

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00091/2017

Reserved on: 17.9.2019

Date of order: 08.11.2019

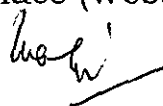
Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Achyut Kumar Bal Neogi,
Ex. Supervisor (Audit),
Son of Late Pradyut Kumar Bal Neogi,
Aged about 68 years,
Had retired from service on superannuation
From the
O/o the Pr. Accountant General (G & SSA),
WB, Treasury Building,
Kolkata - 700 001,
w.e.f. 31.12.2010 and is
residing at Anandapally, Mahamayatala,
Nirmala - 2, P.O. - Garia,
Kolkata - 700 084

Applicant

VERSUS

1. Union of India through the
Secretary, Ministry of Personnel,
Public Grievances and Pension,
Department of Personnel and Training,
Govt. of India,
New Delhi - 110 001.
2. The Comptroller and Auditor General India,
O/o the Comptroller & Auditor General of India,
9, Deendayal Upadhyaya Marg,
New Delhi - 110 124.
3. The Administrative Officer/Staff Entt. - 1,
Office of the
Comptroller & Auditor General of India,
9, Deendayal Upadhyaya Marg,
New Delhi - 110 124.
4. The Principal Accountant General (G & SSA),
West Bengal,
O/o. the Pr. Accountant General (G&SSA),
West Bengal, Treasury Buildings,
2, Government Place (West),



Kolkata – 700 001.

5. The Senior Audit Officer (Administration),
Office of the Pr. Accountant General (G&SSA),
West Bengal,
2, Government Place (West),
Kolkata – 700 001.

.... Respondents

For the Applicant : Mr. K. Sarkar, Counsel

For the Respondents : Mr. S. Roy, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant, being aggrieved with the respondents' rejection of his prayer for pay fixation, has approached the Tribunal in the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985. The relief prayed for, primarily are as under:-

- (i) To set right the pay, namely, of the applicant with respect to his junior Sri Subodh Chandra Mazumdar by antedating applicant's pay w.e.f. 1.5.1974 with consequent quashing of orders dated 5.1.2016, 17.8.2016, 24.8.2016, 4.11.2016 and 26.12.2016 respectively.
- (ii) To recast the entire pay fixation after taking into account the proviso to FR-22 and Rule 10 of CCS (RP) Rules, 1986, at the time of fixation of his pay in higher post as on 20.5.1985 and 1.9.1987 by setting aside that respondents decision dated 26.12.2016.

hch

2. Heard both Ld. Counsel, examined pleadings, documents on record. Written notes of arguments have been submitted by both parties.

3. The primary grounds advanced by the applicant in support of his claim are as follows:-

(a) That, the respondents, vide their communication dated 6.11.2015 (Annexure A-12 to the O.A.) had clarified the provisions under Para 229 of CAG (Manual) of Standing orders (Administrative) Vol. I 2nd Edition, 1970, to state that promotee UDCs had an option to appear for DCE prior to completion of 90 days of regular service in the cadre of UDC.

According to the applicant, the conditions as laid down in Para 299, namely, that a promoted UDC should have qualified in the DCE in four consecutive examinations held immediately after completion of 90 days from the date of his promotion was mandatory and not optional as evident from Annexure A-6 to the O.A.

(b) The applicant claims that Shri Subodh Chandra Mazumdar was promoted as UDC on 4.5.1973 as against the applicant who was directly recruited as UDC with effect from 15.9.1972. Shri Mazumdar, however, was allowed to appear in the relevant DCE on 24.5.1973 i.e. only within 20 days from the date of his promotion. According to the applicant, promoting Shri Mazumdar, who was junior to him as UDC to appear in the DCE within 20 days of his promotion was an illegal act, thereby depriving the applicant invidiously from the benefits. The applicant would further aver that a thorough training is required before the promoted UDCs would be qualified to appear in the said DCE examination, and, accordingly, a time span was mandatorily laid down for this purpose. Relaxation of such time span in the case of his junior was an arbitrary action on the part of the respondent authorities and, accordingly, on account of their misinterpretation of Para 229 of the said

Asst.

