

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 363/1999

New Delhi this the 24th day of October, 2000.

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

Mrs. Kiran Gupta
Junior Analyst
Government of India
Ministry of Science & Technology
Deptt. of Biotechnology.
New Delhi - 110003.

...Applicant.

(By Advocate : Sh. A.K.Bhardwaj, proxy counsel for Sh.
M.K.Bhardwaj)

V E R S U S

Union of India

Through :-

1. The Secretary
Government of India
Ministry of Science & Technology
Deptt. of Biotechnology.
Block-2. (7th-8th floor)
New Delhi - 110002.
2. The Dy. Secretary
Government of India
Ministry of Science & Technology
Deptt. of Biotechnology
CGO Complex, Lodi Road, New Delhi -110003.
3. The Joint Secretary
Mineral Development Board
New Delhi.

...Respondents.

(By Advocate : None)

O R D E R (ORAL)

By Hon'ble Sh. Govindan S. Tambi, Member (Admn)

This application seeks to challenge the non-protection of the pay of the applicant, who joined a new organisation.

2. The applicant, joined Mineral Development Board, an autonomus body under the Ministry of Steel and Mines on 2-4-82. While she was working as

Librarian in the Mineral and Development Board on drawing a basic pay of Rs. 2000/- in the pay scale of Rs. 1640-2900, she applied on 17.7.89 for the post of Junior Documentation Officer, in the grade of Rs.2200 - 4400, in the Ministry of Science and Technology, Deptt. of Bio Technology. After the interview on 10.8.87, she was selected as Technical Asst., in the same scale of Rs. 1640 - 2900/- which she was already drawing in her parent organisation. On being relieved from her parent office she joined the new department on 15.9.87. ^{where} ~~while~~ her pay was fixed at Rs.1640/- i.e., at the minimum of the scale, though she was already drawing Rs.2000/-, as basic pay in her earlier organisation. Her repeated representations dated 16.11.89, 6.8.92 and 7.10.94 were turned down by the respondent organisation on the ground that hers was a fresh appointment and that she had no right for pay protection. However, it was agreed that she would be permitted to count her service for the purposes in terms of DOPT's instructions dated 29.8.84. In the meantime, one Sh. Purshottam Lal who was selected to the Dept. of Biotechnology alongwith the applicant had approached this Tribunal in OA No. 126/1992 and obtained the order for counting his previous service as well as getting pay protection. The applicant's final representation dated 26.12.1995 on the subject was turned down by Memorandum no. BT/E09/003/87/E-II (Vol.II) dated 3.7.1996. Hence this application.

3. The applicant has detailed the facts and circumstances of the case and has argued that denial of pay protection to her was illegal in terms of DOPT's OM No. 12/1/88/Estt.(Pay I) dated 7.8.1989.

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As no reply was filed by the respondents, inspite of repeated opportunities being given to them, their right for reply stood forfeited in terms of the Tribunal order on 4.5.2000.

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4. Heard Sh. A.K. Bhardwaj, who appeared for the applicant. None appeared for the respondents. Sh. A.K. Bhardwaj pleaded that the DOPT's OM dated 7.8.89, with regard to the pay protection of staff from autonomous bodies joining the Govt. ^{through} ~~through~~ a proper process of selection clearly covered the case of the applicant and the benefits should not have been denied. He also points out that Sh. Purushotam Lal, who was identically placed was given the benefit on his coming before the Tribunal in OA No. 126/92, which was decided on 29-9-92. The applicant should also get the benefit is the counsel's plea. On being specifically asked by the Tribunal about the aspect of limitation, as the applicant has come up quite late. Sh. Bhardwaj indicated that as this is a matter of pay and allowances which was a continuous cause of action, in view of the decision of the apex Court in M.R.Gupta's case (M.R. Gupta Vs. Union of India & Ors. 1995 (5) SCC P.628) limitation would not apply.

5. We have given careful consideration to the matter on hand. Though the applicant has come before us at a fairly late stage, we are entertaining this, as this is a matter of pay and allowances, which is a continuous cause of action and the decision of the Hon'ble Supreme Court in M.R. Gupta's decision cited by the applicant's Counsel applies in this case. On merits, we find that it is a matter of record that the

applicant was already working in the pay scale of Rs. 1640 - 2900. as Librarians in Mineral Development Board, an autonomous body under the Ministry of Steel and Mines, drawing basic pay of Rs. 2000/- when she had applied for the post of Senior Documentation Officer in the Dept. of Biotechnology, which was a higher post. But she was selected ^{for} and offered appointment of the junior post of Technical Asst. which was in the same scale of Rs. 1640 - 2900/- , she was already drawing. Still she was fixed at the minimum of the scale, without granting her pay protection, taking her back at least four to five years in her career graph. Ordinarily officers and staff look forward to career advancement when they take up a new job, but in this case what has happened is regression, which cannot be justified, all the more so in view of the specific prescription in DOPT's instructions contained in OM No. 12/1/88-Estt. (Pay I) dated 7.8.89, which deals with the situation as this. The same is abstracted as below :-

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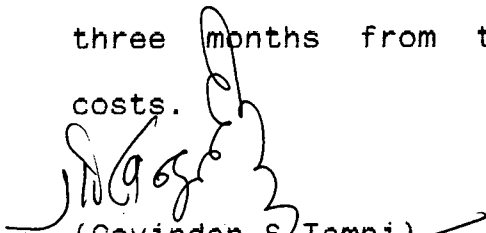
"The question as to how pay protection can be given in the case of candidates recruited from Public Sector Undertakings, etc. has been engaging the attention of the Government for sometime. The matter has been carefully considered and the President is pleased to decide that in respect of candidates working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies, who are appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly, their initial pay may be fixed at a stage in the scale of pay attached to the post so that the pay and D.A., as admissible in the Government will protect the pay + D.A. already being drawn by them in their parent organisations. In the event of such a stage not being available in the post to which they have been recruited, their pay may be fixed at a stage just below in the scale of the post to which they have been

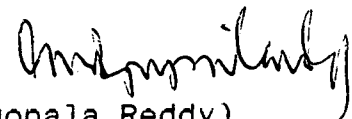
recruited, so as to ensure a minimum loss to the candidates. The pay fixed under this formulation will not exceed the maximum of the scale of the post to which they have been recruited. The pay fixation is to be made by the employing Ministries/Departments after verification of all the relevant documents to be produced by the candidates who were employed in such organisations."

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7. The case of the applicant is clearly covered by the above and she is, therefore, entitled for the pay protection. On her joining the new organisation, more so as the respondents have themselves, granted her the benefit for counting her service in the earlier organisation. However, as she has come to this Tribunal at this late stage, it will be proper to give her only the pay protection and the fixation of pay following it but not the arrears.

8. The application, therefore, succeeds and is allowed. The respondents are directed to extend to the applicant protection of pay and allowances from the date on which she has joined the Deptt of Biotechnology, with consequential benefits in fixation of pay till the date. However, she would be entitled to the arrears only from February, 1999, when she has come before this Tribunal. This should be done within three months from the receipt of this order. No costs.


(Govindan S. Tampi)
Member (Admin)


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

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