**(1975) 07 AHC CK 0001**

**In the Allahabad High Court**

**Case No :** Special Appeal No. 17 of 1974

P.C. Lal and Others — APPELLANT

Vs

The Chief Justice, High Court and Others — RESPONDENT

**Date of Decision :** 14-07-1975

**Acts Referred:**

Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226

**Citation :** (1975) AWC 613

**Hon'ble Judges :** R.L. Gulati, J;C.S.P. Singh, J

**Bench :** Division Bench

**Final Decision :** Allowed

## Judgement

R.L. Gulati, J.—This special appeal is directed against the judgment of a learned Single Judge dismissing the Appellant''s writ petition claiming higher pay in terms of the Government Order No. G-1-1139 (i)/X-142-1965 dated 1st August, 1969.

2. The Appellants are working as Lower Division Assistants In this Court in the pay scale of Rs. 120-250/. One M.N. Rai Was a routine grade clerk in the High Court in the scale of Rs. 100-180/-. On 2nd November, 1970 Rai was also promoted to the grade of lower division Assistants, the grade in which the Appellants had already been confirmed. On his promotion his salary was fixed at Rs. 190/- per month under Fundamental Rule 22-B. This salary turned out to be higher than the salary of the Appellants who were admittedly senior to Rai in the cadre of lower division assistants. This created an anomaly, viz. that Rai being junior started drawing salary higher than the Appellants who were senior. Most of the Appellants made representation to Hon''ble the Chief Justice demanding that their salary be increased to the salary given to Rai in accordance with Government Order No. G-1-1139 (i)/X-142-1965 dated 1st August, 1969 which says that where the salary of a junior on promotion is fixed at a figure higher than the salary drawn by the senior members of the cadre, the salary of the

senior members should also be increased to bring it at par with the salary of the junior. The Hon''ble the Chief Justice called for a report from the Additional Registrar of the High Court who suggested the following three alternatives:

(1) We may increase the salary of the affected persons in accordance with the precedence of Sarvasri I.P. Goel D.N. Roy and Amrit Lal Yadav and then refer the matter to the Accountant General asking for his clearance. The increase in the salary and also the arrears may, however, be drawn after the clearance has been received by the Accountant General so that the painful process of recovery if necessitated may be avoided.

(2) We may refer the matter to the Government in the Finance Department for their advice and clarification of the G.O. which is vague on several points and thereafter fix the salary of the concerned assistants.

(3) We may increase the salary of the affected persons as proposed in the first alternative above and start paying them at the increased rate and endorse a copy of the order to the Accountant General as usual, but refrain from drawing the arrears till clearance has been given by the Accountant General. Of course, the assistants will be told clearly that they will be liable to refund any excess in case it is found that the fixation was not correct.

The Registrar passed on this report to the Hon''ble the Chief justice recommending that the third alternative suggested by the Additional Registrar be accepted. The Chief Justice accepted the recommendation of the Registrar and the salary of the Appellants was fixed at Rs. 190/- with effect from 2nd November, 1970. The Accountant General, however, did not agree. According to him the Government Order dated 1st August 1969 was not applicable to the case of the Appellants and, as such they were not entitled to any increase in their, salaries. The Appellants made another representation and the matter was reconsidered by the Acting Chief Justice who by his order dated 1st September 1972 held that the Petitioners were not entitled to the benefit of Government Order of 1st August, 1969 and there was no question of the refixation of their salaries. The Appellants then made another representation which was rejected by the Chief Justice by his order dated 10th January, 1973. Thereupon the Appellants approached this Court under Article 226 of the Constitution. Brother H.N. Seth has rejected the writ petition. Hence this special appeal.

3. Chapter IV of the Fundamental Rules deals with the pay of the Government servants. Rule 19 says that the pay of a Government servant shall not exceed the pay sanctioned by a competent authority for the post held by him. Rule 22 deals with the fixation of initial substantive pay of a Government servant on his substantive appointment to a post on a time scale of pay. Rule 22-B was added On 8th November 1966 and reads as under:

Notwithstanding anything contained in these rules where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed either in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attached 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 pay arrived at by notionally increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued.

There are three provisions attached to this rule with which we are not concerned. In effect, Rule 22-B provides that on the promotion of a Government servant to a higher post, his initial pay in the higher grade should be fixed by first giving him a notional increment in the lower grade and thereafter by giving him an increment in the higher grade. Thus he gets a double jump. The Government noticed that as a result of this rule some times anomalies arose inasmuch as a junior promoted after coming into force of Rule 22-B get his initial salary fixed at a figure higher than the salary of his seniors already working in the higher grade. To remove this anomaly the Government issued two Government Orders, one dated 1st August, 1969 and the another dated 27th May 1970. Under the first G.O. the salaries of the seniors are to be enhanced at the same level at which the salary of the junior is fixed on promotion and under the latter G.O. the fixation is to be regularised under Fundamental Rule 27. We are concerned with the interpretation of the first G.O. The Government Order is in Hindi and we have been supplied with a translation, which the learned Counsel for the parties agree is a correct translation of the Government Order. This is how the Government Order starts:

Under Fundamental Rules 22-B published with Notification No. G-1-1784/ X-142-65 dated. November 8, 1966 initial pay of a Government servant on promotion is fixed just at the stage next higher to the one which comes after presumptive increment to employee in the pay scale of the lower post. The question of removing the anomalies (unevenness) arising out of fixation of Government servants promoted or appointed to higher posts after the framing of this rule, had been under Government''s consideration, for sometime and after due deliberate actions the Governor is now pleased to make the following order:

(ka)....

