

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/21/1391/2013

Dated: 22/10/2019

Between

K. Sunil Kumar,
S/o. K. Jagan Mohal Reddy,
Aged about 46 years,
Occ: Sr. Stores Assistant,
Resident of Boduppal,
Hyderabad.

... Applicant

And

1. The Union of India,
Ministry of Defence,
Defence Research & Development
Organization,
Dept. of Personnel (Pers-10),
`A Block, DRDO Bhawan,
New Delhi - 110 011
Rep. by its Secretary.

2. Research Centre Imarat,
Vignyana Kancha P.O.,
Hyderabad - 500 069
Rep. by its Director.

3. The Administrative Officer,
Research Centre Imarat,
Vignyana Kancha P.O.,
Hyderabad - 500 069.

... Respondents

Counsel for the Applicant	: Mr. K.S.V. Subba Rao
Counsel for the Respondents	: Mrs. K. Rajitha, Sr. CGSC

CORAM :

Hon'ble Ms. Manjula Das, Member (Judl.)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

{Per Honøble Ms. Manjula Das, Member (Judl.)}

Heard Sri K.S.V. Subba Rao, learned counsel for the applicant and Smt. K. Rajitha, learned Senior Standing Counsel appearing for the respondents. Perused the pleadings and the material papers placed before us.

2. The brief facts of the case are that the applicant was selected and appointed as Store Keeper on 23.01.1991. Subsequently, he was promoted as Senior Store Keeper on 01.12.1993. Later, he was further promoted as Store Assistant (C) on 01.09.2003. However, the said post was redesignated as Senior Store Assistant on 01.01.2006. It is submitted by the applicant that one Sri N. Viswanadham was also selected as Store Keeper in pursuance to the very same selection in which he was selected and was placed below the applicant in the seniority list, based on the merit obtained in the selection. Accordingly, Sri Viswanadham was promoted after the applicant because he was junior to the applicant all through. However, from 2004 onwards, in the promoted category of the Store Assistant (C), Sri Viswanadham was drawing more pay than the applicant. Hence, the applicant submitted a representation to the respondents seeking rectification of anomaly. Accordingly, respondents have stepped up the pay of the applicant on par with Sri Viswanadham.

3. While so, respondents reduced the pay of the applicant from 01.07.2013 without giving any opportunity to the applicant to explain. The applicant submitted a detailed representation on 8.7.2013. Respondents vide Memo dated 17.10.2013 conveyed that the applicant is not entitled to stepping up of pay on par with his junior Sri N. Viswanadham and his pay has been stepped up erroneously and in the process he was paid an excess of Rs.65,591/- and the said amount is to be recovered in six monthly instalments from October, 2013. It was further mentioned in the said Memo by the respondents that during 1996 the applicant's pay has been stepped up in respect of another junior namely Sri Bhaskar and if at all there is any grievance, he should compare his pay with that of Sri Bhaskar and not with any other employee.

4. It is further submitted by the applicant that Sri N. Viswanadham had opted for fixation of pay from the date of next increment in the promoted category and hence his pay has been fixed at higher scale than that of the applicant and such an option was never given to him. It is contended by the applicant that when the nature of duties are identical, the question of a junior drawing more pay than him would not arise. It is further submitted that without there being any impugned order or without being given an opportunity, straight away reducing his pay is arbitrary, illegal and violative of Articles 14 & 16 of the Constitution of India.

5. The Respondents filed a reply statement, opposing the contentions of the applicant. Their main contention is that as per FR 22(20), an employee is entitled for stepping up of pay only once in his service. The applicant had already got the benefit of stepping up of pay on par with his junior Sri

Bhaskar in the year 1996. However, in case where the pay of such first junior gets stepped up in the event of an anomaly arising on promotion of his junior and thus gives rise to situation where the said junior employee again draws less pay than his first junior, the pay of such senior employee may be stepped up with reference to that of his junior for second time. But in this case, the applicant, having availed the benefit of stepping up of pay on par with his junior Sri Bhaskar, requested for stepping up of pay on par with another junior employee which is not admissible under the Fundamental Rules. Moreover, the applicant cannot compare with the pay of N. Viswanadham, SSK as he has opted for fixation of pay from the date of next increment instead of from the date of promotion whereas the applicant has opted for fixation of pay from the date of his promotion.

