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CENTRAL ADMINISTRATIVE TRIBUNAL

Principal Bench

New Delhi, dated this the 2nd March, 2000.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, MEMBER (J)

C.A. No. 2018 of 1998

Shri R.K. Anand,
S/o late Shri D.R. Anand,
Member, MRTCP Commission,
MRTCP House, Shahjahan Road,
New Delhi-110011.

.. Applicant

(By Advocate: Shri Vijay K. Mehta)

Versus

1. Union of India through
the Secretary,
Ministry of Personnel, Public Grievances
and Pensions,
North Block, New Delhi-110001.

2. Union of India through the
Secretary,
Dept. of Company Affairs,
Ministry of Law, Justice & Company Affairs,
5th Floor, 'A' Wing,
Shastri Bhawan,
New Delhi-110001.

.. Respondents

(By Advocate: Shri V.S.R. Krishna)

C.A. No. 1123 of 1999

Dr. S. Chakravarthy,
S/o late Shri A. Srinivasan,
Ex-Member, M.R.T.P. Commission,
R/o C-1/20, Humayun Road,
New Delhi.

... Applicant

(By Advocate: Shri R.D. Makheja)

Versus

1. Union of India through
the Secretary,
Ministry of Personnel, Public Grievances
and Pensions,
Dept. of Personnel, North Block,
New Delhi.

2. Union of India through
the Secretary,
Dept. of Company Affairs,
Ministry of Law, Justice and Company Affairs,
Shastri Bhawan,
New Delhi-110001.

... Respondents

(By Advocate: Shri Harvir Singh proxy
counsel for Mrs. P.K. Guntu)

MR. S.R. ADIGE, VICE CHAIRMAN (A)

As these two O.A.s involved similar questions of law and fact, they are being disposed of by this common order.

2. In O.A. No. 2018/98, applicant Shri R.K. Anand an I.A.S. Officer (H.P. 1963) who was posted as Chief Secretary, Himachal Pradesh State and was drawing pay of Rs.8,000/- p.m., was informed vide letter dated 15.4.97 (Annexure A-2) that the Central Government proposed to appoint him as Member, M.R.T.P. Commission in the scale of Rs.7300-7600 p.m. under Section 6(1) M.R.T.P. Act for five years, or till he attained the age of 55 years, whichever was earlier, and asked him to convey his willingness to accept the abovementioned offer. The subject matter of the letter made it clear that the post was in the scale of Rs.7300-7600 p.m. Applicant in his reply dated 14.5.97 (Annexure A-3) sought pay protection of Rs.8,000/- p.m. and hoping that a favourable decision would be taken, conveyed his willingness for appointment as a Member of the M.R.T.P. Commission. In reply, respondents in their letter dated 29.5.97 (Page 25) requested that applicant's acceptance of the offer being conditional, to send a clear acceptance, even if pay protection was not available. Thereupon applicant in his reply dated 30.5.97 (page 26) clarified that he accepted the appointment offer, and stated that his request for pay protection was not a condition but a prayer. Thereafter respondents issued

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office order dated 20.6.97 (Annexure A-4) appointing applicant as a Member, M.R.T.P. Commission for a period of five years and stating that terms and conditions of the applicant would be governed by the provisions of the M.R.T.P. - (Conditions of Service of Chairman & Members) Rules, 1970 as amended from time to time. Applicant joined as Member on 23.6.97 and retired on superannuation from the I.A.S. on 30.6.97 (Annexure A-7). Applicant represented for pay protection on 28.11.97 (Annexure A-5) and cited the Hon'ble Supreme Court's judgment dated 17.3.97 in Civil Appeal No. 2132/97 M.P. Khosla Vs. U.O.I. & Ors. in support of his contention (Ann. A-6). Upon not receiving a favourable response he filed this O.A.

3. In O.A. No. 1123/99 applicant Dr. S. Chakravarthy an I.A.S. Officer (A.P. 1961) who was posted as Commissioner for land Revenue, Andhra Pradesh State and was drawing pay of Rs.8,000/- p.m. was informed vide letter dated 22.11.93 (Ann. A-3), with reference to his representation for a posting in Delhi on account of the fact that his wife was posted in Delhi, that he was under consideration for appointment as Member, M.R.T.P. Commission in the scale of Rs.7300-7600 for a term of five years or till he attained the age of 65 years whichever was earlier, and he was asked to communicate his availability. Applicant conveyed his willingness unconditionally vide letter dated 23.11.93 (Ann. A-4) upon which he was