Manual, the applicant has been deprived of benefits granted to his juniors. The applicant, accordingly, claims that his date of promotion should be antedated w.e.f. 1.5.1974 at par with that of Shri Subodh Chandra Mazumdar.

(c) The applicant has also advanced the rationale that, according to provisions in Proviso to FR22 and Rule 10 of CCS (RP) Rules, 1986, his entire pay should be recast w.e.f. 20.5.1985, and, from 1.9.1987 respectively. The applicant submits that he was reverted twice and promoted thrice between the period 1.3.1984 and 1.9.1987 on account of restructuring of his office and, accordingly, as granted in the proviso to FR 22, higher pay should be granted to him with incremental benefits on notional basis during reversal period till he was further reappointed to the higher post, so as to protect his loss of financial benefits on account of such unwarranted reversion.

4. The respondents, per contra, have controverted the claim of the applicant on the following grounds:-

(a) That, Para 299 of the CAG's Manual of Standing Order (Admn.) Vol. 1, 2nd Edition, 1970 states that a promoted LDC shall have to pass the DCE within two years of his probation. If an examination is held, however, within 90 days of such promotion, the promoted UDC was quite at liberty to either appear before 90 days of his promotion or within 2 years of his probation as per Para 299 of the Manual.

(b) The respondents have also referred to Para 288 of the CAG Manual that allows any temporary UDC who have rendered at least one year's service (continuous or otherwise) on 1st May or 1st November to appear in the DCT. Hence, Para 288 refers to a temporary or officiating UDC who have rendered at least one year's service as UDC and does not refer to a

bel

LDC promoted to the post of UDC, liable to qualify in the DCT within a schedule time period.

(c) Further, as per para 286 of the Manual, the Office of the AG, Hqrs. is to arrange for training of new recruits in terms of a condensed course for three months and for promoted UDCs in 6 weeks. Completion of training, however, was never contemplated as an eligibility condition for for promotee LDCs to appear in the DCE.

(d) According to the respondents, Shri Subodh Chandra Mazumdar, with whom the applicant seeks a parity in antedating his pay scale, was promoted as UDC on 4.5.1973. He qualified in the said departmental examination on 24.5.1973. The applicant was, however, a direct recruit UDC appointed on 15.9.1972, who qualified in the DCT on 16.11.1973, while Shri Mazumdar, a promotee UDC, qualified in the DCE prior to the applicant. Accordingly, Shri Subodh Chandra Mazumdar was granted his pay scale earlier to the applicant, having qualified in the DCE on an earlier date.

(d) Respondents would further affirm that there is no anomaly in pay fixation of the applicant in terms of FR 22 and FR 26 of service regulations. To substantiate, respondents would state that the applicant was appointed as an UDC on 15.9.1972, qualified in DCE on 16.11.1973, promoted as Sr. Auditor w.e.f. 1.3.1984, reverted as Auditor on 1.5.1985, promoted as Sr. Auditor once again on 20.5.1985, reverted back to Auditor again w.e.f. 1.11.1985 and finally promoted as Sr. Auditor w.e.f. 1.9.1987. The entire process of reversion and further promotions resulted out of a judicial decision resulting in bifurcation of the Office of the Office of the Accountant General (West Bengal).

Initially, the applicant had applied for antedating of his pay with respect to one Debesh Chandra Saha, Ex. Sr. Auditor, junior to him in

Woh

the said cadre. Shri Saha, however, had qualified in the DCE in May, 1973, earlier than the applicant and, accordingly, his claim of antedating of pay with reference to Shri Saha fails.

