

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.102/2003

New Delhi, this the 20th day of February, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.NAIK, MEMBER (A)

K.K.Chakraborty, ISS (Retd.)
R/o 7B Evershine Apartments
D-Block, Vikas Puri
New Delhi - 110 018. ... Applicant

(By Advocate: Sh. Harvir Singh)

Versus

1. The Secretary
Ministry of Commerce
Department of Commerce
'C' Wing, Nirman Bhawan
New Delhi - 110 011.
2. The Director General
Directorate General of Supplies & Disposal
Jeevan Tara Building
5, Parliament Street
New Delhi - 110 001. .. Respondents

(By Advocate: Sh. M.M.Sudan)

O R D E R

Justice V.S. Aggarwal:-

Applicant Shri K.K.Chakraborty by virtue of the present application seeks direction to the respondents to grant him higher or equivalent pay as Deputy Director from the date his junior has been getting more pay, i.e., Shri Rajan. Furthermore, it is claimed that respondents should be directed to grant equivalent or higher pay to the applicant to the post of Director as his junior was getting, with consequential benefits.

2. Some of the relevant facts in this regard are that the applicant was appointed as Assistant Director, (ISS) on 26.2.1976 on promotion from Feeder Grade post of Assistant Director (Supplies) Grade-II.

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He admittedly was senior to Shri G.V.Rajan. The respondents applied the reservation principles and Shri Rajan was promoted to the next higher post of Deputy Director before the applicant and another officer. Resultantly, Shri Rajan was being treated as senior in view of the earlier promotion which he earned from 7.7.1995.

3. One Shri I.S.Garg had filed OA 1631/1996 before this Bench challenging the application of reservation orders in the promotion. This Tribunal on 29.2.2000 allowed the application and quashed the promotion order given to the junior Scheduled Caste and Scheduled Tribe officers. The respondents were directed to carry out the promotion process in accordance with the seniority assigned to all those officers. The compliance of the directions have to be effected into two stages. In the first stage, promotions to the posts of Deputy Director in Indian Supply Service from 1977 to 1984 had to be reviewed and based on it a fresh seniority list has been drawn. In the second stage, relying on the revised seniority list prepared, on completion of the first stage, all promotions given to the post of Directors from 1983 had to be reviewed.

4. When the first stage of compliance was completed, Shri G.V.Rajan was shown to have been promoted from 4.4.1984. A revised seniority list of all these officers was prepared accordingly. While it was being examined, the applicant filed OA 1411/2001. This Tribunal held:

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"4. Having regard to the submissions made above, we dispose of this OA by directing the respondents to comply with the directions of this Court contained in OA 1639/96 and review the case of the applicant and as admittedly the applicant has been found senior to Shri G.V.Rajan and, in case the applicant is found fit, accord him promotion w.e.f. 6.7.1995 as Director with all consequential benefits including the pay and allowances in accordance with rules and instructions on the subject, within three months from the date of receipt of a copy of this order. The OA is accordingly disposed of. No costs."

5. Applicant superannuated on 30.6.2001. All the panels for promotion to the posts of Directors have been reviewed keeping in view directions of this Tribunal in the case of Shri I.S.Garg. On review, Shri Rajan was promoted to the post of Director from 1.7.2001 and the applicant was shown to have been promoted in the grade of Director from 11.2.2000. It was a deemed promotion for the applicant. On his deemed promotion to the grade of Director w.e.f. 11.2.2000 the pay of the applicant was fixed in the scale of pay of the Director. As the applicant was not satisfied with the action so taken, he filed the Contempt Petition in this Tribunal which was not allowed.

6. The grievance of the applicant is that persons junior to the applicant are drawing more, i.e., Shri Rajan, the applicant, therefore, is entitled to the same salary keeping in view the Fundamental Rules in this regard.

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7. The application has been contested. The basic facts are not disputed. But it has been pointed that Shri Rajan ^{was} promoted to the post of Director from 7.7.1995. It was later on changed to 1.7.2001. The applicant was deemed to be promoted from 11.2.2000. Therefore, Shri Rajan was drawing more salary.

8. We have heard the parties counsel. The basic facts which we have reproduced above are not in controversy before us. The short question that was agitated and comes up for consideration is as to whether the applicant is entitled to the same salary as his junior who admittedly has been drawing more salary than the applicant?

