

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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O.A. No. 1749/2000

Date of Decision: 11.01.2002

Shri Ganpati Sharma .....Applicant

(By Advocate Shri Jog Singh.)

Versus

Union of India .....Respondent.

(by Advocate Shri R P Agarwal)

Corum:

Hon'ble Smt. Lakshmi Swaminathan, VC(J)

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

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

(GOVINDAN S. TAMPI)  
MEMBER (A)

Patwal/

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI

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O.A. NO. 1749/2000

*New Delhi, this the 11th day of January 2002 (11.1.2002)*  
Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)  
Hon'ble Sh. Govindan S. Tampi, Member (A)

Sh. Ganpati Sharma,  
S/o Late Sh. Ramchand Sharma,  
r/o-J-5, Saket,  
New Delhi.

...Applicant

(By Advocate Shri Jog Singh )

VERSUS

Union of India through:  
Secretary Min. of Labour,  
Sharam Shakti Bhawan,  
New Delhi

.....Respondent

(By Advocate Shri R.P. Agarwal)

O R D E R

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

Reliefs sought for by Sh. Ganpati Sharma, the  
applicant are as below:

- a) call for the relevant records/file regarding pay fixation of the applicant on his joining the deputation post under the respondent;
- b) quash and set aside the impugned order dated 11.8.1999.
- c) direct the respondent to fix the pay of the applicant properly as per the option exercised by him and in pursuance of the orders of the High Court of Punjab & Haryana, grant him annual increments thereof and pay arrears accrued pursuant to proper fixation of pay, with 18% interest thereon till the final date of payment;
- d) direct the respondent to re-fix the pay of the applicant on his re-employment from 1.9.93 on the basis of last drawn pay, grant him arrears alongwith interest thereon; &

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- e) pass any other order or direction as deemed fit in the facts and circumstances of the case.

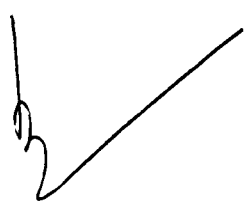
2. Heard S/Sh. Jog Singh and R.P. Agarwal, learned counsel for the applicant and the respondents. Also considered the documents brought on record including written submissions filed by Sh. Jog Singh.

3. The applicant who was an Addl. District and Sessions Judge (ADSJ), in the Superior Judicial Service of Punjab and Haryana, joined on 20.3.90 as Presiding Officer, Central Govt. Industrial Tribunal (POCGIT) on deputation, in terms of the appointment order dated 14.3.90. The applicant who was drawing the personal pay of Rs.6300/- in the scale of Rs. 4500-5700/- (with addition of stagnation removal increments) opted for the same in the deputation post. This was allowed by the respondents for a period of one year. On 23.5.91, the respondents enquired of the applicant, whether he was prepared to forego promotion in his parent cadre, during the period of deputation which he agreed to do on 27.5.91, subject to his getting the pay which he was already drawing. Accordingly, the respondents, in consultation with DOPT, fixed his pay at Rs.6500/- w.e.f. 20.3.90 by their letter dated 24.7.91. Applicant's two predecessors S/Shri G S Kalra & O P Singla were drawing their own pay with Rs. 200/- as Special pay, which was denied to him. This discrimination was all the more acute, as Sh. Kalra belonged to the same cadre as he did and was given the benefit of pay opted by him (Kalra). Applicant's request for grant of Rs. --- 3/-

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200/- as special pay <sup>-3-</sup> was also declined by the respondents, without any reason. On 11.8.92, he was informed that he was to be reverted, if he was drawing pay higher than the maximum of the pay scale of the deputation post. In reply, he reiterated the request for correct refixation of his pay. After the applicant completed three years of deputation, though the parent cadre was not keen to extend the deputation, on his request the applicant was assured by the respondent to engage him on his voluntary retirement, in the same job, without any break, on re-employment basis. On this assurance he voluntarily retired on 31.8.93, and was re-employment w.e.f. 1.9.93, in the same post by order dated 2.6.94 ( he was also assured of continuance in the job till the age of 65). This letter was bad in law in that the applicant's was reduced from Rs.6500/- to Rs.5700/- w.e.f. 20.9.90, without assigning any reason. The respondents were taking advantage of the situation that he had already retired and was at their mercy and had no option but to accept the harsh and improper terms and conditions. He made a number of representations but of no avail. When in 1995 he submitted bills for the drawal of his salary, respondents informed the PAO, Min. of Labour to honour the bills, subject to adjustment of excess salary already paid, resulting in the deduction of an amount of Rs.. 43,333/- from the bills. He was given the reduced salary thereafter. His tenure ended on 8.3.99, when he was only 59 and was eligible for two more terms of three years each.