The respondents have refuted the second contention of the applicant on revised fixation of pay with grant of four advance increments in terms of CAG circular dated 10.2.2011, clarifying that the fourth proviso to FR 22-C, relating to protection of pay previously drawn, states that a Government servant appointed to a post on a second occasion should not draw less pay than what he drew in that post on the previous occasion. Between 1.3.1984 and 1.11.1985, the applicant was promoted as Sr. Auditor twice and was reverted to the post of Auditor twice and that the respondents did not fix his pay in the Sr. Auditor cadre less than what he drew in that cadre on previous occasion. Further, as the period during which the applicant drew such pay on such last and any previous occasions would count for increment in the stage of the time scale equivalent to that pay, and as, the applicant's pay during the period from 1.3.1984 to 1.9.1987 at the officiating post of Sr. Auditor did not contain any stage at which his duties were for more than the incremental period i.e. 12 months, the applicant's claim to additional increments does not arise.

The respondents would also refer to the provisions of FR 26(a) and (b) that warrant that all duties count for increment to that post only in which the Government servant holds a lien i.e. in the substantive post only, which, in the case of the applicant, was that of the Auditor.

5. Hence the two following issues are to be decided upon for adjudication in the instant matter:

hah

(i) Whether the applicant's pay scale deserves to be antedated with reference to the pay fixation of Shri Subodh Chandra Mazumdar w.e.f. 1.5.1974.

(ii) Whether the entire pay fixation of the applicant w.e.f. 20.5.1985 deserves to be recast in terms of the provisions of Rule 10 of RP Rules & proviso to FR 22 c.

6.1.(a) To decide on the issue at (i) above, we would refer to Para 299 of the said Manual, which states as follows:-

PROMOTION OF LOWER DIVISION CLERKS TO UPPER DIVISION

299. A maximum of 20 vacancies in the Upper Division Cadre in Civil Audit and Account Offices as well as in the Railway and Defence Services with five years' service or more, who have displayed conspicuous ability. Promotions are to be made solely on merit. Detailed instructions will be issued by the Comptroller & Auditor General from time to time regarding the manner in which persons are to be selected for promotion.

Every promotion will be on probation. A promoted Lower Division Clerk shall have to pass the Departmental Confirmatory Examination within two years of his probation. This period will ordinarily give him four chances of taking the examination. But if an examination be held within 90 days of the promotion, he may not take it. He may instead take the four consecutive examinations held immediately thereafter, and the period of probation shall be extended to allow of this being done. Unwillingness or inability to take an examination except when it is held within 90 days of his promotion if not explained to the satisfaction of the Accountant General or the Head of the Department concerned, will involve immediate revision and he shall not again be considered for promotion.

From the above, the following is inferred:-

- (1) The matter relates to promotion of Lower Division Clerks to Upper Division Clerks.
- (2) Every promotion will be on probation.
- (3) A promoted Lower Division Clerk shall have to pass the Departmental Confirmatory Examination within two years of his probation. This period will ordinarily give him four chances of taking the examination.
- (4) If an examination be held within 90 days of the promotion, he may not take it. He may instead take the four consecutive examinations held immediately thereafter, and the period of probation shall be extended to allow this.
- (5) If the promotee fails to pass the examination within the stipulated time, he shall be reverted at once. No additional time or chances shall be allowed for passing the Examination.

kel

- (6) Unwillingness or inability to take an examination except when it is held within 90 days of his promotion (if not explained to the satisfaction of the Accountant General or the Head of the Department concerned,) will involve immediate revision and he shall not again be considered for promotion.

Shri S. Majumdar, being a promotee UDC from LDC, had to qualify in the DCE as per provisions of para 299.

- (b) Para 288 of the said Manual is quoted as hereunder:-

" D- DEPARTMENTAL EXAMINATION QUALIFYING FOR CONFIRMATION OF CLERKS IN THE UPPER DIVISION

288. The following regulations are applicable to clerks in the Civil Audit and Accounts Offices. They will also apply mutatis-mutandis to the clerks in the Posts and Telegraphs, Audit and Accounts Offices and the Railway and Defence Service Test Audit Offices -

- (a) The temporary and officiating clerks in the Upper Division, who have rendered at least one year's service, continuous or otherwise, on 1st May and 1st November, are eligible to appear in the Departmental Examination. They will be allowed four chances in all to pass the Examination. Each successive examination held after completion of one year's service in the Upper Division Cadre will count towards this number. If he fails to appear at any of these consecutive examinations, under whatever circumstances it may be, he is to be considered to have lost one chance and that chance will count against the number of four chances admissible. Those who fail to pass the examination within the chances allowed may be offered appointment in the Lower Division, if there are vacancies in that cadre and if the work and conduct of individuals during their service in the Upper Division Cadre have been satisfactory. Otherwise they will be discharged.

