

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO. 1220/2002

New Delhi, this the 7th day of May, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

A.K. Pandey
S/o Late L.N. Pandey
R/o 48/36, HIG Avas Vikas Colony,
Yojana-2, Jhushi,
Allahabad.

Address for the purpose of filing
present Original Application.

A.K. Pandey,
X-257, Sarojini Nagar,
New Delhi-110 023.

...Applicant.

(By Advocate: Shri N. Ranganatha Swamy)

Versus

1. Union of India
through: the Secretary,
Department of Company Affairs,
5th Floor, Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi-110001.

2. The Secretary,
Monopolies & Restrictive Trade
Practice Commission, MRTD House,
Shahjahan Road, New Delhi-110011.

...Respondents.

By Advocate: Shri Rajeev Bansal)

ORDER (ORAL)

By Shri Govindan S. Tampi, Member (A)

Reliefs sought in this OA are as below:-

In view of the facts mentioned in para 4 above,
the applicant prays for the following reliefs:-

- i) to direct the respondents to pay the salary of the applicant as per para 1(b) of O.M.no.1/4/84-Estt.(Pay-II) w.e.f. 1.1.92 to 8.6.95 after deduction of payment already made.

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- ii) to pay arrears of provident fund contribution, pension fund not paid from 19.93 to 8.6.95 as per para (d) of the offer letter with interest as per P.F.rules.
- iii) to pay P.F./Pension fund, Gratuity due after revision of pay as per para 8 (i) plus interest of delay payment of P.F./Pension fund contribution as per P.F.Rules.
- iv) to pay interest @ 18% per annum on the amount to be paid for the period from which the arrears became due till the date of realisation.
- v) to pay cost of filing the case.
- vi) to pay cost of harassment to visit M.R.T.P. Commission and Department of Company Affairs 14 times in Seven years to settle their genuine claim from more than 1000 Km. away Rs.25000/-.
- vii) any other order/Director, which this Hon'ble Tribunal deem fit and proper in the facts of the case."

2. S/Shri N.Ranganatha Swamy and Rajeev Bansal learned counsel represented the applicant and the respondents respectively.

3. The applicant who was working as Senior Accounts Officer, in Northern Coalfields Ltd., a Public Sector Undertakings (PSU) responded to the advertisement for selection to the post of Dy. Director (Accounts) in Monopolies and Restricted Trade Practices Commission (MRTPC) Department of Company Affairs and joined the post on 10.6.91 on 'short term contract' basis. His pay was fixed at Rs.3200/- but on his representation the same was refixed at Rs.3400 /- but further revised to Rs.3500/- on 02.6.1995 w.e.f. 10.6.91, with annual increments upto 1.6.95. Though in terms of the conditions spelt out in their letter dated

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12.4.91, the Govt. had agreed to pay matching contribution towards the applicant's Contributory Provident Fund, they did so just once between 10.6.91 and 31.8.93 but not thereafter. Pay scales in PSUs were revised in 1996, by the Government, but his parent organisation did not pay the arrears of differential amount for the period January, 1992 to June, 1995, as the applicant was ^{during the said period,} working with MRTTP. Considerable correspondence went on between two organisations with no results. On 13.5.99, MRTTP desired Northern Coalfields to verify and authenticate the statement of salary payable to the applicant on revision w.e.f. 01.01.1992, which was duly replied by the letter on 14/15.12.99. The same was forwarded by the latter to the Department of Company Affairs but nothing was done. Applicant had been given the basic pay of Rs.3200/- while joining the MRTTP, keeping in mind the pay he was drawing earlier, but the same was revised in April, 1991 w.e.f. 01.01.1987, when the pay scales in PSUs were revised. However, on subsequent revision of the pay scales in PSUs in September, 1996 w.e.f. 1.1.92, though he applied for protection of his pay in terms of para (1) (b) of OM dated 01.4.1984 and Estt. Pay II dated 26.12.1984, issued by the Ministry of Home Affairs, as per his entitlement, the same was not granted. Hence this OA.

