri G.B. Singh. Immediately, through his representation dated 20.07.2012 (Annexure A-3), he requested for stepping up of his pay also w.e.f. 01.08.1983 in order to bring it at par with his junior, the said Shri G.B. Singh.

3. The applicant's representation was favourably examined by the Department of Telecommunications, where he was serving, and it was decided to recommend stepping up of his pay with reference to his junior Shri G.B. Singh, as all the conditions regarding stepping up of his pay were found to have been fulfilled. It has been submitted that the Bangalore Bench of this Tribunal had in a similar case in OA No.6/2012 (sic. OA No.01/2008) **V.S. Uma Devi vs. Director, ISRO Satellite Centre, Bangalore and others**, decided on 22.02.2012, allowed stepping up of pay for a second time. However, before issuance of the final order

permitting stepping up of the pay of the applicant, the matter was referred to the Department of Personnel & Training (DoP&T, in short).

4. Through its Note dated 11.07.2013 (Annexure A-5), the DoP&T rejected the recommendation of the Department of Telecom, solely on the ground that it would not be appropriate to construe the decision of the Bangalore Bench of this Tribunal, as a rule/guideline for all cases of stepping up of pay. On receipt of advice from the DoP&T, the Department of Telecom, vide their communication dated 22.07.2013, (Annexure A-6), rejected the request of the applicant for stepping up of his pay a second time.

5. The applicant filed this OA on 21.01.2014, nearly 1½ years after his retirement on 31.07.2012, on attaining the age of his superannuation.

6. The applicant is now before us, aggrieved by the denial of stepping up of his pay with reference to his junior the said Shri G.B. Singh as being totally illegal, arbitrary, discriminatory and bad in law, and violative of Articles of 14 and 16 of the Constitution of India, and liable to be quashed and set aside. He has taken the ground that his case is squarely covered by the judgment and order dated 22.02.2012 passed by the Bangalore Bench of this Tribunal in OA No. 6/2012 (sic. OA No.01/2008) in the case of **V.S. Uma Devi vs. Director, ISRO Satellite Centre, Bangalore and others** (supra), the report regarding the judgment as published in Swamy's News June 2012 was produced as an

Annexure by the applicant. He has claimed that his case is covered by the various other judicial pronouncements also, as follows:-

- “i) **N. Lalitha and others vs. Union of India (1992) 19 ATC 569.**
- ii) Order dated 15.12.1994 of Chandigarh Bench of CAT in OAs No.1121 to 1123 of 1993.
- iii) **P. Gangadhara Kurup vs. Union of India** Ernakulam Bench of CAT- **1993(1) ATJA 165.**
- iv) **Anil Chandra Das vs. Union of India (1998) 7 ATC 224** delivered by Calcutta Bench of CAT affirmed by Hon'ble Supreme Court in SLP No. 13994/1991.
- v) **N.K. Sharma vs. Union of India** in OA No.918/2000 decided on 22.01.2001 by the CAT Principal Bench, New Delhi.
- vi) **Gopal Krishan vs. Secy, DoP&T** decided on 27.04.2007 in OA No.705/2006”.

7. The applicant has taken the ground that it is settled law that a senior cannot be made to suffer losses, or remain in a disadvantageous position as compared to his junior due to any circumstances beyond his control, and that he cannot be denied the increase in pay, as any disadvantageous disparity in the pay of a senior Government servant vis-a-vis his junior is violative of the Right to Equality and hence bad in law.

8. It was submitted that the said junior of the applicant, Shri G.B. Singh, had drawn less pay than the applicant till his own superannuation on 30.09.2010, and then, much after his superannuation, on 08.06.2010 his pay had been stepped up with retrospective effect from 01.08.1983, and the discrepancy thus introduced between his pay, and that of the said Shri G.B. Singh, was violative of Fundamental Rights of the applicant, due to the differential

and discriminatory treatment. In the result, the applicant had prayed for the following reliefs:-

- “a) To hold the inaction of the respondents to revise/re-fix the pay of the applicant with reference to his junior illegal, arbitrary and discriminatory and direct the respondent to revise/re-fix his pay with reference to his junior Shri G.B. Singh w.e.f. 01.08.1983 and allow him all the consequential benefits of the arrears of pay and allowances with interest.
- b) To quash the Order No. 30-38/2010-Admn 1 dated 22.7.2013 Annexure A-6 passed by Respondent No.1
- c) To award costs.
- d) Pass any such other or further order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case”.