NOTE - Accountants General and other Heads of Departments, may at their discretion, condone deficiencies in the prescribed service of one year upto a limit not exceeding two months.

- (b) Such of the temporary and officiating clerks (either recruited direct or promoted from the Lower Division) as have passed Part I of the SAS Examination or the Divisional Test Examination are not required to take this examination. Their confirmation in the Upper Division may be done in the usual manner.
- (c) Subject to other prescribed conditions being fulfilled, the temporary and officiating Upper Division Clerks should be considered eligible for the issue of certificates of quasi-permanency in their favour under the Central Civil Services (Temporary Service) Rules, 1965, only after they qualify themselves for confirmation under the conditions prescribed in clauses (a) and (b) of this paragraph and paragraph 287."

The following is deciphered from the above:-

- (1) This para refers to the Department examination qualifying for confirmation of clerks in the Upper Division.
- (2) The temporary and officiating clerks in the Upper Division, who have rendered at least one year's service, continuous or

hch

otherwise, on 1st May and 1st November, are eligible to appear in the Departmental Examination.

The applicant had to appear in the DCT as per para 288.

Hence, while Para 299 applies to promotion of lower division clerks to upper division clerks, Para 288 refers to such Department examination which would enable Upper Division clerks to qualify for confirmation.

The applicant is a direct recruit and not a promotee UDC. Hence, he did not come within the purview of Para 299 of the Manual.

(c) Upon an analysis of the above, it is clearly derived that the LDCs promoted to the post of UDCs were guided by Para 299 and they had an option to qualify in the DCE either within two years (in four chances) of their probation, or, if they so wished, prior to 90 days of such promotion.

There was no compulsion to appear within 90 days but there was an available option to the promotee to so appear in the DCE.

In para 299, there is no stipulation that the incumbents had to undergo a detailed course of training prior to appearing in the DCE as claimed by the applicant. Hence, the promoted LDCs had a clear option to appear in the DCE according to their competence. Shri Subodh Chandra Mazumdar, admittedly promoted as UDC after the applicant, had appeared in the qualifying examination on 4.5.1973, and, having qualified, started accessing his higher pay scale thereafter.

Judicial ratio in the context of stepping up of pay has firmly held in **Union of India & anr. v. R. Swaminathan (1997) 7 SCC 690**, that a junior's ad hoc promotion within the circle to which he belonged, while the senior who belonged to a different circle was not offered any adhoc promotion, did not entitle the senior to stepping up of pay with reference

hch

to junior's pay since pay did not depend on seniority alone nor is mere seniority a criteria for stepping up of pay.

In **Calcutta Municipal Corporation v. Sujit Baran Mukherjee** 1997 (2) LBESR 398 (SC), the Hon'ble Apex Court ruled that, where a junior person, on transfer to a different place, is being paid extra-payment by way of special pay or overtime pay for discharge of the duty outside his normal duty due to special circumstances, the statutory principle of stepping up of the pay so as to be on par with the junior would not be attracted. Accordingly, as the admitted junior promote LDC, Shri Majumdar qualified earlier in DCE, as a special circumstance, we are of the considered view that the applicant's claim fails to succeed in antedating his pay w.e.f. 1.5.1974.

6.2. Regarding the second issue, namely, on recasting of the applicant's pay fixation on the basis of FR-22, FR-26 and Rule 10 of RP Rules, each of the above provisions are examined in detail as below:-

- (a) "F.R. 22 (1) - 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 fulfillment 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 one hundred only], whichever is more.

[Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis or on direct recruitment basis], the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an adhoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment.

*Provided that where a Government servant is, immediately before his promotion or appointment on regular basis 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

h

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 held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or rupees one hundred, whichever is more.

