

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

7

D.A./T.A. No. 1463 of /19 95 Decided on: 31.7.96

Shri S.A. Qureshi

(By Shri S.D. Sharma

..... APPLICANT(S)

Advocate)

VERSUS

U.O.I. & Anr.

..... RESPONDENTS

(By Shri M.M. Sudan

Advocate)

OD RAM

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

THE HON'BLE ~~SHRI S.R. ADIGE~~

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

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

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No. 1463/95

New Delhi: Dated: the 31st day of July 1996.

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

Shri S.A.Qureshi,
s/o Sri Nazir Ahmad,
C/o Qazi Mohd. Idrish,
r/o 463 Matia Mahal,
Jama Masjid,
Delhi.

.....Applicant.

By Advocate: Shri S.D.Sharma.

Versus

1. Union of India through
Secretary,
Ministry of Defence,
South Block,
New Delhi -110011.

2. Controller General of Defence Accounts,
West Block, 5 R.K.Puram,
New Delhi - 110066.....Respondents.

By Advocate: Shri M.M.Sudan.

JUDGMENT

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

In this application, Shri S.A.Qureshi Sr.Gr. Auditor has impugned respondents' letter dated 13.13.95 (Annexure-I) and prayed for removal of the anomaly of pay and his pay be refixed in Sr. Auditor's Grade w.e.f. 1.12.87 as was done in the case of Shri I.C.Sharma, by CAT Single Bench Judgment dated 4.11.93 in OA No. 2572/92 I.C.Sharma Vs. UOI & Ors.

2. The applicant who joined service as UDC on 18.7.61 in due course was promoted as Sr. Gr. Auditor, upon while his pay was refixed as Sr. Gr. Auditor vide order dated 30.11.82, with his next date of increment being shown as 1.4.78.

2

9

Admittedly he is senior to I C Sharma. Consequent to the applicant's prayer for stepping up of pay to that of Shri S.P.Sharma, Sr. Auditor respondents by order dated 30.8.89 (Annexure-III) allowed the same and due to the stepping up, the date of increment was changed from 1st April to 1st December every year, and the applicant was also admittedly paid the arrears of difference of pay from 1.12.78 to 31.3.87.

3. The applicant contends that though pay for the post of Sr. Gr. Auditor and that of selection Gr. Auditor was the same, but the selection Gr. Auditor on promotion as Sr. Auditor was entitled to the benefit of 2 increments, subject to exercise of option, but due to late publication of order dated 30.8.89 (Annexure-III) he could not exercise his option from the date of next increment i.e. 1.12.87 instead of 1.4.87. Had the said publication been made earlier he would have exercised his option for fixation in Sr. Auditor's Grade w.e.f. 1.12.87. He has stated that after making several requests to this effect the same was finally turned down by impugned order dated 13.3.95 (Annexure-I) compelling him to file this OA.

4. The respondents in their reply have resisted the OA. The first ground taken is of limitation wherein it is pointed out that the applicant first represented in this connection on 21.6.90 (Annexure-RIII) which was rejected

on 11.9.91 (Annexure-R IV) but he did not file this OA within one year i.e. 10.9.92. On merits it is pointed out by respondents' order dated 10.2.89 (Annexure-RV) the applicant was given the benefit of two increments upon his promotion and the date of his next increment was fixed as 1.4.88. They deny applicant's contention that due to late publication of order dated 30.8.89 he could not exercise his option for fixation of pay w.e.f. 1.12.87 instead of 1.4.87 on his promotion to Sr. Auditor Grade, because stepping up of pay is distinct from promotion to Sr. Auditors Grade. It is stated that if the applicant had been aware of his stepping up of pay and change of the date of increment he could have added some proviso in this regard while exercising his option on promotion to Sr. Auditor Grade w.e.f. 1.4.87, but he did not do so. It is argued that the option once having been exercised became final and cannot be changed under any circumstance.

5. In his rejoinder the applicant has challenged the stand taken by the respondents in their reply and has broadly speaking reiterated the contents of the OA.

6. I have heard applicant's counsel Shri S.D. Sharma and respondents' counsel Shri M.M. Sudan.

7. In so far as the ground of limitation taken by respondents is concerned, the same is rejected in view of the ruling in O.P. Gupta Vs. UOI 1995 (31) ATC 84, as pay if improperly fixed gives a continuing

~

10

cause of action.

8. Coming to the merits of the case, I note that the applicant applied for stepping up of pay vis-a-vis S.P.Sharma on 16.8.88 which was eventually allowed on 30.8.89, i.e. over 1 year later, by which his date of increment was changed from 1st April to 1st December every year. If that order had issued any time before 10.2.89 - and the period from 16.8.88 to 10.2.89 is in my view a sufficiently long period - the respondents' order dated 10.2.89 would doubtless have reflected the fact that the applicant's date of increment in the lower grade had been shifted from 1st April to 1st December every year.

9. That apart, I notice from the judgment in I.C.Sharma's case (Supra) which was delivered after hearing both parties that it has been recorded in paragraph 3 therein that

" the parties agreed (emphasis supplied) that if the provisions of OM dated 30.8.89 (Annexure-6) are strictly followed, the required relief would be automatically available to the applicant."

In other words both sides in I.C Sharma's case had agreed during hearing that the relief claimed would be admissible to him. No materials have been shown to me to indicate that the said judgment has not become final.

10. That being the position, and I C Sharma admittedly being junior to the applicant, I have a situation where a senior though no fault of his own is drawing less than his junior.

11

11. Under the circumstance this OA succeeds and is allowed, to the extent that respondents are directed to refix the applicant's pay ⁱⁿ as Sr. Auditors' grade w.e.f. 1.12.87, but owing to the delay in filing the OA after rejection of the applicant's representation on 11.9.91, payment of arrears consequent to revised pay fixation will be admissible only from the date of filing this OA on 28.7.95. No costs.

S. Radige
(S. RADIGE)
MEMBER (A).

/ug/