9. The respondents filed their counter reply on 10.10.2014. They pointed out that the applicant (CSL No.3475) had first represented vide his letter dated 09.07.2010 (Annexure R-1) for stepping up of his pay with respect to his junior Shri Harvinder Singh (CSL No. 3506) to Rs.3500/-, in the pre-revised pay scale of Under Secretary, w.e.f. 01.08.1994. When the matter was examined, it was found from the applicant's Service Book that he had already availed ante-dating of his date of increment from 01.09.1996 to 01.06.1996 at par with another one of his juniors Shri J.L. Sharma (CSL No. 3486), as per order dated 03.02.1999 (Annexure R-2), when the applicant was posted in MHA.

10. It was further submitted by the respondents that his representation, flowing from which the present case has been filed, had been considered under Rule FR 22-C, now FR-22 (1)(a), which deals with the subject of removing the anomaly of pay and stepping up of pay of the

senior officer with effect from the date of promotion or appointment of the junior Officer to a higher pay. It was submitted that because of the applicant's earlier representation dated 09.07.2010 (Annexure R-1), requesting for stepping up of his pay at par with Shri Harvinder Singh (CSL No.3506), the DoP&T had opined through endorsement dated 17.03.2011 (Annexure R-3) as follows:-

“For stepping up of pay of senior Government employee at par with his junior employee, the pay in the lower post of senior should be more or equal to junior. This condition does not appear to be fulfilled in the instant case as the junior Harvinder Singh had all along been drawing more pay than Shri Miglani even in the lower grade i.e. SO which was decentralized then. There is no rule for 2nd time stepping up of pay or antitation of DNI of senior with reference to another junior. **Stepping up of pay on 2nd time is allowed with reference to his first junior subject to fulfilment of all other conditions”.**

(Emphasis supplied)

11. The aforesaid decision has been conveyed to the applicant through Annexure R-4 dated 29.03.2011, which stated as follows:-

“.....

1. That for stepping up of pay of senior Government employee at par with his junior employee, the pay in the lower post of senior should be more or equal to junior, and that this condition does not appear to be fulfilled in the instant case as the junior Harvinder Singh had all along been drawing more pay than Shri Miglani even in the lower grade i.e. SO which was decentralized then;
2. That **there is no rule for 2nd time stepping up of pay or antitation of DNI of senior with reference to another junior;**
3. That **Stepping up of pay at second time is allowed with reference to his first junior subject to fulfilment of all other conditions”.**

(Emphasis supplied)

12. Thereafter, the applicant had represented once again on 28.04.2010, through Annexure R-5, requesting for stepping up of his pay w.e.f. 28.09.1998 in the Under Secretary Grade, to bring it at par with another one of his juniors, Shri J.L. Sharma (CSL No.3486), on the ground that the pay of the said Shri Sharma had been stepped up with respect to another junior Shri G.P. Pillai (CSL No.3686) w.e.f. 28.09.1998. The respondents explained that the applicant's case had been then once again considered in the context that stepping up of pay can be allowed to a senior official even a second time, provided the anomaly has arisen with reference to the pay of the same junior, with reference to whom the pay of the senior had been stepped up for the first time. The applicant's claim was found to be justified, and, since no stepping up of his pay had been allowed at par with Shri Harvinder Singh (CSL No.3506) earlier, therefore, his pay had been stepped up at par with the pay of his chosen junior Shri J.L. Sharma (CSL No.3486) w.e.f. 28.09.1998 through orders dated 11.10.2011 (Annexure R-6).

13. The respondents further explained that the present third representation of the applicant dated 20.07.2012 (Annexure R-7), much after his retirement on superannuation, for stepping up of his pay with his another junior Shri G.B. Singh (CSL No.3485) was just because the pay of the said Shri G.B. Singh had been stepped up with respect to one of his juniors, Shri Harvinder Singh, w.e.f. 01.08.1983, because of which the said Shri G.B. Singh had started drawing more pay than the applicant before us. His request for stepping up of pay with respect to the said Shri G.B. Singh was examined by the Finance Branch of

Department of Telecommunication in accordance with FR 22, when, not being aware of the previous circumstances when the applicant was in a different Ministry, it was tentatively opined that the benefit of stepping up of pay can be allowed to him second time also, provided the anomaly had arisen with reference to the pay of the same junior, with reference to whom his pay was stepped up first time. However, it was found on a detailed examination that the second stepping up of the pay of the applicant for any anomaly could have been considered only when his chosen junior, Shri J.L. Sharma, could get a stepping up of his own pay, against whose stepping up of pay the first such stepping up had been allowed to the applicant through the order dated 11.10.2011 (Annexure R-6).