(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis.

Provided that where the minimum pay of the time - scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay.

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post.

On appointment on regular basis to such a new post, other than to an ex cadre post on deputation, the Government servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post.

(3) When appointment to the new post is made on his own request under sub-rule (a) of Rule 15 of the said rules, and the maximum pay in the time-scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay.

(b) If the conditions prescribed in Clause (a) are not fulfilled, he shall draw as initial pay on the minimum of the time scale.

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, or
 - (ii) A permanent or temporary post on the same time-scale, or
 - (iii) A permanent 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 subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules to a tenure post on a time-scale identical with that of another tenure post which he has previously held on regular basis;

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 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. If however, the pay last drawn by the Government servant in a temporary post had been inflated by the grant of premature increments, the pay which he would have drawn but for the grant of these increments shall unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he law drew in the temporary post which he had held on a regular basis. The service rendered in a post referred to in proviso (1)(iii) shall, on reversion to the parent cadre

by

count towards initial fixation of pay, to the extent and subject to the conditions indicated below-

- (a) The Government servant should have been approved for appointment to the particular grade or post in which the previous service is to be counted;
- (b) All his seniors, except those regarded as unfit for such appointment, were serving in posts carrying the scale of pay in which benefit is to be allowed or in higher posts, whether in the Department itself or elsewhere and at least on junior was holding a post in that Department carrying the scale of pay in which the benefit is to be allowed; and
- (c) The service will count from the date his junior is promoted on a regular basis and the benefit will be limited to the period the Government servant would have held the post in his parent cadre had he not been appointed to the ex cadre post.

(II) The President may specify posts outside the ordinary line of service the holder of which may, notwithstanding the provisions of this rule and subject to such conditions, as the President may prescribe, be given officiating promotion in the cadre of the service which the authority competent to order promotion may decide, and may thereupon be granted the same pay whether with or without any special pay attached to such posts as they would have received if still in the ordinary line.

(III) For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith.

(IV) Notwithstanding anything contained in this rule, where a Government servant holding an ex-cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex-cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment."

(b) The applicant would particularly rely on Prov. to FR 22 that states as follows:-

"On re-appointment to the same post held earlier/to the post with same or identical time scale of the post held earlier - The pay will be fixed under FR 22(I)(a)(1) or FR 22(I)(a)(2), as the case may be, subject to the condition that the pay so fixed shall not be less than the pay, he drew on the last occasion, and he shall count the period he drew that pay on a regular basis on such last and previous occasions for increment in the stage of the time-scale equivalent to that pay."

(c) as well as on Swamy's - CCS (RP) Rules, 2008, para 10 which is reproduced below:-

handwritten signature

"10. **Fixation of pay on re-appointment after the 1st day of January, 1986 to a post held prior to that date-** A Government servant who had officiated in a post prior to the 1st day of January, 1986 but was not holding that post on that date and who on subsequent appointment to that post draws pay in the revised scale of pay shall be allowed the benefit of the proviso to Fundamental Rule 22 or of the fourth proviso to Fundamental Rule - 22-C, as the case may be, to the extent it would have been admissible had he been holding that post on the 1st day of January, 1986, and had elected the revised scale of pay on and from that date."

(d) The provisions of FR 26 as cited by respondents are also noted as hereunder:-

"FR. 26. The following provisions prescribe the conditions on which service counts for increments in a time-scale:-

(a) All duty in a post on a time-scale counts for increments in that time-scale;

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale, shall be added to the normal date of increment.

(b)(i) Service in another post, other than a post carrying less pay referred to in Clause (a) of Rule 15, whether in a substantive or officiating capacity, service on deputation out of India and leave except extraordinary leave taken otherwise than on medical certificate shall count for increments in the time-scale applicable to the post on which the Government servant holds a lien, as well as in the time-scale applicable to the post or posts, if any, on which he would hold a lien had his lien not been suspended.

