

Central Administrative Tribunal
Principal Bench
New Delhi

OA No. 2677/2012

MA No. 2208/2012

Order Reserved on: 28.01.2016

Order pronounced on 31.03.2016

Hon'ble Shri V. Ajay Kumar, Member (J)

1. Smt. Amita Verma
W/o Mr. Dev Mitra Verma
R/o D-202, May Fair Society
Patparganj, Delhi

2. Smt. Krishna Gambhir
W/o Shri Krishan Kumar
R/o G-268/DLF, Sector-10
Faridabad 121006 (Haryana)

3. Ms. Sarita Rani D/o Late Shri T.D. Prasad
R/o 121/4, Type-III, Sector-I
Pushp Vihar, New Delhi

4. Tej Veer Singh s/o Shri Mool Chand
R/o N-108, Sector-4, 217 Area,
New Delhi

5. Smt. Rita Gupta
W/o Mr. S.K. Gupta
R/o C-54/B-1, Phase-II, Chatterpur Enclave,
New Delhi-110074

Applicants

(Through Shri Yogesh Sharma, Advocate)

Versus

1. Union of India
Through the Secretary,
Ministry of Commerce and Industries

Udyog Bhawan,
New Delhi.

2. Director General of Foreign Trade,
Department of Commerce
Ministry of Commerce and Industries
Udyog Bhawan,
New Delhi.

3. The Zonal Joint Director General of
Foreign Trade (CLA)
A Wing, Indraprastha Bhawan,
I.P. Estate, New Delhi

Respondents

(Through Shri Nasir Ahmed, Advocates)

ORDER

By V. Ajay Kumar, Member (J):

Heard both sides.

2. This 3rd member reference has been made, in view of the different views expressed by the Hon'ble Members Shri A.K.Bhardwaj, Member (J) and Hon'ble Shri P.K.Basu, Member (A) in their Order dated 27.08.2014, for answering the following issues:

"When the juniors start drawing higher pay than their seniors on account of protection of their pay drawn by them in the lower grade in different organization, whether the pay of the seniors can be stepped up in terms of G.I, M.F., O.M. No.F. 2 (78)-E.III (A)/66 dated 4.02.1966; and

(II) When the pay of junior is fixed at higher level for explainable reasons, such as protection of pay drawn by him in the parent organization, whether the senior can invoke the principle of 'equal pay for equal work'

3. Brief facts, as narrated in the Order dated 27.08.2014, are that the applicants were initially appointed as Lower Division Clerks (LDC) and were subsequently promoted to the post of Upper Division Clerk (UDC) and then Licensing Officer and lastly Section Head. They claim that there are five persons namely Shri O.P. Jaswal, UDC, Shri Nikka

Ram, UDC, Smt. J.K. Saini, UDC, Shri Brij Lal, UDC and Shri B.D. Sharma, UDC, who are junior to them as per their date of appointment as ad hoc LDC in the department and drew less pay than the applicants throughout the service but after the VI Pay Revision with effect from 1.01.2006, the pay of these juniors has been fixed higher than the applicants. This is the precise grievance of the applicants. According to the applicants, as per Ministry of Finance OM dated 4.02.1966, the pay of a senior should be stepped up to a figure equal to the pay as fixed for the junior officers subject to certain conditions being fulfilled.

4. For easy reference, the DoPT OM dated 04.02.1966 is reproduced as under:

"18) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior:-

(a) As a result of application of FR 22-C. (Now FR 22 (1)(a)(1)- In order to remove the anomaly of a Government servant promoted or appointed to a 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, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- (a) Both the junior and senior officers should 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.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR-27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay."

5. For easy reference, the DoPT OM dated 4.11.1993 is reproduced as under:

"Cases for stepping up of the pay of seniors in a pay scale to that of juniors are generally considered if the following conditions are satisfied:-

(a) both the junior and senior officer should 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 the junior and senior officer 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 or on any other account, the above provisions will not be invoked to step up the pay of senior officer.

2. Instances have come to the notice of this Department requesting for stepping up of pay due to the following reasons:-

(a) where a senior proceeds on Extraordinary Leave which results in postponement of Date of Next Increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade;

(b) if a senior forgoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior avails of the ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term;

(c) if a senior joins the higher post later than the junior, for whatsoever reasons, whereby he draws less pay than the

junior in such cases, senior cannot claim stepping up of pay at par with the junior;

(d) if a senior is appointed later than the junior in the lower post itself whereby he is in receipt of lesser pay than the junior, in such cases also the senior cannot claim pay parity in the higher post though he may have been promoted earlier to the higher post;

(e) where a person is promoted from lower to a higher post, 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 whose pay is fixed under different set of rules. For example, an UDC on promotion to the post of Assistant gets his pay fixed under FR 22C with reference to the pay drawn in the post of UDC, whereas the pay of Assistant (DR) is fixed normally at the minimum under FR 22-B (2). In such cases, the senior direct recruit cannot claim pay parity with the junior promoted from a lower post to higher post as seniority alone is not a criteria for allowing stepping up;

(f) where a junior gets more pay due to additional increments earned on acquiring higher qualifications.

