

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 558 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Rama Chandra Lenka, aged about 54 years, s/o Late Rajib Charan Lenka, presently working as Sr., Accountant, office of the Accountant General (A&E), Odisha, Bhubaneswar, residing at Qr. No. Type-III-69, Old AG Colony, Unit-IV, Bhubaneswar-751001.

.....Applicant

VERSUS

1. Union of India, represented through the Comptroller and Auditor General of India, Pocket-9, Deen Dayal Upadhyay Marg, New Delhi – 110124.
2. The Accountant General (A&E), AG Square, Bhubaneswar, Dist. – Khurda, Odisha – 751001.
3. The Dy., Accountant General (Admn), Office of the Accountant General (A&E), AG Square, Bhubaneswar, Dist. – Khurda, Odisha – 751001.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.S.K.Patra, counsel

Heard & reserved on : 12.3.2019

Order on : 28.3.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- “(i) To admit this OA and call for the records;
- (ii) To quash the office order dtd. 11.2.2015 (Annexure A/1) and office order dtd. 14.5.2015 (Annexure A/3) holding that the same is contrary to the provisions of statute and disrespect of judicial pronouncements;
- (iii) To direct the respondents to step up his at par with Sri Raghunath Das, Sr. Accountant;
- (iv) To direct the respondents to extend all consequential benefits to the applicant forthwith with interest;

(v) And/or pass any other order/orders as deemed fit and proper."

2. The short dispute involved in this case is that whether the applicant is entitled for stepping up of his pay second time at a par with his junior employees and whether an executive instruction can override the statutory rules regarding stepping up of pay at par with juniors. The applicant was appointed as a Clerk under the respondents and was promoted as Senior Accountant (in short SA) when he detected an anomaly in pay viv-a-vis the pay of his junior Sri Amiya Kumar Behera. The representation in this regard dated 5.11.2013 was accepted by the respondents stepping up his pay w.e.f. 1.4.2010 vide order dated 28.7.2014 (Annexure-R/3 of the Counter filed by the respondents). Then the applicant represented again for stepping up of his pay at par with his junior Sri Raghunath Das vide his representation dated 31.3.2015 (Annexure-A/2).

3. The respondents in their order dated 10.5.2015 (Annexure-A/3) informed the applicant that as his pay has been stepped up once at par with his junior Sri Amiya Kumar Behera, further stepping up with another junior is not permissible. A similar order dated 11.2.2015 (Annexure-A/1) was also passed by the respondents (Annexure-A/1). The applicant has challenged both these orders in this OA on following grounds:-

(i) The statutory rule will prevail over the guidelines as per the judgment of Hon'ble Apex Court in the case of Union of India vs. N.R. Paramar (CA No. 7514-7515 of 2005) and in the case of Union of India & ors. vs. Dileep Kumar Singh AIR 2015 SC 1420.

(ii) The difference in pay with the applicant's junior Sri Raghunath Das was due to the fact that the applicant had got the benefit of one additional increment prior to 1.1.2006 after passing the departmental examination while his junior Sri Raghunath Das got the benefit of one increment after passing the examination w.e.f. 1.4.2009 drawing higher pay than applicant.

(iii) The case of the applicant was rejected without application of mind and without considering the fact that in OA No. 435/1994 the Tribunal had held that stepping up of the pay can be done second time. Similar finding was there in the case of **E. Sarasian vs. Secretary, Central Board of Direct Taxes reported in 1991 (17) ATC 673 (Madras)**.

4. The respondents have filed the Counter not disputing the facts of the case, but opposing the OA on the following grounds:-

(i) Second stepping up of pay is not permissible under the FR22(20) under which further stepping up is permissible with the same junior. Hence, stepping up again at par with Sri Raghunath Das is not permissible. Since the

applicant's pay was stepped up at par with his junior Sri Amiya Kumar Behera, further stepping up at par with another junior is impermissible.

5. The applicant has filed the Rejoinder stating that the anomaly in pay in this case is not due to pay fixation as per the FR-22 (1) (a)(1) but due to higher amount of increment on account of 6th Pay Commission recommendation w.e.f. 1.1.2006 compared to reduced increment availed by the applicant prior to 1.1.2006. Hence, the provisions of the FR 22(20) cited by the respondents will not be applicable in this case.

6. We heard learned counsels for both the parties. Learned counsel for the applicant submitted that the case of the applicant is covered under the FR 27. It was also submitted by him that during pendency of the OA, it has come to the notice of the applicant that vide circular dated 22.3.2010, copy of which is filed, the CAG has directed for stepping up of the pay of the seniors who are getting less pay only due to additional increment earned by him prior to 1.1.2006 where as the junior was getting more pay on account of the additional increment earned after 1.1.2006 and the respondents were advised to send such proposals to the headquarters for examination. The respondents' counsel filed a letter dated 6.3.2019 in which the respondent no.2 has informed that the applicant is not eligible for stepping up of pay by comparing with another junior since he was allowed the stepping up of pay at par with his junior Sri Amiya Kumar Behera.