14. It was submitted that the Bangalore Bench of this Tribunal had in the case of **V.S. Uma Devi vs. Director, ISRO Satellite Centre, Bangalore and others** (supra), allowed the pay of the applicant before it to be stepped up with reference to the pay of another one of her juniors from the date such junior was drawing more pay than that applicant, with consequential benefits. In view of this judgment when an undertaking was given by the present applicant that he was willing to forego the arrears of pay already drawn by him earlier (for stepping up done twice with his junior Shri J.L. Sharma), the matter regarding stepping up of the pay of the applicant for a second time with reference to another different junior, Shri G.B. Singh, was referred to DoP&T for advice.

15. It was submitted that DoP&T had since advised that it would not be appropriate to construe the decision of the Bangalore Bench of the Tribunal as a rule or guidance for all cases of stepping up of pay, and hence stepping up of pay of the present applicant for the second time with respect to the pay of another junior other than the junior chosen earlier cannot be agreed to, and the applicant had been informed accordingly, assailing which reply the present OA has been filed.

16. The respondents further submitted that as per the available records the applicant and the said Shri G.B. Singh were drawing equal pay till the date of retirement of Shri G.B. Singh. It was explained that the difference in their pay had occurred after the superannuation of both of them, due to their respective stepping up of pay having been allowed with respect to different juniors, from different dates. The stepping up of the pay of the applicant had been allowed at par with that of his chosen junior Shri J.L. Sharma, w.e.f. 28.09.1998, vide order dated 11.10.2011, while on the other hand, the stepping up of pay of the said Shri G.B. Singh had been allowed to bring his salary at par with his chosen junior Shri Harvinder Singh w.e.f. 01.08.1983, vide order dated 08.06.2012.

17. It was submitted that keeping in view the Rule position on stepping up of pay under FR-22, as the pay of the present applicant had already been stepped up with reference to his chosen junior Shri J.L. Sharma, now his case for stepping up of pay for a second time with reference to another junior, from another date, was not permissible and

justified. It was submitted that the decision of the Bangalore Bench cannot be taken as a rule/guidelines for all cases of stepping up of pay, since each case has its own facts, and has its own merits/demerits. It was further submitted that an officer does not become entitled for stepping up of pay merely on the ground that he is senior to another officer also, as all the conditions are required to be fulfilled for stepping up of pay, while the applicant does not fulfil all the conditions to be able to claim for stepping up of his pay at par with another Junior Shri G.B. Singh, after his having obtained stepping up of pay with reference to his chosen junior Shri J.L. Sharma. It was, therefore, submitted that there has been no differential or discriminatory treatment applied to the applicant, and his claim cannot be acceded to, and he is not entitled to any reliefs as prayed for, and that the OA may be dismissed.

18. The applicant chose to file a rejoinder on 13.11.2014, more or less reiterating his contentions as already made out in the OA. Not discussing the facts of stepping up of his pay earlier obtained by him with reference to his chosen junior Shri J.L. Sharma, in the rejoinder he had discussed his case as compared to only the said Shri G.B. Singh. It was further submitted that though the said Shri G.B. Singh had throughout drawn less salary than the applicant, but the anomaly arose only on 08.06.2012 when the pay of the said Shri G.B. Singh was stepped up with reference to one of his juniors. It was submitted that non-stepping up of the applicant's pay is violative of his Fundamental Rights, and he had then once again explained the cases cited by him in the OA, as already listed above.

19. It was further submitted that the respondents have not denied that the case of the applicant is squarely covered by the judgment and order dated 22.02.2012 passed by the Bangalore Bench of this Tribunal in the case of **V.S. Uma Devi vs. Director, ISRO Satellite Centre, Bangalore and others** (supra), and other judgments as cited by the applicant above. It was submitted that the legal position is that in all the cases of stepping up of pay, except where the reduction is by way of disciplinary proceedings, a senior shall always be entitled to have his pay stepped up to the level of his junior. The applicant had also assailed the view of the DoP&T that the aforesaid decision of the Bangalore Bench of this Tribunal cannot be followed as a rule, or the guideline, in all cases of stepping up of pay.

