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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1915/99

New Delhi, this the 10th day of November, 2000

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S.Tampi, Member (Admn)

Shri Balwinder Singh
Ex-Inspector of Factories,
Labour Department
Government of National Capital
Territory of Delhi,
R/o 694, Parmanand Colony,
DELHI - 110009.

...Applicant.

(By Advocate : Sh. Y.D.Nagar with Sh. H.D.Birdi)

V E R S U S

1. Government of National Capital
Territory of Delhi
Through its Secretary,
5, Shamnath Marg,
DELHI - 110054.
2. The Chief Secretary
Government of National Capital
Territory of Delhi
5, Shamnath Marg,
Delhi - 110054.
3. The Labour Commissioner-Cum-Secretary,
(Labour) Govt. of NCT of Delhi,
15, Rajpur Road,
Delhi - 110054.

...Respondents.

(By Advocate : Sh. Ajesh Luthra)

O R D E R (ORAL)~

Shri Govindan S. Tampi,

The applicant in this case, seeks grant of arrears of earned salary from 1984 and onwards up to the date of his superannuation on 31-3-96 alongwith the benefits of revision of pay as recommended by the 4th and 5th Pay Commissions from 1-1-86 and 1-1-96 respectively and directions to direct the respondents to pay salary to him as on date.~

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2. To state the facts in short, the applicant who joined as Overseer (Electrical) in the Labour Department, Delhi Administration on 14-3-64, became Inspector of Factories w.e.f. 21-11-68 in the scale of Rs. 500-900/- which was revised to Rs. 2000-3500/- by 4th Pay Commission's recommendations. He also worked as Asstt. Electrical Inspector between 18-3-78 and 8-11-82. But his pay was not protected on his reversion. Though from 1-1-86 the pay of the Inspector of Factories was revised from Rs. 500-800/- to Rs. 2000-3500/- he was not granted the benefit. He also did not get the benefit of the revision w.e.f. 1-1-96 till 23-2-98 when it was revised to Rs. 5500-9000/- and not to Rs. 6500-10500/- which should have been given. He had retired on superannuation on 31-3-98, whereafter disciplinary proceedings against him have been decided on 17-3-99 by treating his period of absence as dies non. He was not given the benefit of pay revision and increments as due from year to year but was kept on a consolidated amount from 1982 onwards and despite representations there was no relief. Hence this application.

3. The grounds raised in the application are as below :-

i) due to inaction on the part of the respondent in issuing retirement letter, the applicant's retirement benefits are held up.

ii) non-revision of his pay since 1984 inspite two Pay Commissions recommendations have cost him considerably.

iii) he has been put to loss an account of his being denied pay revision w.e.f. 1-1-86 & 1-1-96, which has been made available to all including his juniors.

iv) he has been discriminated vis-a-vis his colleagues and juniors.

Grant of reliefs sought for alone would do him justice at least to some extent, is his plea.

4. Heard the counsel appearing for the applicant and respondents. Sh. H.D.Birdi, learned counsel for the applicant, reiterates the pleas in the submissions and argues that the action of the respondents in denying the applicant, his legitimate pensionary benefits as well as fixation of revised pay w.e.f. 1-1-86 and 1-1-96 was totally unjustified and harsh and deserved to be set aside and the applicant granted his legitimate benefits with interest.

5. Sh. Ajesh Luthra, appearing for the respondents raised the first preliminary objection of limitation as what is being claimed the re-fixation and pay allowances from 1984 for which the applicant has come only in 1999. This is replied to by Sh. Birdi, who states that matter on pay fixation is a continuous cause of action, as clearly laid down by the Supreme Court in M.R.Gupta's case. Sh. Luthra further states that the applicant has been absent from duty for a considerably long time for which proceedings have also been initiated against him. The