(kha) If on the date of publication of Fundamental Rule 22-B i.e. November 8, 1966 or thereafter the pay of a Government Servant promoted or appointed to a higher post exceeds the pay drawn by a person, who might have hem appointed to another similar post in the same cadre before him and is junior to him then the pay of the Senior Officers on the higher post should also be raised to that amount which is being drawn by the Junior employee on that post. Thus increase shall come into effect from the date of promotion of the Junior employee subject to the following conditions:

(1) Both the Junior and Senior employees should be in the same scale and the post to which they have been promoted or appointed should be similar and they too should also be in one and the same cadre.

 

(2) The scales of those lower and higher posts in which they are entitled to draw pay, should also be similar.

(3) The anomaly (unevenness) must have arisen as a result of the application of the Fundamental Rule 22-B and not for any other reason. For instance if the Junior employee has, on account of getting advance increment on his lower post received more pay from time to time than an employee who is senior to him, then the order given in this office memo should not be used in raising the pay of the senior employee. In such cases, orders for the re-fixation of senior employee shall be issued under Fundamental Rule 27 of Part II, Volume II of the Financial Hand Book. The next increment shall be given to senior employee only on his completing one year''s service from the date of re-fixation of his pay. The rest of the G.O. is not material.

4. Now it is not disputed that the conditions Nos. 1 and 2 are satisfied. The dispute relates to the condition No. 3. It is again not disputed that the disparity in the pay of Rai and of the Appellants arose when the former was promoted to the grade of lower division assistant. He was previously a routine grade clerk, It is also not disputed that the Appellants are all senior to Rai in the cadre of lower division assistant. What is urged on be-half of the Respondents and what appealed to the learned Single Judge is that Rai, before he joined the High Court ministerial staff was working in the office of the Police Headquarters and was drawing a higher salary in the scale of Rs. 60-100/-. His initial pay on his appointment to the ministerial staff of the High Court was fixed at a higher figure because his previous service and pay were also taken into consideration. It is said that because of this initial discrepency the pay of Mr. Rai came to be fixed at a figure higher than the pay drawn by the Appellants when he was promoted to the cadre of lower division assistant. Therefore, the grant of a higher salary to him was not solely due to the operation of Fundamental Rule 22-B. This approach in our opinion, is not correct. When Rai was appointed routine grade Clerk in the High Court, the Appellants were already working in the cadre of lower division assistants. Their pay scales were different. Therefore, even if Rai got a higher start in the scale of routine grade clerks it did not create any anomaly, as the Appellants were in a different scale. The anomaly arose when Rai was also promoted to the cadre of lower division Assistants and his salary turned out to be higher than the salary of the Appellants who were senior to him. Rai and the Appellants were now in the same cadre and in the same grade but Rai being a junior was drawing higher salary and it is this type of anomaly which the Government wanted to set right. It may be noticed that the disparity, if any, in the salaries of Rai and the Appellants, which existed before Rai was promoted to the cadre of lower division assistant could not be set right under the Government Order in question because of the conditions Nos. 1 and 2 which say that the anomaly must arise when the junior and senior are in the same cadre and grade. Even, therefore, if Rai was drawing higher salary when he was routine grade clerk, the same could not give rise to any cause of action to the Appellants. But the moment he was absorbed in the higher grade to which the

Appellants belong, the disparity in their salary could no longer be tolerated. We are of the opinion that the immediate cause for the anomaly is the promotion of Rai to the post of lower division assistant and the fixation of his initial salary in terms of Fundamental Rule 22-B. His initial salary while he was routine grade clerk is absolutely irrelevant. The latter part of condition No. 3 is also not applicable because Rai has not been given a higher salary because of any advance increment. He has been given higher salary because of the operation of Fundamental Rule 22-B. For all these reasons we are unable to agree with the learned Single Judge and we hold that the Appellants were entitled to the re-fixation of their salary equal to the salary of Rai in accordance with G.O. dated 1st August, 1969.

5. The appeal is allowed. The order of the learned Single Judge dated 18th December 1973 is set aside. The order of the Hon''ble the Acting Chief Justice dated 1st September 1972 and the order of the Hon''ble the Chief Justice dated 10th January 1973 are quashed. The Respondents are directed to refix the salary of the Appellants in accordance with G.O. dated 1st August 1969 at a figure equal to the salary of Mr. M.N. Rai. They are also directed to pay to the Appellants the salary at the enhanced rate as also the arrears to which they may be entitled.

6. Having regard to the circumstances of the case, however, we make no order as to the costs.