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4. It is further pointed out that writ petition No. 75/94, filed by J. K. Goyal & Others Vs State of Punjab and another, was decided by the High Court on 20.7.95, granting revision of pay to the judicial officers including the applicant, resulting in the issue of notification dated 16.9.96 by the High Court and the refixation of applicant's pay from 1.1.78 to 31.8.93, his date of retirement. The applicant moved the respondent for re-fixation of his pay and grant of arrears and interest, but the same had not been heeded to, inspite of the fact that the above was directly in implementation of High Court's decision. As his earlier representations did not yield any response, the applicant moved the Minister of Labour, who was on enquiry advised by the Minister for Personnel that the question of upgrading the post to honour the judgement, would have to be considered in consultation with the Ministry of Finance. Nothing happened thereon, till 11.8.99, when after the tenure of the applicant was over on 8.3.99, the impugned order was issued rejecting his request for proper fixation of pay was rejected. Hence this O.A.

5. Grounds raised in this OA are as below:-

- a) reduction of the pay of the applicant without notice was illegal and arbitrary.
- b) predecessors of the applicant had been given the proper fixation of pay, which had been denied to him.
- c) persons similarly placed should be treated equally which has not been done in the applicant's case.

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- d) reduction of the applicant's pay was a punishment without any basis, which has hurt him financially.
- e) inspite of the applicant's having a case for refixation of his pay, it was not done and an illegal recovery of Rs. 43,333/- has been effected from him.

6. The above grounds and pleas by the applicant have been fervently reiterated during the oral submissions by his counsel, Sh. Jog Singh, who also filed detailed written submissions, enclosing the decision of the Hon'ble High Court of Punjab & Haryana, in support of his arguments. The points raised in the written submissions are that:

- i) respondents could not have suggested that the applicant whose pay in his parent organisation was more than the maximum of the pay scale in the deputation post, should revert to the parent post.
- ii) refixation and recovery from the applicant's pay after 14 months was improper, especially when his predecessor Sh. G S Kalra was given the benefit of his personal pay, who was also given refixation of pay on the basis of judgement in M S Luna's case (CWP 1814/89).
- iii) decision of the Hon'ble Punjab & Haryana High Court in J.K. Goel Vs State of Punjab, which directed re-fixation of pay to the applicant has not been given effect to,
- iv) applicant's re-employment with the respondents was on account of paucity of qualified persons to work as PO CG II, still he has been treated in a discriminatory manner, asking him to work on emoluments lesser than what he was drawing earlier.
- v) the applicant's case had been duly endorsed by the Hon'ble Labour Minister to Ministry of DoPT, who has suggested revision of pay on personal basis, which has not been found favour with the Min. of Finance.

- vi) respondents have not followed the directions of DoPT's OM No. 3.1.85 Estt. (Pay III) dated 31.7.86, on fixation of re-employed pensioners in terms of which, a pensioner on re-employment has to be granted the pay last drawn, ignoring a part of his pension.
- vii) action of the respondents has been against the doctrine of "legitimate expectation" and the right to be heard when decision prejudicial to him are being taken and communicated.

The application in the above circumstances, should succeed with grant of full reliefs to the applicant, according to Sh. Jog Singh .

7. Respondents fervently argue that the pleas raised by the applicant are misconceived and incorrect. Rules and instructions specifically provide that when a Govt. servant proceeds on deputation to an ex cadre post, pay plus deputation allowance granted to the person cannot exceed maximum of the scale of pay of the deputation post. The applicant, who was drawing his pay in the grade of Rs. 3000-5600/-, was taken on deputation as PO C G-II, in the grade of Rs. 4500-5700/- w.e.f. 20.3.90. Fixation of his pay has been correctly done in terms of DoPT's OM dated 26.12.84 and therefore rejection of his representation dated 31.1.97, by the respondent on 11.8.99 was proper and cannot be assailed. The OA is hit by limitation as the fixation of pay was ordered on 2.6.94 and the recovery of the excess amount paid, took place on 16.11.95, while OA is filed only in July, 2000. Fixation of pay of the applicant's predecessor G.S. Kalra, above the maximum of the scale of pay of P.O. C.G.I.T was done by the incorrect interpretation of the instruction made by the respondents and action