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Disciplinary Authority by his order dated 17-3-99 had held his absence from 16th September to 2nd November, 1985, 10-12-1985 to 25-4-86 and 19-7-86 to 23-1-89 as dies non. The individual had continued to be absent even thereafter. The absence from 1-1-91 to 31-3-98, specifically 17-9-94 to 29-6-97 and 13-9-97 to 31-3-98 are to be regularised without which his claim for refixation cannot be considered. His case for provisional pension also could not be granted earlier as condonation of forfeiture of service could not be granted earlier. It has since been done on 4-4-2000. It is also argued that the applicant's case for revision on 1-1-86 and 1-1-96 did not take place as disciplinary proceedings were on. Further as DPC held on 19-4-94 did not find him suitable for regularisation in the upgraded group 'B' post of Inspector of Factories, he could be considered for fixation only on Rs. 5500-9000/- and not 6500-10500/- w.e.f. 1-1-96. His plea that his pay should have been protected at the time of his reversion from the post of Asstt. Electrical Inspector to Factory Inspector in 1982 is also without basis. As the respondent's action vis-a-vis the applicant has always been correct, there was no reason for interference, requests Sh. Luthra.

6. We have carefully considered the contentions raised by both the parties. The preliminary objection raised by the respondents on limitation has to be negatived, as the issue concerned in this application, relates to pay fixation, and is as such clearly covered by the decision of the Hon'ble

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apex Court in M.R.Gupta's case. Our examination, therefore, has to confine itself to the merits, which now we propose to do.

7. On the merits, the undisputed facts are that the applicant though has retired on 31-3-99, has not got his retirement benefits while the Deptt. holds that the same could not be given as his long period of unauthorised absence remains to be regularised. The fact is that somewhat obstinate attitudes taken by both sides has brought about this impasse, which has to be broken. The applicant who joined service in 1964 as Overseer (Elec.) in the Labour Department, rose in turn to become Inspector of Factories on regular basis w.e.f 21-11-96 and worked as Asstt. Electrical Inspector on ad hoc basis between 18-7-78 and 8-11-82. Thereafter he had a service with intermittent absence (both authorised and otherwise) till the retirement on superannuation on 31-3-99. In between recommendations of two Pay Commissions were adopted w.e.f. 1-1-86 and 1-1-96 which surprisingly did not reach him. His attempts through his application is to get the benefit thereof including the pensionary benefits. On the other hand the respondents have taken the plea that on account of his unauthorised absence, this could not be settled. This cannot be taken as insuitable explanation. The three spells of leave taken by him between March 1994 and March 1995 having been regularised, nothing should have come in the way of his getting the benefit of revised pay scale w.e.f. 1-1-86 following the adoption of the recommendations of the 4th Pay Commission. He should have been fixed on the relevant

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replacement scale of pay w.e.f. that date. It is true that between September 1985 and January 1989, the applicant was on unauthorised leave which have been declared as dies non by the Disciplinary Authority vide his order dated 17-3-99. The same automatically goes out of reckoning for the computation for the qualifying service for pensionary benefits. The respondent say that he was again on unauthorised absence between 1-1-91 and 31-3-98, especially between 17-9-94 and 29-6-97 as well as 13-9-97 and 31-3-98. However, as no action has been initiated by the Department in respect of these periods, so far, we hold that it would be incorrect to harass this retired official any longer. No pensionary benefits had been given to him as yet and his basic pay also remains to be re-fixed from 1984 onwards. The respondents cannot actually take advantage of their inaction merely ^{because}~~because~~ the applicant was also and lazy. The Government as the model employer has greater duty to perform towards its employees atleast in the evening of their career.

8. In the above view of things we dispose of this application with the direction to the respondents to consider and settle the claim of the applicant for re-fixation of his pay and allowances in accordance with instructions relating to the adoption of the recommendations of the Fourth and Fifth Central Pay Commissions with appropriate replacement scales w.e.f. 1-1-86 and 1-1-96 and grant him the consequent pensionary benefits as well, but excluding from the computation of qualifying service for pension the three spells of unauthorised absence between 16-9-85

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and 2-11-85, 10-12-85 and 25-4-86 and 19-7-86 and 23-1-89 declared to be dies non by the Disciplinary Authority. This exercise shall be completed within 3 months from the date of receipt of the copy of this order.

9. Subject to the above directions the OA is dismissed. No cost.

(Govindan S. Tampi)
Member (A)

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(V. Rajagopala Reddy)
Vice-Chairman (J)