

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 842/ 1989.
T.A. No.

DATE OF DECISION November 17, 1989.

Sunil Kumar Sinha

Applicant (s)

Shri B.B. Raval

Advocate for the Applicant (s)

Versus

Union of India & Others

Respondent (s)

Shri N.S. Mehta

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (A).

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No.*
4. To be circulated to all Benches of the Tribunal ? *No.*

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who is posted as Assistant Central Intelligence Officer (for short, A.C. I.O.) Grade II (G) in the Intelligence Bureau, Ministry of Home Affairs, Government of India, has prayed for a direction for fixing up his pay at Rs. 2900/-, i.e., at the maximum of the revised pay scale for the post of A.C.I.O. Grade II (G) in pursuance of the order at Annexure A-1. He has also prayed for a direction for payment of due interest on the arrears of difference of pay after fixation of pay as above.

2. Brief facts of the case, which are relevant to the reliefs prayed for in this application, are that the applicant joined the Intelligence Bureau as A.C. I.O. Grade II (G) on 11.8.1969 and was promoted to the rank of A.C. I.O. Grade I (G) on 28.2.1981. He was removed from service by an order of Joint Assistant Director, Subsidiary Intelligence Bureau, Tezpur, on 12.3.1985. On the basis of a revision petition preferred by him,

Clerk

the Revising Authority, vide order dated 9.12.1985 (Annexure-1 to the counter-reply) reinstated him in the reduced rank of A.C.I.C. Grade-II and posted him at Aizawl. On reinstatement, his pay in the reduced rank was directed to be fixed at the maximum of the pay scale of Rs. 425 - 600, i.e., at Rs. 600/-.

He did not report for duty at Aizawl, but filed an application in the Central Administrative Tribunal against the order of removal from service as also against the order reinstating him in the reduced rank of A.C.I.C. Grade-II. The Patna Bench of the Central Administrative Tribunal, while setting aside the revision order dated 9.12.1985 remanded back the case to the Revising Authority for passing a fresh order after giving a personal hearing and considering the material on record. In pursuance of this direction of the Central Administrative Tribunal, the Revising Authority (Director, Intelligence Bureau) granted a personal hearing to the applicant on 12/13-5-1988 and passed an order (Annexure A-1 to the application) modifying the penalty of removal from service to reduction to the lower rank of A.C.I.O. Grade-II with effect from the date he reported for duty at the I.B. Headquarters, New Delhi. His pay was ordered to be fixed "at the maximum of the pay scale of A.C.I.O.-II(G)". Without any prejudice to his claims and cases, the applicant joined duty at I.B. Headquarters, New Delhi on 17.11.1988, vide his joining report (Annexure A-2 to the application).

3. The case of the applicant is that the final order passed by the Revising Authority on 7.11.1988 directed his pay to be fixed at the maximum of the pay scale of A.C.I.O.-II (G) from the date he reported for duty at IB Hqrs., New Delhi. The pay scale for the post of A.C.I.C. Grade-II on that date was Rs. 1640 - 2900 and, therefore, he is entitled to draw pay at the rate of Rs. 2900/- per month plus allowances admissible thereon with effect from 17.11.1988. The respondents, however, provisionally fixed his pay at Rs. 1880/- with effect from 17.11.1988 vide Office Order dated 15.11.88. He made a representation on 5.1.89

(Annexure A-3 to the application) challenging the provisional fixation of his pay at Rs.1880/- and prayed for that his pay be fixed at Rs.2900/-. Vide Memorandum dated 4.4.1989, he was informed that his request is not tenable and that formal orders regarding fixation of pay on regular basis in the rank of ACIO-II (G) will follow. He has pleaded that he is entitled to a pay of Rs.2900/- with effect from 17.11.88 because that was the maximum of the pay for the post on the date he reported for duty on reinstatement; his joining report expressly stated Rs.2900/- at the maximum of the pay scale and his joining report was accepted by the respondents and no objection was taken; the respondents having offered the maximum of the pay scale of the post and the applicant having accepted the same and he having specifically stated the amount in his joining report, the respondents are under contractual obligation for specific performance of the contract; and on reduction in rank, the employee is given the maximum of the pay scale of the reduced rank.

4. The case of the respondents is that in the initial order dated 9.12.1985 passed by the Revising Authority, it was specifically stated that on reinstatement, the pay of the applicant would be fixed at the maximum i.e., Rs.600/- in the pay scale of Rs.425 - 600, and that the final order passed by the Revising Authority on 7.11.1988 is in continuation of the earlier order. It is also pleaded that in the final order, the punishment of removal from service imposed on the applicant has been modified to reduction to the lower post and if the applicant had joined at Aizawl in pursuance of the first order passed by the Revising Authority on 9.12.1985, his pay would have been fixed at Rs.600/-. It is further pleaded that the applicant's reinstatement in the reduced rank being not as a consequence of either his total exoneration or due to lacuna or flaw in the departmental proceedings but only as a result of a lenient view taken by the competent authority, he had no legal or moral right to

(c)

claim the pay to which he would not have been entitled, had there been no penalty imposed on him. It is specifically pleaded that the pay of Shri R.A. Dass, A.C.I.O. Grade-I, who is immediate senior to the applicant in the seniority list of A.C.I.O. Grade-II has been fixed at Rs.2300/- with effect from 1.1.1986 in the revised scale (after promotion) and the pay of the applicant has, therefore, been fixed correctly at Rs.1880/-, which is the corresponding stage of the maximum of the pre-revised scale (Rs.600/-).