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was being initiated to rectify the mistake and effect the recovery of amounts paid in excess. One mistake does not authorise or sanction another mistake and the applicant cannot ask for fixation of pay, above the maximum of the pay scale for PO CG ITI. His charge of discrimination vis-a-vis Sh. Kalra was baseless and cannot be entertained. Respondents had more than once referred the matter of pay fixation of the applicant to DoPT, who have reiterated the correct position in law that a deputationist cannot draw pay higher than the maximum of the pay scale of the deputation post and this fact had been brought to the notice of the applicant himself on 21.10.91. While it was true that the applicant originally joined on deputation, there was no assurance given to him by the respondents that he would be adjusted, as P.O. CGIT, on re-employment basis, following his voluntary retirement or that he would be retained till 65 years of age, as claimed by him. It was true that there was paucity of eligible officers for being posted as PO CGIT, but it was also a fact that the applicant was keen to continue and had also declined promotion in his parent cadre. Respondents had taken up with DoPT, the issue of higher fixation of pay for the applicant as well as that of upgradation of the post on personal basis which was turned down. Hence he was given the higher pay, which he was drawing in the parent service, for six months whereafter the pay was brought down to Rs.5700/-, i.e. maximum of the pay scale for POCGIT. Recovery of the amount paid in excess was also effected accordingly. This was the correct



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procedure to be ordered and, therefore, the applicant's charge that the respondent did not take care of his pay fixation was baseless. The applicant had been re-employed w.e.f. 1.9.93 upto 8.3.96 or till such time a successor was selected, whichever was earlier. He was however given one more extension upto 8.3.99 and the respondents could not have made any further assurance in that regard. Respondents also agree that the applicant's case was examined at the Labour Minister's level but that the Ministry of Finance to whom the matter was referred to, on the advice of DoPT did not find the suggestion for upgradation of the post on personal basis, acceptable and the same therefore could not be granted. As the applicant has been granted all the benefits, permissible in law and nothing further could be granted, OA deserves rejection, urges Sh. Agarwal, learned counsel.

8. We have carefully considered the matter and deliberated upon the facts and circumstances brought on record. The preliminary objection raised by the respondents is that the OA having been filed in July, 2000, challenging the pay fixation order issued in April, 1994 as well as recovery of alleged excess amount paid effected in May, 1995, was hit by limitation. This is not correct as the order impugned in this OA is the communication dated 11.8.99, issued by the respondents, rejecting the applicant's request for re-fixation of the applicant's pay, in terms of the Hon'ble Punjab & Haryana High Court's order. Preliminary Objection therefore is rejected.

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9. On the merits of the case, we observe that the applicant, an Additional District and Session Judge, from Punjab and Haryana Judicial Service was appointed on deputation as P.O. CGIT, under the Min. of Labour in the pay scale of Rs. 4500-5700/-, on 14.3.90. The terms of Govt. of India, and conditions accompanying the order stipulated that "the pay will be fixed in the scale of Rs. 4500 - 150 - 5700/- . The officer will have the option to get his pay fixed in the deputation post under the normal rules or to draw pay of the post held in the parent department - plus - deputation (duty) allowance in accordance with and subject to conditions, as modified from time to time." The applicant on 29.3.91, opted <sup>for</sup> fixation of his pay at Rs. 6500/- which he was drawing in his parent cadre with deputation allowance and started drawing it. It was on 23.5.91, i.e. nearly one year and two months later, the applicant was informed that deputationists " who become entitled to receive grade pay in parent cadre higher than the maximum of the ex-cadre post, on account of Next Below Rule or otherwise, are to be repatriated within six months" and that relaxation of the above provision though taken up with DoPT's was not agreed to. The applicant was also informed of the DoPT's view that if the "deputationists choose to remain on deputation, they will have to forego the benefit of their promotion in their cadres." He was therefore asked to indicate his choice . The applicant had, by his letter dated 27.3.91, agreed to forego the promotion, during his period of deputation , following which on 24.7.91, respondents had after consultation ~~wixxx~~ with D.O.P.T. - - -

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fixed the applicant's pay at Rs.6500/- p.m. w.e.f.