4. Grounds raised in this OA are that:-

- i) fixation of his pay should have been ordered in terms of Department of Expenditure OM No. 10 (24) E-III/60 dated 04.5.1961, which was not done;
- ii) the applicant had not been advised that the said OM was not applicable to those on short term contract.
- iii) declaration that the above OA is not applicable in this case was it was arbitrary and unjustified.

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- iv) no opportunity had been given to him against the proposed change in the fixation of his pay; and
- v) though he accepted the posting on short term contract it was not established their letter and was in accordance with the relevant OM which benefit was incorrectly denied.

In the circumstances he should get full benefits as claimed (supra), is the applicant's plea.

5. The pleas raised by the applicant are stoutly denied by the respondents in their counter. It is pointed out by them that the applicant, an employee from Northern Coal Field (a PSU) was appointed as Dy. Director (Accounts) in MRTPC under Department of Company Affairs on short term contract basis in the pre revised scale of Rs. 3000 - 4500/- . His terms and conditions had been elucidated in respondents' letter No. A-12023/12/88-Ad.I dated 12.4.91 which was accepted by him. He was on such posting from 10.6.91 to 8.6.95 when he was repatriated to his parent organisation. His pay was to be regulated in accordance with the Department of Expenditure OM No. 10(24)-E-II/60 dated 4.5.61 in terms of which it was fixed at Rs. 3200/- but following his application that the scale for PSUs had been revised on 5.4.91 but retrospectively from 1.1.87, the refixation was done in terms of Department of expenditure OM No.10(24)E-III/60 dated 4th May 1961 and he was fixed at stage of Rs.3500/- w.e.f. 1.1.87 . The applicant having been granted proforma promotion w.e.f. 17.3.93 and revision of pay scales of PSUs having been effected in 1994 but from 1.1.92, he sought pay revision but the Chief Controller of Accounts Department ~~of~~ of Coy Affairs did not agree for revision thereof, a view endorsed by the DoPT as well. The

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applicant having accepted the appointment in terms of the letter dated 12.4.1991 cannot ask for anything different from the same. He could have been given only the pay in terms of the conditions given in the Offer of Appointment. The applicant had already been paid salary and other allowances including pensionary benefits as per Govt. instructions. His request for further pay and allowances payable by the Govt. of India, during the period of his deputation in the Government, on the basis of Revised pay scale of the parent department was duly examined by the Chief Controller of Accounts in consultation with Department of Personnel but the request could not be agreed to as it was not in consonance with the existing instructions. Shri Bansal states that the applicant has been given his due and nothing else was permissible.

6. In the rejoinder it has been pointed out by the applicant that while it was true that his appointment was subject to the terms and conditions mentioned in the offer of appointment, as the said memo did not mention anything about the exercise of the option by the applicant in the event of revision of the pay in his parent department (PSU) the same should be treated as inherent therein. Therefore the respondents could not have denied him the right of exercise of option and consequential benefits. The respondents view that those who had come on 'short term contract' cannot have the benefit of applicable to the deputationists in the case of revision of pay in their parent departments was improper, as no such restriction was incorporated in the offer of appointment. The applicant had therefore properly taken the view that the normal rules on deputation would apply in his case as well and the benefit of revision of pay would be correctly applicable to him.

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The short term contract and deputation being analogous, the respondents cannot take a view that the applicant was not entitled for the said benefit. The Home Ministry's OM dated 26.12.1984 specifically provided that the benefit will be available when the scale of pay of the deputation post or that of the post held by the deputationist in his parent office is revised either retrospectively or prospectively. There was no reason to distinguish or discriminate him vis-a-vis the deputationist as has apparently been done by the respondents. During the personal hearing, Shri Ranganatha Swamy, learned counsel specifically invited our attention to OM No. F.10(24)E-III/60 dated 4.5.61 of Ministry of Finance, Department of Expenditure and OM No. 01/04-84 Estt - Pay II dated 26.12.1984, of the Ministry of Home Affairs dealing with the deputation or posting of employees from Central Government to Public Sector Undertakings (PSUs) and back and claimed that the above OM would come to his assistance in respect of above pleas. He therefore sought Tribunal's interference in the matter to render him justice.