6. The prayer made by the applicant is of two fold:

- 1) To declare him as entitled to draw pay on par with his junior Sh. N. Viswanadham and to direct the respondents accordingly; and
- 2) To direct the respondents not to recover Rs.65,591/- from his pay and allowances.

7. Learned Standing Counsel for the respondents submits that FR 22(20) is not applicable in the present case. FR 22 (20) spells as under:

FR 22 (20) Stepping up of pay of senior for a second time in order to remove an anomaly in pay vis-a-vis same junior admissible:-

Doubts have been raised by various Ministries/ Departments as to whether provisions relating to stepping up of pay of senior employee with reference to his junior in order to remove an anomaly may be invoked to step up the pay of a senior employee for a second time, in case he happens to draw less pay than his junior again, due to stepping up of pay of the latter with reference

to pay of persons further junior to him by applying the above provisions.

2. According to the clarification contained in the Comptroller and Auditor General's decision below this rule, while stepping up pay in accordance with the aforesaid general instructions, the benefit should be allowed only once with reference to the pay of the 'first junior (not necessarily 'immediate junior) on whose promotion an anomaly arose in pay of the senior incumbent. In cases where pay of such 'first junior at par with whom the pay of a senior employee was initially stepped up, gets stepped up in the event of an anomaly arising on promotions of persons junior to him and thus gives rise to a situation where the said senior employee again draws less pay than his 'first junior, the benefit is not admissible in terms of the aforesaid decision. The position has been reviewed and after careful consideration, it has been decided that on the pay of the 'first junior being stepped up with reference to that of his junior, the pay of such senior employee may be stepped up for a second time at par with the 'first junior, provide all the conditions laid down in the general orders, are satisfied with reference to that junior at par with whom the pay of the aforesaid 'first junior was stepped up. The principle to be followed in such cases is explained by way of a suitable illustration as follows: -

The situation is that, the pay of Senior 'A is first stepped up with reference to the pay of his first junior 'B and at a later date, pay of 'B is stepped up with reference to another Junior 'C. Then the pay of 'A may be stepped up for a second time at par with 'B provided all the conditions under the general orders for stepping up of pay of 'A vis-a-vis 'C are fully satisfied.

3. The provisions for stepping up of pay for a second time contained these orders will take effect from the date of issue of this O.A. Past cases may be reviewed in the light of these instructions, but the effect of refixation of pay of the employees concerned under FR 27 and under the normal rules from time to time, will be only notional for periods prior to the date of issue of these orders.

8. We are of the view that so far as the prayer made by the applicant for extension of the benefit of pay as has been granted to his junior, it has already been granted. However, the pay of the second junior namely N. Viswanadham has not yet been decided by the respondent authorities. Hence,

the aspect of grant of benefit of pay on par with N. Viswanadham shall be kept open. Accordingly, the applicant is at liberty to make a representation, by supporting his case with relevant rules and provisions. After receipt of such representation, the respondent authorities shall decide his case as per provisions of rules and law, by giving opportunity of being heard, within a period of four months, if so filed. It is made clear that the applicant is at liberty to approach this Tribunal if he is not satisfied with the decision of the respondent authorities.

9. So far as the recovery of the amount of Rs. 65,591/- is concerned, as the applicant is a Group 'C' employee, recovery is not permissible as per the law laid down by the Hon'ble Supreme Court in *State of Punjab & Ors vs Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012*. Hence, the interim order passed by this Tribunal on 20.11.2013 is made absolute.

10. With the above observation and directions, the O.A. is disposed of accordingly. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(MANJULA DAS)
MEMBER (JUDL.)

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