3. In the instances referred to in Para.2 above, a junior drawing more pay than the senior will not constitute an anomaly. In such cases, stepping up of pay will not, therefore, be admissible.

[G.I., Dept. of Per. & Trg., O.M.No.4/7/92-Estt.(Pay-I), dated the 4th November, 1993.]”

6. It is also relevant to reproduce FR 22-C (Deleted by G.I., Dept. of Per. & Trg., Notification No.1/10/89-Estt.(Pay-I), dated the 30th August, 1989, Published in the Gazette of India, as G.S.R. 679, dated the 16th September, 1989) now F.R. 22(I)(a)(1), which is as under:

“F.R. 22-C. Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage of which such pay has accrued:

Provided that the provisions of this rule shall not apply where a Government servant holding a Class I post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to a higher

post (which is also a Class I post and carries a time-scale of pay with the minimum more than Rs.1,500:)

Provided further that the provisions of sub-rule (2) of Rule 31 shall not be applicable in any case where the initial pay is fixed under this rule:

Provided also that where a Government servant is, immediately before his promotion or appointment to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by an amount equal to the last increment in the time-scale of the lower post:

Provided that if a Government servant either-

(1) has previously held substantively, or officiated in-

- (i) the same post, or
- (ii) a permanent or temporary post on the same time-scale, or
- (iii) a permanent post other than a tenure post, or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale; or

(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated;

then proviso to F.R. 22 shall apply in the matter of the initial fixation of pay and counting of previous service for increment."

7. Fixation of pay on promotion to a higher post is governed by Fundamental Rule 22(I)(a)(1) [Substituted by G.I., Dept. of Per. & Trg., Notification No.1/10/89-Estt.(Pay-I), dated the 30th August, 1989, Published in the Gazette of India, as G.S.R. 679, dated the 16th September, 1989, as amended by Notification of even number, dated the 28th November, 1990], which was formerly Fundamental Rule 22-C, the relevant part of which is reproduced below:

"F.R. 22(I) : The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows :-

(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more."

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The proviso to Fundamental Rule 22 is as follows :

"Provided that, both in cases covered by clause (a) and in cases, other than the cases of re-employment after resignation or removal or dismissal from the public service, covered by Clause (b), if he -

(1) has previously held substantively or officiated in

- (i) the same post,
- (ii) to (iii).

(2)

then the initial pay shall not, except in cases of reversion to parent cadre governed by proviso (1)(iii), be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the President under Rule 9(21)(a)(iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on a regular basis on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay."

8. The learned Member(A) following the decisions in **K. Nagarajan & Others v. Union of India & Others**, (2003) 2 ATJ 652 (Coordinate Bench of this Tribunal), **Shyamapada Roy & Others v. Union of India & Others** in WP(C) 224/2010 of the Hon'ble Calcutta High Court, and **Union of India v. T.M. Somarajan & Others** (2010) 2 AISLJ 1, held that the applicants are entitled for stepping up of their pay at par with their junior Shri O.P.Jaswal from the date he is getting

the higher pay than the applicants, along with arrears, however, from the date of filing of the OA.

9. On the other hand, the learned Member (J), by mainly relying on **Union of India & Anr. v. R.Swaminathan & Others**, (1997) 7 SCC 690, **Surender Kumar v. Union of India & Others**, (JT 2005(1) SC 557), **Union of India & Others v. M. Suryanarayana Rao**, JT 1988 (5) SDC 448 held that the applicants are not entitled for the relief claimed.

10. Since both the learned Members while coming to their respective conclusions have elaborately discussed the aforesaid case law with reference to the facts of the case, I am not intending to burden this order by discussing the same again.

11. The learned Member (J) rightly distinguished the decision in **T.M.Somarajan** (supra) [on which the learned Member (A) had relied on to coming to his respective view], wherein, the controversy involved was not of stepping up of pay in terms of OM dated 04.02.1966 but it pertained to the protection of pay and interpretation of the expression "higher scale of pay" occurring in definition III of Schedule II of IPS (Pay) Rules, 1954.

12. In **R. Swaminathan** (supra), it was held that it is not always permissible to step up the pay of the senior when the junior gets higher pay than him, and stepping up of pay is permissible only when three conditions mentioned in OM dated 04.02.1966 are fulfilled.

Since in the present case, the said conditions have not been fulfilled, I subscribe to the view expressed by the learned Member(J).

