

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A. NO. 719 OF 1989.

DATE OF DECISION: 13-9-1991.

Dr. B.P. Patnaik.

.. Applicant.

Vs.

Union of India and another.

.. Respondents.

Ms. Sheela Goel, Counsel for the applicant.

Mrs. Raj Kumari Chopra, Counsel for the Respondents.

CORAM:

Hon'ble Mr. G. Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr. S. Gurusankaran. .. Member (A)

J U D G M E N T

Hon'ble Mr. G. Sreedharan Nair, Vice-Chairman:

The applicant joined the Department of Health Services with effect from 4-6-1981. Before that, from 7-1-1972 onwards he was a Short Service Commissioned Officer ('SSCO' for short). His grievance relates to the denial of arrears of pay consequent upon the fixation of his pay with effect from 4-6-1981 taking into account his Army service. The request made by the applicant in this behalf was turned down by the order contained in the communication dated 23-1-1989. The applicant has prayed for the issue of a direction to the respondents for payment of arrears during the period from 4-6-1981 to 31-10-1984, with interest. It is urged that the denial of the benefit of arrears prior to 1-11-1984 is violative of Article 14 of the Constitution. It is alleged that in respect of Dr. Tripathy, whose case is identical to that of the applicant, the benefit has been allowed.

2. In the reply filed on behalf of the respondents, it is stated that with respect to the fixation of pay of Emergency Commissioned Officers ('ECOs' for short) and SSCOs on appointment to civil posts, there was an O.M. issued on 6-1-1975

governing those who joined the Army between 1-11-1962 and 10-1-1968 enabling to give credit for their approved military service in the matter of fixation of pay. It is stated that as regards those who joined the Army after 10-1-1968 an O.M. was issued on 29-11-1984 allowing them advance increments equal to the completed years of service rendered by them in the Armed Forces on a basic pay equal to or higher than the minimum of the scale attached to the civil post. The O.M. was given effect to from 1-11-1984. On 31-10-1985, yet another O. M. was issued extending the benefit of the instructions contained in the O.M. dated 29-11-1984 to ECOs and SSCOs appointed to civil posts before 1-11-1984 also. It was made clear in that O.M. that the pay of such officers may be fixed on a notional basis and they may be allowed arrears only with effect from 1-11-1984.

3. The respondents have pointed out that the applicant joined the Army after 10-1-1968 and came over to the civil post from 4-6-1981 and hence in accordance with the provisions contained in the O.M. dated 29-11-1984 his pay was notionally fixed with effect from 4-6-1981, but actual benefits were allowed only with effect from 1-11-1984 in terms of the subsequent O.M. dated 31-10-1985. It is contended that as the pay of the applicant has been regulated in terms of the orders issued by Government, the applicant is not entitled to the relief claimed.

4. The respondents have contended that as the pay of Dr. Tripathy was fixed in 1981, the applicant cannot claim parity with him and as such the plea of discrimination is unfounded.

5. The facts are not in dispute. Though the applicant became a SSCO in 1972 and joined the civil service only on 4-6-1981, in view of the O.M. dated 29-11-1984 (Annexure-C)

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read with the O.M. dated 31-10-1985 (Annexure-R2), he was entitled to a revised fixation of pay by the grant of advance increments equal to the completed years of service rendered in the Army on a basic pay equal to or higher than the minimum of the scale attached to the civil post. However, in view of the later O.M. he could not claim any arrears prior to the date of coming into force of the former O.M. namely 1-11-1984. It was stated by the counsel of the applicant that the denial of arrears prior to 1-11-1984 was arbitrary. The submission cannot be accepted since the respondents have acted in consonance with the instructions contained in the relevant O.M. dated 31-10-1985. It is significant that the applicant has not prayed for quashing the stipulation in the O.M. relating to notional fixation of pay and denial of arrears prior to 1-11-1984. Indeed, it was only in pursuance of the O.M. dated 29-11-1984 that those who were commissioned after 10-1-1968 and took up civil posts were enabled to have their pay fixed having regard to the service rendered in the Armed Forces. Effect was given to the instructions contained in the O.M. only from 1-11-1984.

6. It appears that prior to the issue of the aforesaid O.M. dated 29-11-1984 fixation of pay of certain officers was made allowing benefit of completed years of service in the Armed Forces. Placing reliance on one such case of Dr. Tripathy who was allowed the benefit by the communication contained in the letter dated 18-2-1981 (Annexure-D), it was emphatically submitted by counsel of the applicant that there is discrimination since the same benefit has not been extended to the applicant and as such there is infraction of Article 14 of the Constitution of India. We are unable to agree. The applicant cannot equate himself with Dr. Tripathy as the fixation of pay of the latter was in the year 1981, while the fixation of pay of the applicant was by the order dated 21-8-1985

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(Annexure-F) when the O.M. dated 29-11-1984 had been issued and necessarily the fixation and the consequential benefits had to be done in terms of the instructions contained therein. As such, when the respondents have decided the case of the applicant accordingly, it cannot be said that the action of the respondents is arbitrary or illegal, nor can the plea of discrimination or violation of Article 14 of the Constitution be sustained.

7. It was pointed out by counsel of the applicant that as early as on 22-6-1961 a representation had been submitted by the applicant for protection of the salary that he was drawing in the Armed Forces. We are of the view that the submission of that representation by itself cannot be of assistance to the applicant at this stage to challenge the fixation that has been done in terms of the instructions contained in the O.M. It is to be pointed out that in respect of persons who were commissioned after 10-1-1968, the benefit of fixation of pay by grant of advance increments was introduced only by the O.M. dated 29-11-1984 and had effect only from 1-11-1984.

8. The application is dismissed.

[Signature]
13/9/99
MEMBER (A)

[Signature]
13-9-99
VICE-CHAIRMAN.