

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 1817/2014

Reserved on : 07.12.2015
Pronounced on : 14.12.2015

**HON'BLE MR. JUSTICE SYED RAFAT ALAM, CHAIRMAN
HON'BLE MR. P.K. BASU, MEMBER (A)**

Ms. Pushp Lata Sharma,
W/o Shri H.V. Sharma,
Age 60 years,
Retd. Grade-II (DASS)/Head Clerk, MAMC
R/o 1987, Delhi Admn. Flats,
Gulabi Bagh, Delhi-7.

.. Applicant

(By Advocate : Shri Hem C. Vashisht)

Versus

1. The Govt. of NCT of Delhi,
Through its Principle Secretary (Services),
Services Department,
7th Level, Delhi Secretariat,
I.P. Estate, New Delhi-2.

2. The Dean,
Maulana Azad Medical College,
New Delhi-2.

.. Respondents

(By Advocate : Ms. Ritika Chawla)

ORDER

By Hon'ble Mr. P.K. Basu

The applicant was appointed as LDC/Grade-IV (DASS) on 19.11.1979 in Maulana Azad Medical College (MAMC) under the Govt. of NCT of Delhi. She was promoted to the post of UDC on

30.04.1990 and as UDC/Grade-II on 31.03.2008. She retired from service on 31.03.2014 on attaining the age of superannuation. The applicant had sought stepping up of her pay, viz-a-viz. two of her juniors, namely, Shri Tej Pal and Shri R.S. Lingwal. However, the respondents rejected her claim and communicated vide order dated 06.05.2014 this rejection. Being aggrieved by this order, the applicant has filed this O.A. with the following prayer:

- “(a) This Hon’ble Tribunal graciously be pleased to pass an order or direction to quash the impugned order dated 06.05.2014 passed by the Respondent Department.
- (b) Pass any other order or direction which the Hon’ble Tribunal may deem fit, just and proper in the circumstances of the case may also be passed in favour of the petitioner and against the respondents.
- (c) Direction to the Respondents to pay compound interest on the arrears, compounded every month, as the respondents caused serious prejudice to the Applicants every month when the Applicant was not granted the financial upgradation by stepping up her pay.
- (d) Direction to the respondents to pay cost of litigation to the Applicant as the Applicant has been dragged to the Tribunal by the respondents.”

2. The applicant states that her case is fully covered by the provisions of FR 22 and FR 27. According to the learned counsel, FR-22(I)(a)(1) provides that:-

“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.”

FR-27 reads as follows:

“Subject to any general or special orders that may be made by the President in this behalf, an authority may grant a premature increment to a Government servant on a time-scale of pay if it has power to create a post in the same cadre on the same scale of pay. ”

3. As regards Shri R.S. Lingwal, the respondents states that he joined as LDC w.e.f. 30.12.1979, i.e. after the applicant. Consequent upon the implementation of 4th Pay Commission w.e.f. 01.01.1986, the pay of both these officials were fixed at the stage of Rs.1070/- with date of next increment as 01.11.1986 and 01.12.1986, respectively, with the pay to be enhanced on increment to Rs.1090/-. It is stated that while Shri Lingwal has exercised revised option for fixation of his pay from the date of next increment, i.e. 01.12.1986 at Rs.1110/-, the applicant did not exercise this option. Therefore, his pay became lower. This option was to be exercised in writing within three months (i.e. 31.12.1987) from the date of publication of rules. Therefore, it is stated that it cannot be claimed now. It is, therefore, contended by the respondents that the higher pay of Shri Lingwal has resulted basically due to giving the option and the applicant not giving the option.

4. As regards Shri Tej Pal, the respondents states that the applicant has not provided any particulars regarding Shri Tej Pal so that this could be verified from the records. The respondents further argued that the stepping up of pay is governed by FR-22, which will not apply in the applicant's case.

5. Heard the learned counsels and perused the relevant rules.

6. FR 22(I)(a)(1) that governed stepping up of pay has now been replaced by Govt. of India instructions (1) below FR-22, which states as follows:

“(1) Fixation of pay on promotion on or after 1-1-2006 – In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows :-

- (i) One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay band also, the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum.
- (ii) In the case of promotion from PB-4 to HAG+, after adding one increment in the manner prescribed in Rule 9, the pay in the pay band and existing grade pay will be added and the resultant figure will become the basic pay in HAG+. This shall not exceed Rs.80,000/-, the maximum of the scale. For Government servants in receipt of NPA, pay plus NPA will not exceed Rs.85,000/-.”

7. In fact, in this connection, the clarification issued by the Govt. of India, Department of Personnel & Training's O.M. dated 04.11.1993 further explains the rule, which provide as follows:

“23. Instances which do not constitute an anomaly for stepping up of pay with reference to juniors.- 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.]”

8. It will be clear that it is not in every case that whenever a junior gets higher pay than his senior, the senior's pay has to be hiked up. It has to arise as a result of pay fixation under FR-22 and governed by Govt. of India instructions (1) and O.M. dated 04.11.1993. The present case clearly does not fall within this rule or the O.M. and, in our view, FR-27 is not at all relevant in this case.

9. This is a case where an employee opted for fixation of his pay on the next date of increment and the applicant did not opt for the same, which results in the difference of their pay, as between the applicant and Shri Lingwal. Therefore, there can be no comparison

between the case of the applicant and Shri Lingwal to seek stepping up of pay. As regards Shri Tej Pal, the applicant has not supplied any document in his regard and, therefore, it is not at all possible for the respondents or for us to take any view in the matter. It is for the applicant to produce the necessary documents in respect of her claim, in absence of which no decision can be made based on such a bland claim.

10. In view of clear position of rules and facts of the case, we do not find any merit in the Original Application and, therefore, the same is dismissed. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/Jyoti/