20.3.90. It is thus evident that the respondents had directed his fixation only after fully realising the implications of the same. The said order No. A-11016/12/89-CS-II dated 24.7.91, does not state anywhere that the fixation of pay was conditional in any manner. That being the case, the validity of the letter No. A-11016/1/89-CLS II dated 11.8.92, issued after one year from the date of fixation of pay directing that intimating that as no officer on deputation can be allowed to draw pay more than the maximum of the scale of the post held on deputation and that the pay drawn at the higher rates beyond the said period was liable to be recovered, is suspect. Respondents were fully aware of the rules and instructions when they issued the letter dated 23.5.91. Still they did not direct the applicant to be reverted but only asked him to indicate whether he would forego his promotion, during the period of his deputation, which he agreed to do by his letter dated 27.3.91. Fixation of pay ordered on 24.7.91 has therefore to stand on principle, and the recovery of the excess amount of Rs. 43,333/- arising from the order of 11.8.92 and 11.11.95, was liable to be vacated. The position however, is that the applicant had willingly acquiesced in the above and repaid the above excess amount by adjustment in bill No. CGIT/ND/03 dated 16.11.95. This has become final and cannot be re-opened through the challenge directed at another order issued on a later date and in a different context.

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10. At the same time we observe that, following their order dated 20.7.95, in CWP No. 75/94, filed by Sh. J K Goel, Hon'ble High Court of Punjab and Haryana, have directed the refixation of the pay of the applicant at Rs.6900/- w.e.f. 1.1.90, Rs. 7100/- w.e.f. 1.1.91 and Rs.7300/- (maximum) w.e.f. 1.1.92, till 31.8.93, his date of superannuation. This being the order of the Hon'ble High Court, who have adjudicated the issue, the respondents have to give effect to the same. It was for the respondents to have sought modification of the order, if they felt that the said order, by any reason, could not have been implemented. Not having done so, the Hon'ble High Courts' directions have become final and it could not have been refused by the impugned order dated 11.8.89, issued by the respondents. The Tribunal is neither called upon nor is it empowered to adjudicate on the issue which has been settled by the Hon'ble High Court. Respondents can only be advised to implement the High Court's order.

11. This position obtains only upto 31.8.93, when the applicant was on deputation from the Superior Judicial Service of Punjab, to the Central Govt. and therefore the terms and conditions governing deputation applied in his case. On 1.9.93, he had become a pensioner, appointed though to the same post, but on re-employment basis. He has therefore to be rightly covered by the conditions of his re-employment. The relevant letter No. A-11016/1/93-Estt. II dated 2.6.94 shows that the applicant was being appointed on

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re-employment basis as PO CGIT w.e.f. 1.9.93 upto 8.3.96 or till a successor is appointed whichever is earlier, with the basic pay of Rs.5700/- in the pay scale of Rs.4500-5700/- . DoPT's instructions No. 3/1/85-Estt (Pay II) dated 31.7.86, dealing with fixation of pay of re-employed pensioners provides in para 4(a) as follows:-

"Re-employed pensioners shall be allowed to draw pay only in prescribed scales of pay for the posts in which they are employed. No protection of the scales of pay of the posts held by them prior to retirement shall be given".

This provision is based on the sound principle that the re-employment is a matter of additional facility or concession, and therefore the person re-employed can only claim what is attached to the post. In the instant case, even on re-employment he has been fixed at the maximum of the scale of pay of the post i.e. at Rs.5700/- . The applicant cannot ask for anything more than that in law in such a scenario. The applicant also makes a specious plea that as retired judges of the High Court on being posted as PO, CGIT are given the basic pay of Rs.8000/- p.m. , he should also be given the same pay. He has forgotten that he was never a judge <sup>of the High Court</sup> but only an addl. Dist. & Session Judge. Therefore the relief claimed by the applicant in para 8(d) has inevitably to fail.

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12. Applicant has averred that the respondents have assured him employment till he reached the age of 65, which is contested by the latter. Nothing has been brought on record by the applicant to support his version. Besides, it is seen that the applicant's first re-employment was from 1.9.93 to 8.3.96 or till such time a successor was appointed, whichever was earlier. The said order does not refer to any possible re-employment. Still one more extension upto 8.3.99 has been given to the applicant. Respondents could not at all have made any assurance that the applicant would be kept till 65 years of age. Applicant's averment to the contrary cannot be endorsed and deserves rejection outright. We have also considered the other claims of the applicant but do not find any merit on the same.

13. In the above view of the matter the application is disposed of with the following directions:-

- i) The impugned letter dated 11.8.1999 issued by the respondents is quashed and set aside as the order of the Hon'ble High Court of Punjab and Haryana High Court with regard to the fixation of applicant's pay for the

period upto 31.8.1993 has become final and binding . The respondents shall, therefore, pass appropriate orders in the light of the directions of the Punjab and Haryana High Court in W.P. 75/94.

- ii) The other claims being devoid of merit are rejected.

No order as to costs.

(Govindan S. Tampi)  
Member (A)

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