9. Applicant has made available a chart of the salary drawn by him as well as Shri G.V.Rajan which reads as:

"(a) As Deputy Director

| Applicant | | Sh. G.V.Rajan | |
|------------|-----------|---------------|-----------|
| As on Date | Basic Pay | As on Date | Basic Pay |
| 22.1.1996 | 12,275.00 | 1.1.96 | 14,300.00 |
| 1.3.1996 | 12,600.00 | 1.7.96 | 14,700.00 |
| 1.3.1997 | 12,925.00 | 1.7.97 | 15,100.00 |
| 1.3.1998 | 13,250.00 | 1.7.98 | 15,500.00 |
| 1.3.1999 | 13,575.00 | 1.7.99 | 15,900.00 |

(b) As Director

| Applicant | | Sh. G.V.Rajan | |
|------------|-----------|---------------|-----------|
| As on Date | Basic Pay | As on Date | Basic Pay |

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|-----------|-----------|-----------|-----------|
| 11.2.2000 | 14,300.00 | 1.7.1999 | 15,900.00 |
| 11.2.2001 | 14,700.00 | 1.7.2000 | 16,300.00 |
| 30.6.2001 | 14,700.00 | 30.6.2001 | 16,300.00 |

10. This was not disputed before us.

11. The learned counsel for the respondents has drawn our attention towards the decision of the Supreme Court in the case of Union of India & Anr. v. R. Swaminathan etc.etc. JT 1997(8) SC 61, the Supreme Court while considering the Fundamental Rule 22(1)(a)(i) regarding fixation of the pay held that increased pay drawn by the junior is due to ad hoc officiation or a regular short periods of service. Pay does not depend on seniority alone. Therefore it was held that in the peculiar facts the junior could draw more salary. As is apparent that what we have reproduced above, the facts of the present case are different. Shri G.V.Rajan was not drawing more salary than the applicant on account of ad hoc officiation for regular short period of service.

12. As referred to above, Shri G.V.Rajan had been promoted earlier taking him to be entitled to promotion because of the reservation policy. This Tribunal had quashed the same. The said order had become final. Necessarily, a fresh exercise had been done. As a result of which Shri Rajan had been promoted to the post of Director after the applicant. However, no steps have been taken to make sure that the pay is re-fixed and he does not draw more than the applicant. Despite being junior he had been drawing

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more salary.

13. Under Fundamental Rule 22, in pursuance of Department of Personnel & Training's O.M.No.4/7/92-Estt.(Pay-I) dated 4.11.1993 in the case of cases where one can step up the pay of the senior, in a pay scale to that of the juniors, on satisfaction of certain conditions:

"(27) 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."

14. In the present case, the applicant and Shri Rajan belong to the same cadre and admittedly Shri Rajan was junior to the applicant. The applicant retired as Deputy Director on 30.6.2001 after the decision of this Tribunal whereby earlier appointment of Shri Rajan was not upheld. Shri Rajan was promoted from 1.7.2001. The applicant was given deemed

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promotion w.e.f. 11.2.2000. Since Shri Rajan had been working to the post of Director earlier to the applicant his pay was more than the applicant's pay.

15. In the scenario of these facts, it is obvious that Shri Rajan discharging the duties of the Director from 7.7.1995, and even after the decision of this Tribunal the applicant was deemed to have been promoted from 11.2.2000. Necessarily the applicant for that period cannot claim that his salary should be fixed at par with Shri Rajan.

16. However, the applicant was deemed to be promoted as Director from 11.2.2000. He superannuated on 30.6.2001. Shri Rajan for the said period was also working as Director and was drawing more salary as has been indicated above. Consequently for the period from 11.2.2000 to 30.6.2001 when both of them belong to the same cadre and holding similar post, the applicant being senior could not draw less.

17. In this backdrop, the above said instructions of the Department of Personnel & Training would come to the rescue of the applicant.

18. Consequently, we allow the application in part. It is directed that from 11.2.2000 to 30.6.2001 the pay of the applicant would be fixed at par with Shri G.V.Rajan. The applicant would be entitled to all the consequential benefits including in the pension of the applicant.

S.K. Naik
(S.K. Naik)
Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman