

(2002) 08 GAU CK 0002
In the Gauhati High Court
Case No : C.B. No. 259 of 1992

Nepal Chandra Das and Another

APPELLANT

Vs

Tripura Gramin Bank and Others

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Central Civil Services (Revised Pay) Rules, 1997 — Rule 22(1)

Citation : (2003) 1 GLT 254 : (2003) 2 LLJ 543

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : S. Bhattacharjee and S.M. Chakraborty, for the Appellant; A.M. Lodh, K. Bhattacharjee and M. Dutta, for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—The above three Writ Petitions were heard analogously and disposed of by this common judgment. The Petitioners before us have prayed for stepping up of their pay scales to that of their juniors.

2. The Petitioners are all employees of the Tripura Gramin Bank, a Rural Bank established under the Regional Rural Banks Act, 1976. Pursuant to the orders of the Hon'ble Apex Court, the Government of India referred the dispute regarding pay scales of the employees of the Regional Rural Banks to the National Industrial Tribunal under the Chairmanship of Hon'ble Mr. Justice Obul Reddy, Retired Chief Justice, and the Tribunal gave an award on April 30, 1990 and the same was accepted by the Government of India. Thereafter, an Equation Committee was constituted by the Government of India for the purpose of determination of the equation of posts in Rural Banks - vis-a-vis - Sponsored Bank for fixation of pay and allowances.

3. The said Equation Committee submitted a report which was also accepted. The grievance of the Petitioners in this case is that their juniors were getting higher pay and their prayer for stepping up has been rejected by the concerned Bank,

hence the application under Article 226 of the Constitution has been made for stepping up.

4. The Respondents have filed their affidavit-in-opposition wherein they have raised certain pleas regarding maintainability of the Writ Petitions on the ground that as the award of the Tribunal was given at the direction of the Supreme Court no writ lies in the High Court, or that the Writ Petition is not maintainable for non-impleading of the sponsored Bank. However, during the course of arguments the above plea was not pressed seriously.

5. Before proceeding further, we may at this stage, detail the facts of the individual cases, as admitted, which are as follows:

Civil Rule No. 259 of 1992

6. The Petitioner Nepal Chandra Das was appointed as Field Supervisor (direct Recruit) on December 29, 1989 and his total salary as on August 31, 1997 was Rs. 1690/-. As per report of the Equation Committee, the basic pay of the Petitioner was fixed at Rs. 1175/- on the scale of Rs. 1175-2675/- + D.A. Rs. 1081/-. The pay of Rs. 2256 as on September 1, 1987 was in parity with the Officers belonging to O.J.M. -1 of the Sponsored Bank i.e. United Bank of India. Thereafter, as per the revision of pay scales of the United Bank of India, the pay of the Petitioner was revised to the pay scale of Rs. 2100/- 4020/-. The Respondent Shri Sishu Ranjan Das was appointed as Senior Clerk-Cum-Cashier on February 15, 1984 and he was awarded fitment on the basis of pay and D.A. and subsequently he was promoted to the post of Field Supervisor on January 1, 1989 and the fitment after the promotion was different for the rules of the Sponsored Bank and accordingly the pay of Sishu Ranjan was fixed at Rs. 2580/- as on January 1, 1989. Thus, Sishu Ranjan Das, though Junior to the Petitioner Nepal Chandra Das was drawing two increments more than the Petitioner Nepal Chandra Das. The Petitioner has therefore prayed for stepping up of his pay equal to Sishu Ranjan Das.

Civil Rule No. 260 of 1992

7. The Petitioner Subhas Chandra Singha Samanta was appointed as Junior Clerk-Cum-Cashier on October 22, 1979 and he was promoted as Field Supervisor on January 1, 1983 and his pay was initially fixed on September 1, 1987 and thereafter on January 1, 1989 at Rs. 2340/-. The Respondent Swapan Adhikari was appointed as Junior Clerk-cum-Cashier on September 19, 1980 and he was promoted as Senior Clerk-cum-Cashier on July 15, 1984 whereas the Petitioner Subhash Chandra Singha Samanta was promoted as Field Supervisor w.e.f. January , 1983. The Respondent was promoted as Field Supervisor on January 1, 1989. As per the fitment made in the rules, of the sponsored Bank, the pay scale of Respondents Swapan Adhikari was fixed at Rs. 2580/- on January 1, 1989. The Petitioner has therefore prayed that his pay be stepped up to that of Swapan Adhikari as on January 1, 1989.

Civil Rule No. 261 of 1992

8. The Petitioner Sri Bibhas Dhar was appointed as Field Supervisor (direct recruit) on November 19, 1980 and from the Fitment Formula his pay was fixed at Rs. 2340/- on January 1, 1983. The Petitioner has also prayed for stepping up of his pay scale to that of the Respondent Sishu Ranjan Das as claimed by the Petitioner in Civil Rule No. 259 of 1992.

9. In these Writ Petitions, the Petitioners have prayed for providing them higher pay than the pay of their juniors and for modification of the instructions issued by the Government of India on February 22, 1991. (annexure-4). The Respondents have claimed that the circular issued by the Central Government was on the basis of the award of the National Industrial Tribunal and on the basis of the recommendation of the Equation Committee and it is applicable to all the employees of the Rural Banks all over the country and as there is no infirmity or irregularity regarding the fixation of pay in Government of India Circulars, the Petitioners are not entitled to any relief.

10. In view of the state of affairs as quoted: above, this Court is of the view that the matters in hand are not to be considered for the purpose of fixation of pay of the Petitioners as per the recommendation of the Equation Committee and the Central Government Circular on the matter. The grievance of the Petitioners is more in the nature of the stepping up of their pay scales with that of their juniors which has got nothing to do with the re-fixation of pay under the revision of pay scales or fitment formula. The Principles of stepping up of pay is well known and such stepping up is permissible under FR 22(1)(a)(i) in the matter of Revised Scale of pay. The CCS (RP) Rules, 1997 provides:

"In cases where a Government servant promoted to a higher post before the 1st day of January, 1996, draws less pay in the revised scale than his Junior who is promoted to the higher post on or after the 1st day of January, 1996, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions namely:

(a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.

(b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.

(c) the senior Government servants at the time of promotion have been drawing equal or more pay than the junior.

(d) the anomaly should be directly as a result of the application of the provision of Fundamental Rule 22 or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in lower post, the junior officer was

drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this note need not be invoked to step up the pay of the Senior Officer.

2. The Order relating to refixation of the pay of the Senior Officer in accordance with the above provisions should be issued under FR 27 and the Senior Officer will be entitled to the next increment on the completion of his required qualifying service with effect from the date of refixation of pay."

11. In the case of Union of India (UOI) and Others Vs. P. Jagdish and Others, the Apex Court held:

"So far as the second question is concerned it depends upon the applicability of the principle of stepping up. Admittedly, the Respondents had been promoted earlier to the category of Head Clerks and some of their Juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs. 35/- per month on being promoted to the post of Head Clerks later than the Respondents got their pay fixed at a higher level than the Respondents. Under the provisions of Fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier 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 the higher post the principle of stepping up of the pay is applied. In such cases the pay of the Senior Officer in the higher post is: required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or the appointment of the junior officer. On refixation of the pay of the Senior Officer by applying the principle of stepping up the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of the refixation of pay. The principle becomes applicable when the junior officer and the Senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the Junior officer on being promoted later than the Senior Officer gets a higher pay. This being the principle of stepping up contained in the fundamental rights and admittedly the Respondents being seniors to several other Senior Clerks and the respondents having been promoted earlier than many of their Juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the Respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and the pay was fixed at a higher slab than that of the Respondents. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like Respondents would be stepped up to a figure equal to the pay as fixed for their Junior officer in the Higher post of Head Clerk. In fact the Tribunal by the impugned order has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications. This

principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reason that the Respondents had not worked in the post to which 35% special pay was attached in the lower cadre. But by reason of promotion the Promotee-juniors who worked on the said posts in fact, performed the hard duties and earned special pay. Directions to pay arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though direction to step up the pay on notional basis is consistent with Article 39(d) of the Constitution, it would be applicable only prospectively from the date of the promotion and the fixation of the scale stepping up of the scale of pay would be prospective to calculate future increments on the scale of pay in promotional post only prospectively. The appeal is dismissed but in the circumstances there would be no order as to costs."

12. Now, coming to the case of the Petitioner Bibhas Dhar and Nepal Das, we find that the two Petitioners were appointed as Field Supervisors as a result of direct recruitment in the year 1983 and 1980 respectively, whereas, the Respondent Sishu Ranjan Das was appointed as Senior Clerk in the year 1984. The post of Senior Clerk is below the post of Field Supervise and admittedly the Respondent Sishu Ranjan Das had joined the Bank after the two Petitioners. The Respondents have tried to submit that the two Petitioners were direct recruits to the post of Field Supervisor, whereas the Respondent Sishu Ranjan Das was promoted to the post of Field Supervisor on December 22, 1983 and hence this being the case of "Promotee" and "Direct Recruit" they cannot be treated equally. I find no force in the above submission as because we find that the two Writ Petitioners who had joined the Bank in year 1980 and 1983 itself in a higher post and were getting higher salary than the Respondent Sishu Ranjan Das, who joined the bank after them and that too in a lower post and promoted subsequently to the post in which the two Petitioners were appointed. This is not a case where the two Petitioners were appointed to the post of direct recruitment and the respondent who was serving the bank long before the Petitioners joined the Bank in a Junior post, was promoted and, because of the length of service his pay was higher than the Respondents. The total period of service of the two Petitioners was more than that of the Respondent Sishu Ranjan Das but still their pay was fixed at a lower slab than that of the Respondent Sishu Ranjan Das.

13. So far the Petitioner Subhas Ch. Singha Samanta is concerned, he had joined the bank as Jr. Clerk on September 22, 1979 prior to Swapn Adhikari who was appointed in the similar post on September 19, 1980 i.e. about one year after the Petitioners were appointed in the Bank the Petitioner was promoted as Field Supervisor on January 1, 1983, whereas Swapn Adhikari was promoted as Senior Clerk-cum-Cashier on July 15, 1984 and he was promoted as Field Supervisor on January 1, 1989. However, the pay scale of Swapn Adhikari was fixed at Rs. 2560/- on January 1, 1989 but the Petitioner was to get Rs. 2340/- as

on same date. Swapn Adhikari was junior to the Petitioner in the Grade of Junior Clerk-Cum- Cashier and also in the Grade of Field Supervisor, but still his pay was fixed at a higher slab due to the formula adopted by the bank as per NABARD guidelines.

14. In view of what has been stated above and following the Fundamental Rule and the law laid down by the Apex Court, as stated above, it is held that the pay of the Petitioners Sri Nepal Chandra Das and Sri Bibhas Dhar and three others are required to be stepped up to that of Sishu Ranjan Das as on January 1, 1989 and the pay of Sri Subhas Chandra Singha Samanta is to be stepped up to that of Swapn Adhikari as on January 1, 1989.

15. We direct the Respondents Tripura Gramin Bank to step up the pay of the Petitioners as stated above and this shall be done within a period of three months from the date of this order.

16. The Writ Petitions stand allowed but there would be no order as to costs.