20. The respondents thereafter chose to file a sur-rejoinder on 26.03.2015, reiterating that stepping up of pay is not a matter of right, and that the eligibility has to be considered as per Govt. of India's instructions under FR 22, and that the second stepping up of pay with reference to another junior other than the junior chosen earlier is not permissible at all. They had pointed out the OMs dated 31.03.1984 and dated 22.07.1985 passed under FR-22. It was further submitted that in the case of **V.S. Uma Devi vs. Director, ISRO Satellite Centre, Bangalore and others** (supra), the Bangalore Bench had allowed the OA granting the relief of second stepping up of pay with respect to another junior, only because the applicant of that OA had continued to draw pay less than her first chosen junior, even after her date of next increment was antedated with respect to him, which was not the case of the

present applicant, and hence the two cases were distinguishable. It was submitted that the Respondent Department had since obtained another opinion of the DoP&T dated 16.03.2015, which had been produced as Annexure R-3. Therefore, the Respondents had again prayed that the OA may be dismissed, in the interest of justice.

21. Heard both the learned counsel who took us through the various pleadings and documents, and the arguments advanced by them were on the same lines.

22. The entire emphasis of the learned counsel for the applicant seeking to be permitted to change the chosen junior concerned in respect of his claiming of stepping up of pay, from Shri J.L. Sharma earlier, to Shri G.B. Singh now, was based upon the order of Bangalore Bench of this Tribunal in the case of **V.S. Uma Devi vs. Director, ISRO Satellite Centre, Bangalore and others** (supra). However, during his arguments, the learned counsel for respondents produced a copy of the order dated 03.04.2014 passed by the Karnataka High Court in W.P. No. 26424 of 2012 (S. CAT)-**The Director ISRO Satellite Centre, Bangalore and others vs. V.S. Uma Devi**, through which that order dated 22.02.2012 passed by Bangalore Bench of this Tribunal (supra) had been set aside by the Karnataka High Court, holding as follows:

“7. The contention of the petitioner was negated by the Tribunal. The Tribunal relied on an Official Memorandum dated 04.09.1987, wherein it was held that the post of Grade-B and above in the different areas of administration form the common cadre for all ISRO / ODS Centres / Units. Therefore, it was held that since both them form common cadre, stepping up of pay is just and proper. However, the Tribunal failed to consider the fact that for the purpose of stepping up of the pay, both of them should be in the same cadre. That the employees are to be

considered within the same cadre and cannot be compared with other cadres, even though their pay-scales are similar. The official memorandum dated 08.07.1987 clearly refers to the restitution in law.

8. Under these circumstances, we are of the considered view that the reasoning assigned by the Tribunal that the respondent as well as Smt.A.N.Parijatham are from the very same cadre is erroneous. It is only when both of them are in the same cadre that stepping up of pay can be ordered. In the instant case, there is a factual error committed by the Tribunal. Since the respondent does not belong to the same cadre as that of Smt.A.N.Parijatham, she is not entitled for stepping up pay to that of Smt.A.N.Parijatham. Both of them cannot be equated. Even otherwise, the material would clearly show that the post of respondent as well as Smt.A.N.Parijatham are not interchangeable since they belong to different cadres. Therefore, they cannot belong to the same cadre.

10. For the aforesaid reasons, the petition is allowed. The order dated 22.02.2012 passed by the Central Administrative Tribunal, in O.A. No.01/2008 is set-aside. The application of the respondent before the Tribunal is dismissed”.

23. Therefore, the applicant cannot be allowed to draw any sustenance from the Bangalore Bench’s order in the case of **V.S. Uma Devi vs. Director, ISRO Satellite Centre, Bangalore and others** (supra). On a perusal of the judgment of the Principal Bench in **N. Lalitha** (supra), and the other judgments and orders passed by various Benches of this Tribunal, which had been cited by the applicant, it appears that the applicant cannot be allowed to derive any benefits from those judgments also, in the face of the ratio of the Karnataka High Court’s judgment reproduced above.