7. We have carefully deliberated on the matter. The point for determination in this OA falls into a very small compass - the payment of higher pay and allowances for a PSU employee while working with the Government on short term contract basis. The applicant, an Accounts Officer of Northern Coal Fields, a PSU came on posting on short term contract to MRTPC, and his pay was fixed in terms of the appointment order, the same was subsequently revised when the scale of pay was revised in the parent organisation. However, the effect of second revision of pay scales of PSU officers was not given effect to in his case ^{by the parent organisation} as during the said period he was working with the Government. The view taken by the respondents is that the applicant was only on

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short term contract basis and therefore he cannot be granted the benefit of refixation of pay in the parent organisation while on foreign service, especially as the second revision, though, with the retrospective effect took place after the applicant returned to his parent organisation. We notice that in the offer of appointment issued to him on 12.4.91 the Department had indicated that he will draw the pay and allowances as admissible under Central Government Rules and that during the period the Government would also pay Contributory Provident Fund matching to his share of contribution in the parent organisation. This means that while accepting the individual on short term ^{contract} basis his interests in parent organisation were also duly protected by the Government. It is also seen that the respondents had themselves, revised his pay on 26.6.95, though effective from 1.6.91, after the applicant had returned from foreign service with MRTPC keeping in mind the revised pay from 1.6.91. This was inspite of the objection raised ^{earlier} by the Ministry on 8.9.93. What is being objected by the respondent is the second refixation which had been ordered in September 1996 but with effect from 1.1.92. During the relevant period, he was ^{in service} on short term basis with MRTPC and therefore parent organisation had not granted him the same pay. Respondents have, vide their letter No. A.12023/12/88-Ad.I dated 12.7.2001, declined to grant the benefit by holding that his was not a case of foreign service. This view is totally unacceptable as for the appointment who has worked from a PSU to the Govt service, the tenure with MRTPC was definitely a foreign service. It is clear from the perusal of the OM No. 10(24)E-III/60 dated 4.5.61 of Department of Expenditure and (DoP&AR) OM No. 1-4/84 Pay II dated 26.11.84 of the Ministry of Home Affairs (DoP&AR) that the benefit of revision of pay scale

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either of the deputation post or the post held by the deputationist in his parent organisation is revised either retrospectively or prospectively. The individual concerned is also permitted to exercise the option. There being nothing in the appointment order issued to the applicant to the effect that prohibits the above, the respondents could not have denied him the right of exercise of option on the revision of the scale in his parent organisation and grant the benefits, with the only restriction that the revised pay should not exceed the maximum of the scale of the pay of the post held in foreign service. The applicant has correctly exercised the option, when the second revision came and he has to be granted the same. The fact that by the time the revision arrived, he was repatriated to his parent organisation also would not alter the position, as the revision related to the period when he was on foreign service on short term contract and respondents themselves have permitted earlier revision relating to same period. There is no justification for taking a view that since he was on a 'short term contract' deputation conditions would not apply in his case as both are foreign service. The applicant is therefore entitled for the said benefit and he could not have denied the same as has been done in terms of the letter dated Department of Company Affairs dated 12.7.2001. He is also entitled for the payment of CPF for the period for which he has not been given while on foreign service. If such re-fixation, would give rise to increased pension as well as gratuity, the same would follow. His plea for grant of interest has no basis, as the denial of the increased pay scale was only ^{on account of} a genuine difference of opinion. His plea for cost is also without any basis.

8. In the above view of the matter, OA succeeds substantively and is accordingly disposed. The respondents are directed to grant him the benefits and refixation of pay and allowances effected in September 1996, but w.e.f. 1.1.92, during which he was working with them subject to the condition so re-fixed did not exceed the maximum of the scale of the post held by him in MRTYPC. The amount due could be worked out and paid alongwith the arrears of CPF which has not been paid earlier. This shall be done within four months from the date of receipt of certified copy of this order. No interest or cost is payable.

(Govindan S. Tampa)
Member (A)

Paternal

(V.S. Aggarwal)
Chairman