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appointed as Member, M.R.T.P. -Commission vide office order dated 20.2.94 (page 26A of O.A.) for a period of five years from the date he assumed office, the terms and conditions of the appointment being governed by the provisions of the M.R.T.P. (Condition of Service of Chairman and Members) Rules, 1970 as amended from time to time. The further order dated 29.4.94 (Annexure A-6) made it clear that although applicant was drawing pay of Rs.8,000/- p.m. as Commissioner, Land Revenue, Andhra Pradesh his pay as Member, M.R.T.P. Commission, applicant's pay would be fixed at Rs.7600/-. Meanwhile applicant who had joined as Member on 16.3.94 represented on 16.3.94 itself (Annexure A-5) for fixation of pay at Rs.8,000/- p.m. and followed it with subsequent representations. He was eventually informed by letter dated 9.3.99 [Page 26 (3) of the O.A.] that the matter had been considered in consultation with DP&T and it had not been found possible to accede to applicant's request. It was pointed out that while coming to join the post of Member, M.R.T.P. Commission in the scale of Rs.7300-7600, applicant had given an unconditional acceptance for the same, and it had also earned him a further tenure beyond his superannuation, which he must have taken into account before accepting a post in a level lower than what he was earlier holding in his State cadre. It was pointed out that Section 4 M.R.T.P. Act dealing with the salary of Members of the Commission did not allow Government to provide a higher pay than that stipulated under the law. As regards the

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applicability of the Hon'ble Supreme Court's decision in M.P. Khosla's case (supra) it was stated that the same was not applicable in the present case, as its facts and circumstances were quite different, upon which applicant filed this O.A.

4. We have heard applicant's counsel Shri Vijay Mehta in OA-2018/98 and respondents' counsel Shri V.S.R. Krishna and applicant's counsel Shri R.D. Makheja in OA-1123/99 and respondents' proxy counsel Shri Harvir Singh. We have also perused the materials on record and given the matter our careful consideration.

5. Section 6 M.R.T.P. Act deals with the terms of office, conditions of service etc. of Members of M.R.T.P. Commission. Section 6(5) provides that

"The Chairman of the Commission and other Members shall receive such remuneration and other allowances and shall be governed by such conditions of service as may be prescribed.

Provided that the remuneration of the Chairman or any other Member shall not be varied to his disadvantage after his retirement."

6. Rule 3 M.R.T.P. Commission (Conditions of Service of Chairman and Members) Rules, 1970 lays down the remuneration, allowances etc. of the Chairman. Rule 3(1) provides that a retired Judge of the Supreme Court or High Court appointed as Chairman or Member shall be paid such salary together with his pension, and

pension equivalent of any form of retirement benefits shall not exceed the last pay drawn by him before retirement. Rule 3(3) provides that a person not being a serving or a retired judge of the Supreme Court or High Court shall be paid a salary of Rs.8000/- p.m. and shall be entitled to draw allowances in the first grade. A separate Rule viz. Rule 4 of the aforesaid Rules prescribes the remuneration, allowances^{etc.} of Members. It clearly lays down that

" A person not being a serving or a retired judge of the Supreme Court or of a High Court appointed as a Member shall be paid on and from the 1st day of January, 1986 salary in the scale of Rs.7300-100-7600 per mensem and shall be entitled to draw such allowances as are admissible to a Government servant in the first grade.

Provided that if such person at the time of his appointment as Member was in receipt of a pension in respect of any previous service under the Government or local body or authority owned or controlled by the Government. Such salary shall be reduced by the amount of pension and pension equivalent of any other form of retirement benefits."

7. It is thus clear that the salary of both applicants as Members, M.R.T.P. Commission have been fixed in the scale of Rs.7300-7600/- in accordance with Section 6 M.R.T.P. Act read with Rule 4 M.R.T.P. (Conditions of Service of Chairman and Members) Rules, 1970 which are protected under Article 309 of the Constitution. There is merit in respondents' contention that in the facts and circumstances noticed above, they were not empowered to provide to applicants a higher salary than that stipulated under the law. Indeed the

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payment of any salary to applicants other than in the pay scale of Rs. 7300-7600/- p.m. (and its corresponding equivalent pursuant to the 5th Pay Commission's recommendations) even if it be personal to them, would be directly violative of Section 6(5) M.R.T.P. Act read with Rule 4 M.R.T.P. (Conditions of Service of Chairman and Members) Rules, 1970, which as mentioned above, has Constitutional protection under Article 309. In this connection, we notice that none of the rules themselves have been impugned, and in Karam Pal Vs. U.O.I. 1985 (2) SCC 457 the Hon'ble Supreme Court has held

"In the absence of challenge to the rules and regulations, resulting situations flowing from compliance of the same are not open to attack."

8. Considerable stress has been laid by applicants on the case involving Shri B. Sankaran, Chairman, Staff Selection Commission as well as the Hon'ble Supreme Court's decision in Khosla's case (supra). As regards Shri Sankaran no doubt the post of Chairman, SSC was upgraded from the scale of Rs. 7300-7600^{p.m.} to that of Rs. 7300-8000^{p.m.} as personal to Shri Sankaran, till he demitted office vide Respondents' letter dated 14.11.95 (copy taken on record).