24. The matter relating to stepping up of pay has been decided in a few more cases of the Principal Bench of this Tribunal in OA No.4122/2011 order dated 12.02.2013 **Smt. Sanju Gupta vs. Govt. of NCT of Delhi**, in OA No. 1313/2011 order dated 12.03.2013 **Mrs. Nirmal Kanta vs. NDMC**, and in OA No.2136/2011 order dated

01.11.2012 **Nandan Singh Mahalwal & Ors. vs. MCD.** We may take the liberty of borrowing from the order in OA No.4122/2011 dated 12.02.2013 **Smt. Sanju Gupta** (supra) as follows:-

“5. As has been provided in G.I, M.F. O.M. No.F.F.2 (78)-E.III (A)/66 dated 4.02.1966, as a result of application of FR 22-C [later FR 22 FR 22 (I) (a)(1) and now GID (1) below FR 22 (1)] (G.I. M.F.O.M.No. 1(14)-E-III/89 dated 16.06.1989] in order to remove the anomaly of a Government servant promoted or appointed to higher post on or after 1-4-1961 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 another identical post, the pay of senior officer in higher post was required to be stepped up to a figure equal to the pay as fixed for junior officer in that higher post. The stepping up was to be done with effect from the date of promotion or appointment of the junior officer and was subject to the following conditions:-

- (a) Both the junior and senior belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22-C. 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 the senior officer.”

Said position was reiterated in note 9 below Rule 7 of CCS (RP Rules, 1997, which read as under:-

“Such stepping up is permissible if the anomaly has arisen as a result of the application of provisions of FR 22-C (now 22 (1) (a) (1) or any other rules or order regulating pay fixation on such promotion in the revised scale vis-a-vis the fulfillment of other conditions mentioned therein. The anomaly can be said to exist only if a senior employee, drawing equal or more pay than his junior in the lower post and promoted earlier starts drawing less pay than such junior promoted later on regular basis. Further, two employees are said to be

drawing equal pay if they have been drawing pay at the same stage with same date of increment. In the case the junior has been drawing the same pay with date of increment earlier than senior, then senior cannot be said to have been drawing equal pay and hence no anomaly.

Instances have come to notice where the pay of a senior Government servant has been allowed to be stepped up equal to junior even though there was no anomaly because the senior had no occasion to draw more or equal pay than junior in the lower post. Such stepping up wherever allowed should be rectified.

2. It has also come to notice that in certain cases, where anomaly arose not because of application of Rule 22-C [Now FR 22 (1) (a)(1)] or any other rule/order regulating pay fixation on promotion, pay has been stepped up under Note 7 below Rule 7 of CCS (RP) Rules, 1986. These are the cases where the junior Government servant started drawing enhanced pay in lower post itself because of increments under Provisos 3 and 4 of Rule 8 of CCS (RP) Rules, 1986 and then on promotion his pay fixed under FR 22-C (Now FR 22 (1) (a) (1)] but more pay as a result of increments in lower post under Provisos 3 and 4 of Rule 8 ibid. Note 7 below Rule 7 ibid is not attracted, and stepping up of pay under these provisos is not in order.

3. Nevertheless, the Government is of the view that even if the anomaly is as a result of increments in terms of Provisos 3 and 4 of Rule 8 of CCS ® Rules, 1986, combined with application of FR 22-C (Now FR 22 (1)(1)(1)] anomaly may be rectified by stepping up the pay of senior promoted before 1-1-1986, equal to junior promoted on or after 1-1-1986 subject to fulfillment of following conditions:-

- (a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) The pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical, and
- (c) The senior Government servant promoted before 1-1-1986, has been drawing equal or more pay in the lower post than his junior promoted after 1-1-1986.

4. Further, it has also been decided that where a senior Government servant was promoted after reaching the maximum of the pre-revised scale of the lower post before 1-1-1986, he should be deemed to have been drawing equal pay vis-à-vis his junior, who was also drawing pay at the maximum on that date (viz., date of promotion of senior) and promoted after 1-1-1986.”

From the aforementioned, it is clear that stepping up could be allowed if only on the date of promotion the junior starts drawing higher pay, but if the junior starts getting higher pay from the date of next increment due to him as a consequence of option given by him/her to fix his pay in promotional grade, the pay of the senior may not be stepped up. In G.I.M.F.,O.M.No.1(14)-E.III/89 dated 16.06.1989, it is provided that stepping up is permissible only if a senior employee drawing equal or more pay than his junior in the lower post and promoted earlier and starts getting less pay than his junior later on regular basis. In terms of said OM the **two employees are said to be drawing equal pay if they have been drawing pay at the same stage with same date of increment. In the case junior has been drawing the same pay with date of increment earlier than senior, then senior cannot be said to have been drawing equal pay and hence no anomaly.**

(Emphasis supplied)