7. The applicant's counsel has also filed a copy of the judgment of Hon'ble Apex Court in the case of **Er. Gurcharan Singh Grewal & anr. vs. Punjab State Electricity Board & Others reported in (2009) 1 SCC(L&S) 579** to strengthen the applicant's case. We have perused the judgment in the cited case in which the dispute was that there was prayer for stepping up of pay at par with the junior by two petitioners. While the respondents granted the stepping up to one of the petitioner, they justified the disparity in pay in case of the other petitioner who had joined the promotional post prior to 1996 where as the junior had joined the promotional post in May, 2006 w.e.f 1.9.2001. This argument of the respondents was not accepted and it was held that the senior was entitled for stepping up of pay at par with the junior. From the facts of the cited case, it is clear that the dispute was different from the dispute in the present OA where the applicant was claiming stepping up for second time with another junior and the stand of the respondents is that under FR 22(20), the applicant was not entitled for second stepping up. Hence, the cited case is factually different.

8. The applicant has also cited judgments in some cases in support of his claim for second stepping up of pay vide para 4.9 and 4.10 of the OA and copy of the judgments at Annexure-A/4. The respondents in their Counter have not contradicted these judgments. In the case of E. Sarasian (supra), the dispute was on account of grant of advance increment after passing the examination like in the present case. It was held by the Tribunal as under:-

"The applicant is admittedly senior to Shri Srinivasan, the applicant passed the same Departmental Examination of the next higher grade before 1.1.1973 and he got advance increments at a lower rate in the pre-revised scale applicable to him. On the contrary, his junior Shri Srinivasan, never passed the Departmental Examination for ITI as UDC. He passed the same examination only in 1979, after nine years since the applicant passed the said examination. At that time Shri Srinivasan was a Tax Assistant. There is a blatant argument in the reply that because Shri Srinivasan, passed the examination in 1979 as Tax Assistant and the applicant has passed the same examination as UDC in 1970 the cases are not comparable. Such an argument is extremely unfair and has the effect of punishing the applicant for being more resourceful in passing the same examination much earlier. One cannot understand this argument designed to punish the more diligent.

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In the result the impugned order is quashed and the respondents directed to refix the pay of the applicant in the case of Tax Assistant at Rs.500 per month same as that of Shri Srinivasan with effect from 14.7.1979 and grant consequential benefits by way of refixation of pay and stepping up as directed in this application."

9. Another judgment of the Tribunal in OA no. 435/1994 before Mumbai Bench has also been cited in the OA (Annexure-A/4). In this case also, the second stepping up of pay was not allowed at par with another junior. It was held by the Tribunal as under:-

"This is a most unreasonable condition incorporating an arbitrary element into the OM. Secondly, the respondents themselves have admitted that there is no provision in the Government of India to circulate a seniority list along with pay scales drawn by them. If that is the situation, it is clear that there are limitations to the knowledge which would be available to any employee for making a representation. There is no doubt, that when the department itself does not take steps to promote a better knowledge of opportunities enjoyed by their colleagues working in other stations, an employee must take a chance of knowing about an anomaly from whatever source he can gather and in such a situation he should not be shut out merely on the ground that he came to know about the anomaly of stepping up with reference to which he would have been benefited more at a later date. From this point of view also the conditions imposed in this OM, dated 31.3.1984, are unreasonable. It is not contended that these conditions are part of FR 22-C. Therefore, the OM dated 31.3.1984, cannot be said to have a greater authority than FR 22-C. We are, therefore, of the view that so long as the applicant is able to show that he is fulfilling the conditions laid down in FR 22-C vis-a-vis an employee giving rise to an anomalous situation, he is entitled to have his pay stepped up for a second time irrespective of whatever is stated in OM, dated 31.3.1984, so long as the three conditions set out in FR 22-C are fulfilled."

10. The FR 22(20) referred by the respondents in their pleadings as well as the impugned order is the OM dated 31.3.1984, listed at serial no. 20 of the decisions of Government of India after the FR 22. It states that the second

stepping up of pay is permissible in comparison with the same junior. Below the instructions, the following clarification has been provided:-

"Clarification—It is clarified that the benefit of stepping up of pay can be allowed to a senior official, 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 was stepped up first time. Type of cases quoted below can be examined and decided at their own merits in consultation with this Department and when they occur."

From above, it is clear that the instructions are applicable in case of anomalies in pay fixation in case of promotion where pay has been fixed under the FR 22. But in the case of the present applicant, the anomaly in pay has arisen not due to pay fixation on account of promotion under FR 22, but it is due to the revision in the rate of increment on account of sixth pay commission recommendation for which difference in pay has arisen due to the incentive increment. In our considered opinion, the instructions at serial no. 20 after FR 22 do not bar the cases like that of the applicant where the anomaly in pay is due to grant of incentive increment after implementation of the sixth pay commission recommendations for pay revision.

11. Moreover, the cases cited by the applicant i.e. the order of the Tribunal in OA No. 435/1994 and in the case of E. Sarasian (supra) in which the relief was allowed in similar situations as in the present OA, will be squarely applicable to the present applicant before us. Hence, the applicant in this OA is also entitled for the same relief.

12. In view of the above discussions, the impugned order dated 11.2.2015 (Annexure-A/1) and order dated 14.5.2015 (Annexure-A/3) are set aside and quashed and the respondents are directed to allow stepping up of the pay of the applicant at par with Sri Raghunath Das with consequential benefits as per law. The OA is allowed accordingly with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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