9. Here it must be stated that Government has the legal right to upgrade or downgrade posts keeping in view the public interest, but because the post of Chairman, SSC was upgraded, in the case of Shri Sankaran, does not give applicants a corresponding

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enforceable legal right to compel upgradation of the posts of Members, M.R.T.P. Commission held by them. Indeed applicants are not claiming upgradation of the post of Member, M.R.T.P. Commission, but the pay of Rs.8,000/- per month while working as Members, as personal to them. Hence the decision in Sankaran's case (supra) does not help applicants.

10. We now come to Khosla's case (supra). Shri M.P.Khosla was an I.A.S. Officer of Jammu & Kashmir cadre who served as Chief Secretary to the State of Jammu & Kashmir and thereafter held other posts also in the State, which were declared equivalent in status and responsibilities to the I.A.S. cadre post of Chief Secretary in terms of rule 9 (1) I.A.S. Pay Rules, 1954 and he was paid the same salary which he was drawing as Chief Secretary of the State. Thereafter he was offered appointment as Secretary, AAIFR the post being equivalent to that of Additional Secretary to Government of India in the scale of Rs.7300-7600/-. He accepted the offer, but contended that the difference in pay between the pay of Chief Secretary in the State of Jammu & Kashmir and Secretary, AAIFR should have been protected as personal to him. The Hon'ble Supreme Court in its order dated 17.3.97 in Civil Appeal No.2132/97 allowed his appeal and directed that the aforementioned difference in salary be paid to him.

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11. Applicants contend that the ratio of that order is fully applicable in their case and should be extended to them. Respondents in their reply have, however, correctly pointed out that the Hon'ble Supreme Court in Khosla's case (supra) at no stage held that any of the rules applicable in Khosla's case (supra) were erroneous and were required to be set aside. That order was specific to the facts and circumstances of Khosla's case (supra) and did not lay down any ratio of general application. Any extension of that order to the cases of the applicants, even by grant of pay protection as personal to them, would go against the provisions of Section 6(5) M.R.T.P. Act read with Rule 4 M.R.T.P. (Conditions of Service of Chairman & Members) Rules, 1970 which lay down a specific scale of Rs. 7300-7600/- p.m. for Members of the Commission, which applicants accepted unconditionally, when they joined.

12. There is another aspect of the matter. The post of Secretary, AAIFR to which Shri M.P. Khosla was appointed is ~~only one~~^{a single post}, but there are more than one posts of Members in the M.R.T.P. Commission. Granting some of the Members pay in the scale of Rs. 7300-7600/- p.m., and granting additional emoluments to others, even by way of personal pay, when no difference in the nature of duties and responsibilities of Members have been brought to our notice, would be treating equals unequally, which would be violative of Articles 14 and 16 of the Constitution.

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13. Nor is that all. We have already noticed that the remuneration, allowances etc. of the Chairman, M.R.T.P. Commission are provided for in Rule 3 (1) and 3(3) M.R.T.P. (Conditions of Service of Chairman and Members) Rules, 1970 which are distinct and different from the remuneration, allowances etc. of Members provided for in Rule 4 of those Rules. A serving High Court judge draws a fixed salary of Rs.26,000/- p.m. (corresponding to Rs.8000/- p.m. prior to the 5th Pay Commission's recommendations). Rule 3 (1) specifically provides that a retired judge of the High Court when appointed as Chairman shall be paid such salary which together with his pension shall not exceed the last pay drawn by him before retirement i.e. Rs.26,000/- p.m. (or Rs.8,000/- p.m. prior to the 5th Pay Commission's recommendations), and Rule 3(3) specifically provides that a person not being a serving or retired judge of the Supreme Court or High Court appointed as Chairman shall be paid salary of Rs.8000/- p.m. It is clear that the rule making authorities fixed a higher pay for the Chairman as compared to that of the Members, keeping in view his higher status and more onerous duties, functions and responsibilities. It is not the case of the applicants that the status, duties, functions and responsibilities of the Chairman are equal in all respects with that of the Members. Indeed it cannot be so. Yet allowing applicants their prayer for grant of pay of Rs.8000/- p.m. (or Rs.26,000/- p.m. based on 5th Pay Commission's recommendations) even if it be

personal to them would mean treating the Members of the Commission on par with the Chairman as far as salary is concerned, and as salary is a crucial determinant of status, duties, functions and responsibilities, it would mean treating unequal equally, which would also be violative of Articles 14 and 16 of the Constitution.

14. In the light of the above, the ruling in 1999 (5) SCC 209 cited by applicants' counsel does not advance applicants' claims and we find ourselves unable to grant the relief prayed for by them.

15. Both O.As are, therefore, dismissed. No costs.

16. Let copies of this order be placed in both O.A. case records.

(Kuldip Singh)
Member (J)

/GK/

(S.R. Adige)
Vice Chairman (A)

Attested

Pradeep
Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
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New Delhi 110001