25. In the order in OA No.1313/2011 dated 12.03.2013 **Mrs. Nirmal Kanta** (supra) in Paragraphs-22 to 24, the Bench had observed as follows:-

“22.....In the case of **Union of India and Another vs. R. Swaminathan & Ors. 1997 SCC (L&S) 1852**, in the judgment delivered on 12.09.1997, the Hon’ble Apex Court, speaking through Justice Sujata V. Manohar, had laid down the law that **when juniors were officiating on a promotional post on account of their local adhoc promotions, while seniors were not so officiating before their regular promotion, by operation of proviso to FR 22, the juniors already officiating on a promotional post were rightly given higher pay than their seniors, who were not so officiating on a promotional post, and it was not an anomaly.** It was also held that in such cases higher pay of juniors was not amenable to application of FR 22-C/FR 22 (I) (a) (1). It was held by the Hon’ble Apex Court that **pay is not a criterion of seniority, and seniors are not entitled to seek stepping up of their pay with reference to**

the pay of their juniors, without being able to make out a legal claim for their case.

23. Further, in the context of applicability of FR 22 (I) (a) (1) the Hon'ble Apex Court had in the case of **Union of India vs. Ashoke Kumar Banerjee 1998 (2) AJT 661 (SC)**, held that **for determining the applicability of FR 22 (I) (a) (1), it was not merely sufficient that officers get a promotion from one post to another involving higher duties and responsibilities, but the other condition must also be satisfied, that he should move from a lower pay scale attached to a lower post, to a higher scale of pay, attached to the higher post.** When the ratio of this judgment is applied to the case of the applicant herein, she had got her promotional benefit in April 2008 through Annexure A-4, and also an entitlement to apply for an option under FR 22 (I) (a) (1), and, therefore, she cannot now be allowed to assail the fixation of her pay beyond what had been fixed as a result of the fixation of her pay after the exercise of an option by her under Annexure A-4.

24. It is only a fortuitous circumstance that the applicant finds herself in a pay scale for which she was appointed in the year 1988, and which she failed to challenge till the filing of this OA. However, **as held by a Coordinate Bench at Hyderabad Bench of this Tribunal, in the case of A. Venkatmuni vs. Union of India (OA No.1917/2000 decided on 06.09.2001)**, that **there are several fortuitous circumstances which are not-un common in service, and that fortuitous circumstances are a part of one's service career.....”.**

(Emphasis supplied)

26. In the order in OA No.2136/2011 dated 01.11.2012-**Nandan Singh Mahalwal & Ors.** (supra), the Bench had observed in Para-15 as follows:-

“12.....It is significant to observe that the FR 22-C itself does not speak of such stepping up of pay. It was a benefit that was given by the Government in its decisions in the OM. It can also be said that prior to 4.2.1996, such stepping up of pay was not allowed under FR 22-C, in spite of existence of such anomalies of pay. Further, the stepping up of pay is allowed only in cases fulfilling the conditions stipulated in the above O.M. and not in all cases of pay anomaly between a senior and junior, working in the same cadre. Thus, it is not a result of the principle of equality or equity; the fixation of pay being always referable to individual employees.

“13...Stepping up of pay was a benefit allowed by the Government in certain situations as contained in O.M. Dated

4.2.1996. The foundation for the claim of stepping up did not lay on the principle of equality of pay between two employees in a cadre. It was a decision taken by the Government in 1966 only to set-right anomaly that arises directly as a result of pay fixation under FR 22-C. **If a junior gets higher pay, that does not mean that invariably a senior to him should also get it without foundation for such claim in law. The difference in pay may arise due to several fortuitous circumstances which are not un-common in service.** High pay due to adhoc promotion {**Swamination's case 1997 SCC [L&S] 1852**}, drawing running allowance while performing duty of Drivers [**O.P. Saxena's case** 1997 [6] SCC 360] in the lower cadre by junior and not drawing by a senior or wrong fixation of pay in the lower cadre to a junior, can be such instances claimed by stepping up in all these cases, were disallowed by Courts. **Equal protection means the right to equal treatment in similar circumstances.** Different treatment does not per se one of discrimination of violative of Article 14. It denies equal protection only when there is no basis for differentiation. The stepping up of pay however, would be a valid claim under law only if it equality falls within OM dated 4.2.1966 and that too such a stepping up was allowed only once.”