(ii) All leave except extraordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time-scale applicable to a post in which a Government servant was officiating at the time he proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of India:

Provided that the President may, in any case, in which he is satisfied that the extraordinary leave was taken for any cause beyond the Government servant's control or for prosecuting higher scientific and technical studies, direct that extraordinary leave shall be counted for increments under Clause (i) or (ii).

(c)(i) If a Government servant, while officiating in a post of holding a temporary post on a time-scale of pay, is appointed to officiate in a higher post or to hold a higher temporary post, his officiating or temporary service in the higher post shall, if he is reappointed to the lower post, or is appointed or reappointed to a post on the same time-scale of pay, count for increments in the time-scale applicable to such lower post. The period of officiating service in the higher post which counts for increment in the lower post is, however, restricted to the period during which the Government servant would have officiated in the lower post but for his appointment to the higher post. This clause applies also to a Government servant who is not actually officiating in the lower post at the time of his appointment to the higher post, but who would have so officiated in such lower post or in a post on the same time scale of pay had he not been appointed to the higher post.

(ii) If a Government servant on reversion from an ex-cadre post to the parent cadre is appointed to a post on a scale lower than that of the ex-cadre post but not on the same time-scale as the post held at the time of

6/1

his transfer to the ex cadre post, the service rendered on the higher scale in the ex cadre post shall count for increments in the time-scale applicable to the cadre post, subject the same conditions as are laid down for cases falling under proviso (1)(iii) to Rule 22."

6.3. (a) To substantiate his claim for recasting his pay fixation, the applicant has furnished in page 25 of his rejoinder a statement that he avers to be correct between 1.3.1984 to 1.9.1987. The said pay fixation statement is reproduced as below:-

Date	Event	Lower post	Higher post	Remarks
1.3.1984	Promotion to higher post	(Rs. 515/-)	Rs. 530/-	FR 22(1)(a)(1)
1.5.1984	Increment	(Rs. 530/-)	Rs. 560/-	Re-fixed under FR 22(1)(a)(1) on the date of his next increment
1.5.1985	Increment in both higher and lower post	Rs. 545	(Rs. 580/-)	
20.5.1985	Promotion	(Rs. 545)	Normally Rs. 580/-	Pay protection allowed
01.11.1985	Reversion	Rs. 545/-	(Rs. 580/-)	
01.01.1986	Pay Revised	Rs. 1600/-	(Rs. 1700/-)	4th CPC
01.05.1986	Increment	Rs. 1640/-	(Rs. 1750/-)	
01.05.1987	Increment	Rs. 1680/-	(Rs. 1800/-)	
01.09.1987	Promotion	(Rs. 1680/-)	Normally Rs. 1800/-	Pay protection allowed

(b) To examine the veracity of the same, on otherwise, we traverse the career graph of the applicant, which is as follows:-

(i) The applicant was directly appointed as a UDC/Auditor on 15.9.1972. He qualified in the departmental confirmatory test on 16.11.1973.

(ii) As recommended by the DPC, the applicant was promoted to the post of Sr. Auditor on 1.3.1984, whereupon, he functioned as Sr. Auditor for a period of nearly 14 months. On 1.5.1985, on account of restructuring, he was reverted to the post of UDC/Auditor.

(iv) He was once again posted as Sr. Auditor on 20.5.1985 consequent to the restructuring process and, after, 19 days of

hsh

officiating in such post. He was once again reverted to the post of UDC/Auditor on 1.11.1985 and he continued to function as Auditor for the next 22 months until he was once again posted as Sr. Auditor on 1.9.1987. The applicant retired ultimately on 31.1.2010.

It is not a disputed fact that the applicant was initially promoted to the post of Sr. Auditor on 1.3.1984 on recommendations of the DPC. In reply to his RTI queries received from the respondent authorities (page 51 of the O.A.) the respondents have also described his status as deemed promoted to Sr. Auditor w.e.f. 1.3.1984. This leads us to conclude that subsequent process of reversal and promotion upon restructuring notwithstanding the applicant's substantive date of promotion as Sr. Auditor was 1.3.1984. Neither parties have brought before us any record to establish that any further DPC were held to promote the applicant to Sr. Auditor on 20.5.1985 and 1.9.1987 respectively.