13. I am also fortified my view, by the following decisions:

- a) **Union of India and Others v. Sushil Kumar Paul & Others**, (1998) 5 SCC 268 read as under:

"4. The only question which arises for consideration in these appeals is whether the Central Administrative Tribunal was right in allowing the application of the respondents directing the appellants to step up their pay so as to make it at par with the pay of B. C. Mishra who was their junior but getting a higher pay.

5. It is held by the Tribunal that the respondents and Mishra belonged to the same cadre and their pay scales were also the same in the lower posts and, therefore, they are entitled to the benefit of stepping up. But, what the Tribunal has failed to take into consideration is the Circular dated 4-11-1993 issued by the Government of India, Department of Personnel and Training which clearly provides that the anomaly for granting benefit of stepping up of pay should be directly as a result of the application of Fundamental Rule 22-C and that if a junior officer draws a higher pay in the lower post either because of advance increments or on any other account then the provision of stepping up would not apply in such a case. Moreover in paragraph 2(c) of the Circular it is, further, provided that if a senior joins the higher post later than the junior, for whatsoever reason, whereby he draws less pay than the junior, in such a case senior cannot claim stepping up of pay at par with the junior.

6. In this case what had happened was that the respondents and Mishra were appointed as typists/clerks on different dates but were promoted to the post of Welfare Inspector Grade-III on the same date. Mishra was promoted to Grade-II earlier than the respondents on ad hoc basis. He was promoted as Welfare Inspector Grade-II on 1-2-1981 on ad hoc basis and worked continuously on the higher post upto 1-1-84 on which date the two respondents and Mishra were promoted as Welfare Inspectors Grade-II on regular basis. At that time he was getting a higher pay than the respondents because of his earlier ad hoc promotion. Mishra was again promoted as Welfare Inspector Grade-I on ad hoc basis and worked on that post continuously from 28-7-86 to 13-1-93. On 13-1-93 the respondents and Mishra were promoted to Grade-I on regular basis. On that date also Mishra was getting a higher pay because of his ad hoc promotion as Welfare Inspector Grade-I. It was for that reason that Mishra, even though was a junior, was getting more pay than the respondents. In view of these facts, the Circular governing stepping up of pay issued by the Railway Board and the law laid down by this Court in *Union of India v. O. P. Saxena*, (1997) 6 SCC 360, the respondents were not entitled to the benefit of stepping up. The Tribunal, thus committed an error in granting that benefit to the respondents. We, therefore, allow

these appeals and set aside the impugned orders of the Tribunal.”

- b) In **R.P.Arora v. Union of India & Others**, WP(C) No.6048/2008 dated 28.01.2010 of the Hon’ble High Court of Delhi, after considering **R. Swaminathan** (supra), it was held as under:

“2. The petitioner claims step up of his pay at par with his juniors on the ground that Western Railway communication dated 14th July, 1954 had contemplated that instructors deputed to Ajmer and Udaipur Training Schools retain a lien in their parent categories and as such he could not be promoted on account of being on deputation whereas his juniors were given ad-hoc promotion.

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5. The Tribunal after considering the pleas and contentions have noted that in terms of circular dated 16th October, 1964, if there is an administrative error on account of which any promotion is lost, then an employee would not suffer on account of seniority as well as pay, however, the petitioner cannot contend that not granting adhoc promotion is on account of any administrative error as the petitioner was on deputation to another organization and could not be granted ad-hoc promotion required for administrative exigencies.

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6. The petitioner therefore, cannot claim stepping up of his pay at par with his juniors who had been given ad-hoc promotions when the petitioner was on deputation and therefore, he could not be given ad-hoc promotions which were given to some of the juniors of the petitioner.

7. The petitioner also cannot claim ad-hoc promotion after a considerable gap of time. In fact the petitioner had not made a grievance for not granting the adhoc promotion nor had claimed notional ad-hoc promotion, which could not be granted to him, but had only sought step up of pay in consonance with the pay of his juniors, which was higher than that of the petitioner on account of adhoc promotion given to some of the juniors. The adhoc promotions in any case could not be given to the petitioner because he was working in a different department on deputation and could not have been considered for such ad-hoc promotion.