5. I have carefully gone through the pleadings of the case and have also heard the learned counsel for the parties. The applicant was removed from service with effect from 12.3.85 and was reinstated with effect from 17.11.88. No orders are shown to have been passed by the respondents for the treatment of the period from 13.3.85 to 16.11.88 and it is not known whether this period is going to be treated as period spent on duty and, if so, for what purpose. In the absence of such orders, it is not possible for the Tribunal to arrive at a correct fixation of the pay to which the applicant may be entitled on his reinstatement on the reduced rank of A.C.I.O. Grade II (G).

6. The documents filed in this case show that the pay of Rs.1880/- allowed to the applicant with effect from 17.11.88 is on a provisional basis and no formal orders for regular fixation of his pay have been produced before me. It would probably be done after passing orders under the relevant rules about treatment of the period of absence from duty referred to in the preceding para.

7. The main question for adjudication in this case is as to whether the applicant is automatically entitled to pay in the revised scale of Rs.1640 - 2900, which came into effect for the post of A.C.I.O. Grade-II in the Intelligence Bureau with effect from 1.1.1986. Since the applicant was not in service on that date, he is prima-facie not entitled automatically to fixation of pay in the revised scale of pay.

Dear

8

Proviso to Rule 5 of the Central Civil Services (Revised Pay) Rules, 1986 provides for an option. Rule 6 (i) provides that the option shall be exercised in writing in the form prescribed for the purpose so as to reach the prescribed authority within three months of the date of publication of these rules. Proviso (ii) of Rule 6 provides that where a Government servant is under suspension on the 1st day of January, 1986, the option may be exercised within three months of the date of his return to his duty if that date is later than the date prescribed in this sub-rule. Note 1 below Rule 6 provides that persons whose services were terminated on or after the 1st January, 1986 and who could not exercise the option within the prescribed time limit, on account of death, discharge on the expiry of the sanctioned posts, resignation, dismissal or discharge on disciplinary grounds, are entitled to the benefits of this rule. Though no specific provision appears to exist in regard to cases in which the applicant is placed, yet on the analogy of the provision cited above and also due to the fact that the applicant was not in service on 1.1.1986, I am of the view that the revised pay scale which came into effect from 1.1.1986 will not automatically apply to the applicant unless a specific order is passed by the competent authority and after consideration of his option exercised by him, if any, extending the benefit of the revised scale to him.

8. The final order passed by the Revising Authority on 7.11.1988 cannot be said to be in continuation of the earlier order passed by the Revising Authority on 19.12.85. However, the operating part of the two orders is virtually the same, viz., the applicant was ordered to be reduced to the lower post of A.C.I.O. Grade-II and his pay was to be fixed with effect from the date he resumed duty on reinstatement, at the maximum of the pay scale of the reduced post.

In the order dated 19.12.1985, the scale of the reduced post

and the maximum of the pay in that scale is also mentioned.

In the order dated 7.11.1988, neither the scale is mentioned nor the maximum of that scale is mentioned. In view of what has been said by me in the preceding para, it cannot, therefore, be accepted that the order dated 7.11.1988 provided for a pay of Rs.2900/-, the maximum of the revised scale of pay, from the date the applicant resumed duty on 17.11.1988.

9. The respondents have specifically stated in their counter reply that the officer immediately senior to the applicant in the seniority list of A.C.I.O. Grade-II has been allowed the pay of Rs.2300/- with effect from 1.1.1986 in the revised scale of pay. It is also clear that this senior officer is already promoted as A.C.I.O. Grade-I. If the applicant's claim is accepted, it would mean that he would be allowed to draw a higher pay than what is admissible under the rules to a number of his seniors. This would be against all principles of equity and harmonious construction of rules and orders, all the more so, when it is not in dispute that the applicant has been awarded penalty of reduction in rank in disciplinary proceedings. These facts have not been disputed by the applicant. It may be noted that no rejoinder has been filed in this case by the applicant.

10. The contention of the applicant in regard to a contract having been entered into after the final order was passed by the Revising Authority on 7.11.88 is not tenable. The operating part of the order dated 7.11.88 cannot be legally treated as an offer and, therefore, the question of its acceptance does not arise. Further, there is no element of 'consideration' in the so-called contract.

11. In view of the above discussion, I see no merit in this application, which is hereby rejected. Parties will bear their own costs.

E. C. Jain
(P.C. JAIN) 17/11/88
MEMBER(A)