(v) There are no records whatsoever to substantiate that the applicant was ever on lien in the post of Auditor as because once again he has been substantially promoted as Sr. Auditor on recommendation of DPC, the applicant has the claim to substantive appointment as Sr. Auditor w.e.f. 1.3.1984.

(vi) The applicant, in support of his claim, has advanced the rationale with the support of FR 22(1)(a)(i), fourth proviso to FR 22(c), as well as Govt. of India instructions at Note 10 of RP Rules 2008. Govt. of India decisions in the context of stepping up of pay to remove anomalies, as per Swamy CCS

wh

(RP) Rules, 2008, particularly, Note 10 thereof states as follows:-

"10. Fixation of pay on re-appointment after the 1st day of January, 1986 to a post held prior to that date - A Government servant who had officiated in a post prior to the 1st day of January, 1986 but was not holding that post on that date and who on subsequent appointment to that post draws pay in the revised scale of pay shall be allowed the benefit of the proviso to Fundamental Rule 22 or of the fourth proviso to Fundamental Rule 22-C, as the case may be, to the extent it would have been admissible had he been holding that post on the 1st day of January, 1986, and had elected the revised scale of pay on and from that date."

Following the same, we refer to the 4th proviso of FR 22 C which says that pay in the higher post is fixed at the stage next above the pay notionally arrived at by increment at the stage at which such pay has accrued.

In the case of the applicant, the applicant was functioning as Sr. Auditor on 31.10.1985. He was reverted to the post of Auditor as on 1.1.1986 and again appointed in the post of Sr. Auditor on 1.1.1986 as on 1.1.1986 the applicant was officiating in the post of Sr. Auditor prior to 1.1.1986. He, however, could not hold the post of Sr. Auditor on that date as because he was reverted to the post of Auditor 1.11.1985. The applicant was subsequently again appointed to the post of Sr. Auditor w.e.f. 1.9.1987. Accordingly, as per the Govt. of India instructions on stepping up, the benefit of fourth proviso of FR 22 would be squarely applicable to the applicant had he been holding the post of Sr. Auditor as on 1.1.1986 and had elected to come on the revised scale of pay on and from the said date.

The fourth proviso to FR 22(c) that is the applicant's pay in the higher post is to 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 at which such pay has accrued holds goods in the case of the applicant.

luc

The respondents' arguments that the applicant has been reverted twice and has received two promotions as averred in their written notes of arguments is not correct. The applicant was not holding the post of Auditor substantively. Consequently the provisions of FR 26 which refers to arriving at date of next increment in the time scale taking into account the normal date of increment does not apply in the case of the applicant.

Accordingly, we are of the considered view that the applicant's claim to recasting of his pay fixation after taking into account increments while fixing his revised pay during his subsequent appointments to the post of Sr. Auditor is substantiated.

Accordingly, we hold that the applicant's higher pay is to be fixed with incremental benefits equivalent to the higher post on notional basis during his reversal period till he was further reappointed to the higher post, so as to protect his loss of financial benefits on account of such unwarranted reversion.

7. The instant adjudication was taken up to decide on the two following issues:-
- (i) Whether the applicant's pay scale deserves to be antedated with reference to the pay fixation of Shri Subodh Chandra Mazumdar w.e.f. 1.5.1974.

The issue is answered in the negative as the provisions of appearing in the DCE within 90 days was available as an option to LDCs promoted to UDCs and Shri Mazumdar had availed of the same.

- (ii) Whether the entire pay fixation of the applicant w.e.f. 20.5.1985 deserves to be recast in terms of the provisions of Rule 10 of RP Rules & proviso to FR 22 c.

The answer to the second issue as to whether the entire pay fixation of the applicant w.e.f. 20.5.1985 deserves to be recast in terms of

60h

provisions of FR 22 (10) of RP Rules and fourth proviso to FR 22(c), however, is answered in the affirmative in terms of the above mentioned discussions.

8. The O.A. is partly allowed to the extent of the above findings. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP

