

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

R.A. No. 416/94 IN
DA No. 42/94

New Delhi, dated the 26th May, 1995

HON'BLE MR. S.R. ADIGE, MEMBER (A)

Shri M.L. Mahna,
R/o House No.2,
Kiran Vihar,
Delhi-110092.

(By Advocates: Shri U.S. Bisht)

.....

APPLICANT

VERSUS

1. Union of India,
through the Secretary,
Ministry of Defence,
Sena Bhawan,
New Delhi-110011.
2. Engineer-in-Chief,
Army Hqrs.,
Kashmir House, DHQ P.O.,
Rajaji Marg,
New Delhi-110011.
3. Controller of Defence Accounts,
'G' Block,
New Delhi.

(By Advocate Shri P.H. Ramchandani)

RESPONDENTS

ORDER

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

This R.A. bearing No. 416/94 was filed by Shri M.L. Mahna praying for review of the judgment dated 31.10.94 in O.A. No. 42/92 M.L. Mahna Vs. UOI.

2. In that O.A. Shri Mahna had prayed for stepping of pay equal to that of pay drawn by his junior. His case was that he and his immediate junior Shri M.M. Sharma were promoted and posted to the new units. He was posted to Vizakhapatnam while Shri Sharma was posted to Ambala on receipt of posting orders. Shri Sharma joined the new post on 21.9.82 while the applicant was retained by his previous office in the public interest till 5.2.83 and the applicant joined the new post on 21.2.83. The applicant contends that while Shri Sharma's pay was fixed Rs.1100/- w.e.f. 21.9.82 and earned his next increment on 1.9.83, his own pay was fixed only on 21.2.83 and earned his next increment on 1.2.84

9

6

The matter was heard in the presence of both the parties, and the prayer was rejected on the ground that even if the applicant was retained against his wish in the old post in the public interest, and was relieved to proceed on promotion with some delay, this was an incident of service that and did not give him right to claim stepping up of pay. Moreover, it was stated that stepping up of pay could be ordered only if the anomaly was directly attributable to the application of FR 22-C, but in the present case the conditions required for stepping up of pay were not satisfied. Further, it was noted that the applicant had not represented in time and thus not being vigilant in seeking to protect his rights. The O.A. was accordingly dismissed.

3. In the R.A., the applicant has stated firstly ^{that} he discovered certain new and important matters which were not available with him when the judgment was delivered, and ^{has} as such annexed the material in respect of judgment dated 29.5.92 in O.A. No. 576/91 S.C. Mishra Vs. UOI & Ors. as well as the applicant's representation dated 27.6.86, and correspondence in connection with the same. He has contended that the judgment in S.C. Mishra's case (Supra) is in all fours with to his own case, and has also relied upon the ruling in the Tribunal's decision in O.A. No. 369/90 decided by the Bangalore Bench on 8.2.91. He has contended that such an anomaly seldom occurs as a result of the application of FR 22-C and relies upon that portion of the judgment in S.C. Mishra's case (Supra) where it has been held

"It is the recognised rule in services jurisprudence that the pay of the senior should not be less than that of his junior."

In so far as the delay in enforcement of the claim is concerned

19

7

that his junior Shri M.M. Sharma had assumed the higher appointment on 21.1.82 and the applicant made his representation on 27.6.86, as soon as he learnt of the anomaly.

4. The Respondents in their reply have stated that the correspondences and judgment relied upon by the applicant were supposed to have been known by him, at the time when the O.A. was heard, and the applicant is now barred by the doctrine of Res Judicata. They reiterate that stepping up of pay is permissible only when the conditions in FR 22-C are satisfied, and furthermore as Shri Sharma had been drawing more pay than the applicant even in the lower grade, stepping is not permissible. They have also referred to the DOP's O.M. dated 4.11.93 which explicitly declares that if a senior joins the post later than the junior for whatever reasons and draws less pay in such case the senior cannot claim stepping up of pay. It has been averred that ruling in S.C. Misra's case (Supra) does not help the applicant, because in that case the junior never drew more pay than the senior, even in the lower grade. Further more, it has been stated that the judgment in O.A. 369/90 is also not relevant because in the present case the applicant had managed to delay his departure for personal reasons, which was not the case there.

5. In his rejoinder the applicant has reiterated his contention in the R.A.

6. I have heard Shri U.S. Bisht for the applicant and Shri P.H. Ramchandani for the respondents.

7. Under Order 47 Rule 1 C.P.C. any order/judgment/decision can be reviewed only if

- (i) it suffers from error on the face of the record;
- (ii) it is liable to be reviewed on account of the discovery of any material or evidence which was not within the knowledge of the party or could not be produced when the judgment was made despite diligence; or

20

(iii) any sufficient reason construed to me analogous to reasons.

8. The applicant himself does not contend that there are errors apparent on the face of the record. His argument is that the judgment in S.C. Misra's case (Supra) and his representation dt. 27.6.86 as well as the correspondence thereon, constitute new materials, which could not be produced at the time of hearing. Similarly, the judgment in O.A. No.369/90 is also stated to be new material which the applicant was unaware of, and which could not be produced at the time of hearing.

9. There is a merit in the Respondents' contention that copies of judgments cannot be said to be materials which could not be made available to the applicant, despite due diligence at the time of hearing. That apart, even on merits the applicant cannot be said to have a case. Shri Bisht has no doubt argued that the DOPT circular dated 4.11.93 cannot have retrospective effect and be made applicable to the present case, and in this connection has relied upon the ruling in B.Bhandopadhyay Vs. UOI SLJ 1994 (3) CAT 378; but Respondents' counsel Shri Ramchandani has invited my attention to the Hon'ble Supreme Court's ruling in State of AP Vs. G. Srinivasa Rao and Ors. JT 1989 (1) SC 615 wherein the Hon'ble Supreme Court has recognised that situation may well arise where the pay of a junior is higher than that of his senior in the same cadre, because of ^{the} source of recruitment, educational qualifications, ^{or} other incidents of service, and such situation could not be termed as violation of the principle of equal pay for equal work. In the impugned judgment dated 31.10.94 transfer has been noted to be one such incident of service. We are bound to follow the Supreme Court's ruling in this regard.

21

10. In this connection my attention has also been invited by Shri Ramchandani to the Hon'ble Supreme Court's ruling in Sow. Chandrakanta Vs. Sheikh Habib 1975 (1) SLR 773, wherein it has been held that a review of the judgment is a serious step and resort to it is proper only when there is a glaring omission or patent mistake or a grave error has crept in earlier by judicial fallibility. In the present case none of these infirmities have been made out and the R.A. cannot be used as an appeal to seek to reverse or modify a well considered judgment passed after hearing both the parties.

12. The R.A. is, therefore, rejected.

Anfolige
(S.R. ADIGE)
Member (A)