

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2196/1999

105

T.A. No.

20

DATE OF DECISION 2-7-2001

Amitabh Mathur

....Petitioner

Shri K.C. Sharma

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh. Madhav Panikar, learned counsel. Advocate for the
for Respondent No. 1 Respondents.

Shri V.S.R. Krishna, learned counsel
for respondent 2

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

The Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

Central Administrative Tribunal
Principal Bench

O.A. 2196/1999

New Delhi this the 2nd day of July, 2001

(21)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

Amitabh Mathur,
Director,
Cabinet Secretariat,
Room No.7, Bikaner House Annex,
Shahjahan Road,
New Delhi. Applicant.

(By Advocate Shri K.C.Sharma)

Versus

1. Union of India through
Secretary (R),
Cabinet Secretariat,
Shahjahan Road,
New Delhi.
2. Ministry of Home Affairs,
through
Joint Secretary (Police Division),
North Block,
New Delhi.
3. Govt. of Manipur,
through
Chief Secretary,
Govt. of Manipur,
Imphal. Respondents.

(By Advocates Shri Madhav Panikar - for Respondent No.1,
Shri V.S.R. Krishna - for Respondent No.2)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicant is aggrieved by the action of the respondents in not fixing his pay correctly, which according to him, has resulted in his receiving reduced pay from Rs.17300 to Rs.15000 with effect from November, 1996. This, according to him, has happened because the respondents have not correctly applied the relevant law and rules on his absorption with Respondent No.1 on regular basis from the cadre of Indian Police Service (IPS) under Respondent No.3, that is, the Government of Manipur.

18/

2. The applicant has also filed M.A. 2188/99, praying for condonation of delay. In this Miscellaneous Application, he has submitted that he had made a representation to Respondent 3, who had given him to understand that a favourable decision is being taken. He has also submitted that the applicant was posted at a place from where he could not pursue his representation. Shri K.C. Sharma, learned counsel has submitted that in any case, the grievance of the applicant is a continuous cause of action as it involves wrong fixation of pay, and the M.A. is being filed only by way of abundant caution for condonation of delay, if any. He relies on the judgement of the Supreme Court in M.R. Gupta Vs. Union of India (1995(5) SCALE 29).

3. The brief relevant facts of the case are that the applicant was appointed to the IPS in 1997 and allotted to Manipur-Tripura Cadre, that is Respondent No.3. He was sent on deputation from the State Government to Respondent No.1 on 15.9.1981. During the period of his deputation, he had earned promotions to JAG in 1986 and Selection Grade in 1991. By order issued by the President dated 27.2.1987, the applicant was approved for permanent secondment to Respondent No.1 on deputation basis. The applicant has stated that in 1993 while on deputation at the Centre, he was empanelled for the post of DIG in the pay scale of Rs.5100-6150 and he started officiating on deputation in the higher grade w.e.f. 23.10.1993. He has submitted that one Shri J.C. Dabas, IPS of the same batch and immediate junior to him was promoted on officiating basis as DIG in November, 1993. Shri K.C. Sharma, learned counsel has submitted that under Rule 5 of the IPS (Pay) Rules, 1954,

(3)

the applicant was entitled to the benefits under the "Next Below Rule" which has not been given to him. The applicant was absorbed in Research and Analysis Service (R&AS) of the Cabinet Secretariat (Respondent No.1) on a permanent basis in public interest with the consent and approval of the State Government (Respondent No.3) w.e.f. 31.10.1996.

(23)

4. Shri K.C. Sharma, learned counsel for the applicant, has relied on the provisions contained in FR 113, FR 22(I) and FR 26. He has very vehemently submitted that Respondent No.3 as the cadre controlling authority ought to have considered the applicant in the DPC for promotion to the scale/grade of DIG, when the applicant's juniors were being considered and empanelled. He has submitted that the applicant was evidently prevented from officiating in his turn in the grade of DIG in his cadre **deputation** because of his/with the Centre in public interest which had also been done with the consent of the concerned Governments. He had also been empanelled for DIG. He has submitted that the pay of the DIG is Rs.16,400-20,000 whereas the applicant's pay has been reduced on his absorption with Respondent No.1 which is unfair. Learned counsel has also referred to the Government of India's Instructions Nos.1 and 5 below FR 23. He has also relied on the reply given by Respondent No.2, that is the Ministry of Home Affairs that his service should count for pay protection together with the benefits to be given to him under the "Next Below Rule". Learned counsel has submitted that a direction should be issued to Respondent No.1 to fix the applicant's pay in the scale of DIG with effect from the date of his absorption in R&AS on 31.10.1996 with all arrears and also grant him increments in the grade w.e.f.

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October, 1993. He has also sought a direction to Respondent 3 to consider the case of the applicant for promotion to the post of DIG during the period of his deputation, that is from the date his immediate junior in the cadre was promoted in November, 1993 to 31.10.1996. He has also prayed for interest on the due amounts.

(2A)

5. Respondent No.1 have not filed any reply. We have seen the reply filed by Respondent 2 and we have heard Shri V.S.R. Krishna, learned counsel. We have also heard at length Shri Madhav Panikar, learned counsel for Respondent No.1, who has made his submissions based on the Rules, in particular, Rule 4-A of the IPS (Tenure) Rules, copies placed on record. Respondent No.2 in their reply have submitted that in view of Rule 4-A of the Rules, the applicant has no claim for fixation of his pay in terms of the IPS (Pay) Rules. Both the learned counsel have referred to the option given by the applicant dated 8.11.1991 in which he has technically resigned from IPS with effect from the date of his induction into R&AS. They have accordingly submitted that in accordance with the provisions of Rule 4-A of the IPS (Tenure) Rules, coupled with the fact that he did not return to his cadre and he was absorbed in RAS, the applicant cannot claim pay protection with regard to his junior being promoted in his cadre in the State Government. They have clarified that the applicant's case is, therefore, not covered by the Rule 5(5)(b) of the aforesaid Rules as he did not return to his parent cadre to enjoy the benefits under the "Next Below Rule". Shri Madhav Panikar, learned counsel has submitted that the applicant was no more a member of the IPS but is with Respondent No.1 in R&AS. They have submitted that the

V

claim of the applicant for benefits under the FRs or "Next Below Rule" provisions are not applicable to the facts of the present case as he had been seconded and then permanently absorbed in R&AS. They have also submitted that the O.A. is hopelessly barred by limitation, as what the applicant is claiming is his promotion and pay protection with regard to his junior, Shri J.C.Dabas, IPS when he was promoted in the higher grade of DIG in his cadre in November, 1993. In the circumstances, both learned counsel for respondents have strongly urged that as the applicant's claims are misplaced and not supported by any rule the O.A. may be dismissed.

25

6. We have carefully considered the pleadings, and the submissions made by the learned counsel for the parties.

7. The applicant has submitted that it is by way of abundant caution that he has filed MA 2188/1999. Shri K.C.Sharma, learned counsel has submitted that in view of the fact that applicant was posted at a place from where it was practically impossible for him to pursue his representations as well as the O.A., he has filed the Miscellaneous Application for condonation of delay. These facts have not been controverted by the respondents, excepting to emphasise that he cannot compare himself with Shri J.C.Dabas who was promoted in the IPS Cadre in the State of Manipur way back in 1996, and the O.A. was, therefore, belated. However, it is relevant to note in this context the reply given by Respondent No.2 that "neither State Government issued proforma promotion in favour of the applicant nor he ever returned to his parent

12

Cadre....". Therefore, according to them, he is not eligible to get pay protection in R&AS with reference to an officer who has been promoted in the State to which he earlier belonged. From this, it is implied that Respondent No.3 ought to have also considered the applicant for promotion, along with other eligible officers, including his junior Shri J.C.Dabas, at the relevant time when the latter was promoted to the post of DIG in the State cadre w.e.f. 31.10.1996. This has apparently not been done. It is not the case of respondents 1 and 2 that the applicant does not hold a sensitive post with R&AW and they ought to have, therefore, taken necessary action to protect his interests. This is especially so when it is seen that the officer had been permanently seconded to R&AW and later absorbed in R&AS in public interest by Respondent No.1. It would, therefore, not be fair or equitable in such circumstances for the respondents to turn around and take the technical plea of limitation to defeat the applicant's claims for proper fixation of his pay. Therefore, taking into account the facts and circumstances of the case, the preliminary plea taken by the respondents that the application is belated cannot be agreed to and in the peculiar circumstances of the case, MA for condonation of delay is allowed.

8. It is seen from the relevant facts mentioned above that the respondents have themselves taken the action to consider the case of the applicant for his "permanent secondment" and absorption in R&AS. By the Memorandum dated 10.10.1991 issued by Respondent No.1, that is the Cabinet Secretariat, they have mentioned that the applicant who is at present permanently seconded to R&AW, is requested to

exercise his option for joining the R&AS or otherwise, as per the enclosed proforma. This proforma has been filled by the applicant on 8.11.1991, relevant portion of which reads as follows:-

"1, Amitabh Mathur, Member of Indian Police Service, hereby opt to join the Research and Analysis Service of the Cabinet Secretariat on the terms and conditions contained in the Cabinet Secretariat Memorandum No.2/42/91/DD.II dated 10.10.1991.

2. This may also be treated as my technical resignation from the Indian Police Service with effect from the date of my induction into the RAS".

(Emphasis added)

9. Having regard to the provisions of Rule 4-A of the IPS (Tenure) Rules, relied upon by the respondents, read with the aforesaid option exercised by the applicant, it cannot, therefore, be stated that the applicant's technical resignation from the IPS can be prior to his date of induction into R&AS. That has been done on a much later date i.e. in November 1996, whereas in the IPS Cadre under Respondent No.3, the applicant's junior, Shri J.C. Dabas, had been promoted in October, 1993. It is also relevant to note that the applicant has been permanently seconded and later absorbed by Respondent No.1 in R&AS in public interest and his services can be utilised not only in R&AW but could also be inter-changed with the "hard-core officers of the Intelligence Bureau".