8. In the circumstances, there are no grounds to step up the pay of the petitioner considering the pay of his juniors who had been given ad-hoc promotions. There are no grounds to interfere with the decision of the Central Administrative Tribunal, Principal Bench in the facts and circumstances and the writ petition is, therefore, dismissed.”

c) In **Union of India & Others v. S.K.Pandey & Others**, CWP

No.6359/2001 dated 19.09.2002, the Hon'ble High Court of Delhi, observed as under:

"2. The respondents herein who were applicants before the learned Tribunal belonged to the Administrative wing of All India Radio. According to them, an all-India seniority list was to be maintained wherefor the feeder grade of Head Clerk and Accountant was being maintained for promotion to the post of Administrative Officer. A common seniority list of all-India basis is allegedly maintained in respect of the post of Administrative Officers also. The contention of the respondents before the learned Tribunal was that as one Shri R.P.S. Chauhan who was junior to them was getting a higher pay and as such, in terms of FR 22-C, the employees who were senior to him were entitled to a higher pay equivalent to the said Shri Chauhan. It is not in dispute that in a similar situation, Hyderabad Bench of the Central Administrative Tribunal in the case of R. Amanulla Khan granted such relief.

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4. Mr. Sameer Aggarwal, the learned counsel appearing on behalf of the petitioners would submit that the learned Tribunal went wrong in passing the impugned judgment in so far as it proceeded on the basis that a common seniority list is being maintained at the level of the Head Clerk. The learned counsel would contend that the seniority list is maintained at the zonal level and not on all-India basis. In this connection, our attention has been drawn to the recruitment rules for various posts in All India Radio which are to the following effect:

"The combined eligibility list should be prepared by first listing the eligible officers in each of the 15 zones separately and then arranging these eligible officers according to their length of continuous regular service subject to maintenance of inter-se-seniority."

The basic point to be noted is that the eligibility list is not a seniority list. Since there are 15 separate zones, having separate seniority lists there is no comparison in the matter of seniority between the officers working in different zones. The date of appointment on regular basis is relevant for determining the placement of Head Clerk/Accountant/Senior Storekeeper in the eligibility list subject however to the maintenance of their inter-se-seniority within the respective zone."

and after considering **R. Swaminathan** (supra), **Sushil Kumar Paul** (supra), etc., allowed the Writ Petition.

d) In O.A.No.3918/2013 with O.A.No.4212/2013, dated 15.09.2015, a Coordinate Bench of this Tribunal, observed as under:

"2. For convenience we take up the facts in OA 3918/2013. The applicants in this OA are officers belonging to Group 'A' and Group 'B' in the office of Controller General of Defence Accounts. Their basic prayer is that their pay and allowances should be stepped up at par with their juniors and similarly situated employees. As stated by the applicants, the genesis of their claim arises from the fact that one Shri L. Narhari, who is junior to them, had been given higher pay scale. Thereafter, similarly placed persons as the applicants herein filed OA 260/2002 before the Madras Bench of the Tribunal and obtained favourable orders. In OA 260/2002, Shri L. Narhari was respondent no.7. The case had been filed by Assistant Accounts Officers (AAOs) because of their claim that they had been promoted as AAOs on a much earlier date than respondent no.7 but respondent no.7 was drawing a higher salary. It is stated that the order of the Madras Bench of the Tribunal was challenged in the Hon'ble High Court of Madras by filing Writ Petition No.20774/2003, which was dismissed vide order dated 27.11.2008. Thereafter the respondents filed SLP No.14167/2009 arising out of judgment and order dated 27.11.2008 of the Hon'ble High Court of Madras and the said SLP was also dismissed. Therefore, it is claimed that the order of the Tribunal in OA 260/2002 has attained finality. The applicants, therefore, claim that they should also be given the benefit of the order of the Madras Bench of the Tribunal in OA 260/2002 whereas the respondents have agreed to implement the directions contained therein in respect of the applicants in that OA only.

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22. From the above, it will be clear that the question of stepping up of pay is not a general provision that on any promotion, if the junior draws higher salary than the senior, then his pay should be stepped up. First of all, it has to arise directly as a result of application of FR 22-C, now FR 22 (1) (a) (i). The 1993 OM makes clear the situations where no stepping up is permissible and it would be seen that if the junior is getting higher pay by virtue of grant of advance increments or on any other count (for example, in this case special pay), the above provisions of stepping up will not be applicable. This has also been made clear in 2008 CCS (Revised Pay) Rules where it clearly states that senior government servants at the time of promotion should have been drawing equal or more pay than the juniors. It has to be kept in mind that juniors do draw some times higher pay than the seniors due to historic factors such as having drawn more increments, special pay etc. These are not covered in 1993 OM.

23. In our view, therefore, the case of the applicants is not covered by FR-22 and OM dated 4.11.1993. Therefore, the orders of the Hon'ble High Courts of Madras and Bangalore would be restricted to the petitioners only in those cases and not *suo motu* apply to the applicants in the present cases. The OAs are, therefore, dismissed. No costs."

14. In the backdrop of the aforesaid enunciation of law and in the facts of the present case, I agree with the view expressed by the

Hon'ble Member(J) and accordingly, the present reference is answered and the OA is dismissed. No order as to costs.

Registry is directed to return the original records to the concerned respondents immediately.

(V. Ajay Kumar)
Member (J)

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