“14. xxx xxx xxx xxx

“15. The arguments based upon Article 14 of the Constitution also fell for consideration by the Hyderabad Full Bench of the Tribunal, in **B.K. Somayajulu's case** [supra] and it was disposed of as under:-

“7. **If a junior gets a higher pay, that does not mean that the senior also should necessarily get it without a foundation for such a claim in law. Fortuitous events are part of life. Fixation of pay is generally with reference to an individual. Various reasons may account for the grant of a higher pay to a junior.** For example undergoing a vasectomy operation or achieving excellence in sports or belonging to a certain community or even a wrong fixation of pay may bring about a situation where a junior gets a higher pay. If a junior is granted a higher pay for any of these reasons, that will not confer a corresponding right if a senior to get the same. **If, for example, wrong fixation of pay in the case of a junior is to bring about a corresponding fixation in the case of a senior by applying the principle of**

equality, that would be an instance of using Article 14 to perpetuate illegality. If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a junior. He cannot acquiesce in a wrong, and make a gain from that wrong by a comparison. Without disguise the attempt of the senior, is to get the benefit of a higher pay, by comparison. **Without challenge the wrong, he cannot claim a remedy from a wrong. Such collateral reliefs are alien to law. The decision of the Supreme Court in Chandigarh Administration vs. Jagjit Singh [1995] SCC 745 supports this view.**

“8. Ultimately the question boils down to this, what is the right of the senior and where does he find that right. Certainly he does not find that right in any law. The law governing the subject is FR 22{I}{a}{i}. Incidentally this rule is not challenged. It follows that only those anomalies that are directly referable to that rule, are amenable to the curative process thereunder, namely stepping up, and no other. Equity does not offer a cause of action, as we have already pointed out. Discrimination arises only vis-à-vis law. Difference on facts – often non actional basis facts, does not give rise to a cause of action in law. **The Supreme Court in India in comparable circumstances held [State of A.P. and others vs. G. Sreenivasa Rao and others [1989] 10 ATC 61, that difference per se, is not discrimination.”**

13. Thus, it is clear from these cases, any higher pay drawn by a junior due to fortuitous circumstance does not automatically entitle the senior to lay a claim for stepping up of his pay, unless the conditions as laid down by the OM dated 4.2.1966 are satisfied. Life is full of fortuitous circumstances....”

(Emphasis supplied)

27. In the instant case also, the applicant had chosen to peg his stepping up benefits to the pay scale of his chosen junior Shri J.L. Sharma, who was 11 positions below him in the seniority, the applicant's Number being CSL No.3475, and that of Shri J.L. Sharma being CSL

No.3486. He got two stepping up benefits at par with the said Shri J.L. Sharma. The said junior Shri G.B. Singh who was just above Shri J.L. Sharma (CSL No.3485) was not chosen by the applicant for the purpose of comparison when it was not convenient to him. The applicant had retired on 31.07.2012, and had pocketed the stepping up benefits *vis-a-vis* his chosen junior Shri J.L. Sharma (CSL No.3486) twice.

28. When he later discovered that the said Shri G.B. Singh (CSL No.3485) had got the stepping up benefit with respect to his junior Shri Harvinder Singh, this OA came to be filed. The Rules and the case law and the law of the land as decided by the Supreme Court, however, do not now permit the applicant to change his named chosen junior from Shri J.L. Sharma (CSL No.3486) to Shri G.B. Singh (CSL No.3485), and even offer to refund all the financial benefits earlier claimed by him, and disbursed to him, to bring him at par with the said Shri J.L. Sharma, in order to enable him to now change his stand to claim parity with Shri G.B. Singh.

29. If the applicant had chosen to peg his stepping up of pay to Shri G.B. Singh from the very beginning, instead of pegging his claims to the salary of Shri J.L. Sharma, he may have got less benefits while he was in service, but he would have got more benefits now, by claiming his salary being stepped up at par with the said Shri G.B. Singh second time also. This was the very same reason due to which his earlier request for stepping up of his pay with respect to another one of his juniors Shri Harvinder Singh could not be acceded to in 2010 also. But, as was very

aptly said by the Hyderabad Bench of the Tribunal in the case of **A. Venkatmuni vs. Union of India** (supra), “**life is full of fortuitous circumstances**”.

30. Therefore, we find no merit in the present OA. The OA is, therefore, rejected, but there shall be no order as to costs.

(Brahm Avtar Agrawal)
Member (J)

(Sudhir Kumar)
Member (A)

cc.