10. It is also relevant to note the reply filed by Respondent No.2. Although they have categorically stated that his case is not covered by Rule 5(5)(b) of the IPS (Pay) Rules as he did not return to his parent cadre to enjoy NBR benefits, at the same time they have submitted that his case is covered by the provisions of the Government of India, Ministry of Finance O.M. dated 20.1.1970. They have stated that he should prefer his claim for protection of last pay

drawn before his permanent absorption in R&AS, in terms of the aforesaid O.M. for pay protection of his last pay drawn as Director while on deputation with Cabinet Secretariat, that is Respondent No.1.

(28)

ii. Therefore, it is clear from the above facts and circumstances of the case as well as the reply filed by Respondent No.2, that the applicant's claim for refixation of his pay at a higher stage in the scale of DIG with effect from the date of his absorption in R&AW cannot be outrightly rejected as submitted by the learned counsel for respondents. In other words, we find that the claim of the applicant is neither unreasonable or arbitrary and respondent No.1 ought to have considered his case in accordance with the relevant rules and instructions which they have failed to do. They were well aware of the above mentioned relevant facts, rules and instructions and considering the nature of his assignment in R&AW, the silence and refusal of the respondents to consider his case, at least at the time when he made his representations, cannot be considered as either reasonable or justifiable. In any case, the applicant was entitled for protection of his pay as Director with Respondent No.1 without there being a fall in his emoluments as compared to his pay fixed prior to his absorption in that very office. This is what Respondent 2 has also stated by reference to the O.M. dated 20.1.1970. The relevant portion of this O.M. reads as follows:-

"3. In the case of persons who opt to draw pay in the scale of the deputation post, the service rendered in that scale prior to permanent absorption counts for the purpose of fixation of pay under the normal rules. As regards persons who draw pay in their parent grade plus deputation (duty) allowance, cases are often referred to this Ministry for protection of the emoluments drawn by them in the ex-cadre post prior to their permanent absorption against such posts. The President is

181

29

now pleased to decide that when a Government servant drawing emoluments in the ex-cadre post on the basis of his grade pay plus deputation (duty) allowance is absorbed in a public Sector Undertaking/another Government Department in public interest, his pay on such absorption shall be fixed in the relevant scale of pay of the post as if the person concerned had elected to draw pay in the scale of the post from the date of his initial appointment on deputation/foreign service subject to the restrictions laid down in this Ministry's Office Memorandum No.F.10(24)-E.III/60 dated 9.3.1964. This would be further subject to the condition that the pay thus fixed is not more than the pay plus deputation (duty) allowance drawn immediately before permanent absorption. No arrears should, however, be paid on account of such fixation nor any adjustment made in the deputation allowance already drawn till, the date of absorption. However, in cases where such fixation of pay on permanent absorption results in drop in the emoluments drawn by the Government servant concerned, the difference in between the pay so fixed and pay plus deputation (duty) allowance drawn prior to absorption may be allowed as personal pay to be absorbed in future in cases in pay".

(Emphasis added)

The aforesaid order is to take effect from the date of its issue and hence, the applicant's case is fully covered by this order.

12. Noting the above provisions of the O.M. and the facts of the case, especially the reply filed by the Government of India, Ministry of Home Affairs/Respondent No.2, the stand taken by Respondent No.1 not to reply to the applicant's representations or that he is not entitled to pay protection after his absorption with them is arbitrary and unwarranted. The reply of Respondent No.2 has been filed as far back as 28.6.2000 but no reply has been filed by Respondent No.1 for reasons best known to them. Therefore, an anomalous situation has arisen where the applicant was admittedly receiving a higher pay before his absorption with Respondent No.1 in R&AS in 1996. This has also led to this litigation for proper fixation of his pay. Considering the fact that the respondents themselves have failed to consider

(30)

the case of the applicant in terms of the GOI, Ministry of Finance, O.M. dated 20.1.1970, we, therefore, consider it appropriate to direct respondent No.1 to do so.

13. In the result, for the reasons given above, the O.A. succeeds and is allowed with the following directions:

(i) Respondent No.1 to consider the case of the applicant and grant him re-fixation of pay from the date of his permanent absorption in R&AS, so that there is no drop in his emoluments, in accordance with the Government of India, Ministry of Finance O.M. dated 20.1.1970;

(ii) In the circumstances of the case, the applicant shall also be entitled to payment of arrears of difference of pay and allowances as refixed from the above due date with interest at 10% per annum on the difference of the amounts till the date of payment;

(iii) Necessary action shall be taken by Respondent No.1 to pay the above amounts within two months from the date of receipt of a copy of this order;

(iv) In the circumstances of the case, costs of Rs. 4000/- (Rupees Four thousand) is given in favour of the applicant and against the Respondent No.1.

(Govindan S. Tampi)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

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