

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Regn. No. O.A.692/1988

Date of Decision: 1-10-1991

Shri Dulal Krishna Sikdar ... Applicant

And

Union of India & Others ... Respondents

Shri B.L. Chawla, counsel for the applicant.

Shri Makhanlal Verma, counsel for the respondents.

CORAM: Hon'ble Shri G. Sreedharan Nair, Vice Chairman.

Hon'ble Shri S. Gurusankaran, Member(A)

J U D G E M E N T

HON'BLE SHRI S. GURUSANKARAN, MEMBER(A)

The applicant was appointed as Sub-Inspector of Schools in Dandakaranya project on 7.12.1963 in the pay scale of Rs 170-380 and was later promoted as Zonal Inspector of Schools with effect from 1.3.1965 in scale Rs 210-425. He was declared quasi permanent as Zonal Inspector of Schools with effect from 29.12.1980. With effect from 1.1.1973, the pay scale of the Zonal Inspector of Schools was revised to Rs 425-700, while the pay scales of the Head Master, Middle School/Trained Graduate Teachers/ Sub Inspector of Schools was revised to Rs 380-640. The post of Zonal Inspector of Schools is a promotional post from the post of Head Master, Middle School/Trained Graduate Teachers/Sub-Inspector of Schools and its duties include inspection and supervision of performance of the Middle Schools and its Head Masters etc. and he was drawing confidential character rolls of teachers and sub-Inspectors of Schools as a Reporting Officer. The Third Pay Commission did not suggest specific revised scales of pay for the teaching staff of the Dandakaranya Project, but it had recommended that the posts for which the recruitment qualifications are the same as for similar categories in the Ministry of Railways and Defence and where the duties performed are also comparable, the appropriate revised scales

recommended by them in the case of Railways and Defence should be adopted. However, the pay scales of the teaching staff of the Dandakaranya project were not revised.

Aggrieved by the same, some Trained Graduate Teachers of the Dandakaranya project filed Writ Application Nos. 656 & 658 of 1979 in the Orissa High Court for revising their pay scales from Rs 380-640 to Rs 550-900. These Writ Applications were allowed by the Orissa High Court in September, 1984 directing the opposite parties to revise the pay scales of the Petitioners from Rs 380-640 as recommended by pay Commission.

Accordingly, the Dandakaranya Development Authority vide their order dated 23.7.1985 (Annexure-A6) had revised the pay scales of the Trained Graduate Teachers to Rs 440-750 and Head Master, Middle School to Rs 550-900 in accordance with the approval of the Government of India, contained in the Rehabilitation Division, Department of Home Affairs, Ministry of Home Affairs letter dated 5.6.1985. However, the Government of India and Dandakaranya project authority did not revise the pay scales of the Zonal Inspectors of Schools in the project. The applicant submitted a representation dated 10.1.1985 to the Chief Administrator of the Dandakaranya project, requesting them to grant him the pay scale of Rs 650-1200 from 1.1.1973 based on the judgement of the Orissa High Court in OJC 658 of 1979. However, no reply was given to the applicant. Prior to this representation, the applicant had given his option dated 25.7.1983 (Annexure-R4) for being surrendered to the Central (Surplus Staff) Cell in preference to his juniors on being rendered surplus consequent to the closure of the project. Based on this option, the applicant was rendered surplus and surrendered to the Central (Surplus Staff) Cell with effect from 15.7.1985. Subsequently, he was redeployed under the Ministry of Food & Civil Supplies with effect from 11.10.1985 in scale Rs 425-700. In the meanwhile, the anomaly in the pay scales of the Zonal Inspector of Schools

(9)

and the Head Master of Middle Schools, due to revision of the pay scale of the latter post to Rs 550-900 based on the Orissa High Court judgement, was referred to the Government and the same was rejected vide their order dated 20.7.1987 (Annexure-R2). Aggrieved by the same, the applicant has filed this application in April, 1988 praying for a direction to the respondents to fix his pay in appropriate scale above the pay scale of Rs 550-900 with effect from 1.1.1973, to pay arrears of pay and allowances for the period from 1.1.1973 to 10.10.1985 and also to absorb him in the Ministry of Food and Civil Supplies in an equivalent post corresponding to the pay scale of Rs 550-900 alongwith arrears of pay and allowances due to him on such absorption.

2. In his application, the applicant has stressed the fact that the post of Zonal Inspector of Schools in Rs 425-700 was a promotional post from the post of Head Master, Middle School/Trained Graduate Teacher/Sub Inspector of Schools, which were all carrying the pay scale of Rs 380-640 from 1.1.1973. He has contended that since the pay scales of the posts of Head Master, Middle School, Trained Graduate Teacher and Sub-Inspector of Schools have been revised with effect from 1.1.1973 by segregating them and giving them the pay scales of Rs 550-900, Rs 440-750, Rs 380-640 respectively based on the judgement of Orissa High Court in Writ Application Nos. 656 and 658/1979, the pay scale of the post of Zonal Inspector of Schools, which was a promotional post, should have also been consequently revised upwards. Had this been done, he would have been enjoying a pay scale higher to Rs 425-700, when he was surrendered to the Surplus Cell and would have also been placed in an equivalent post in the Ministry of Food and Civil Supplies, where he was absorbed subsequently. The applicant has also filed an application for condonation

of delay stating that the pay scales of the feeder posts were revised by the orders of the Government of India dated 5.6.1985 only just before his actual release to the Surplus Cell and also the demand for revision of pay scales for the Zonal Inspector of Schools was finally turned down by the Government only on 20.7.1987. He, has therefore, submitted that if it all there is any delay in filing this application, it should be condoned having regard to the facts and circumstances of the case.

3. The respondents in their reply have taken two preliminary objections. Firstly, they have stated that the application is hit by limitation and this Tribunal cannot take cognizance of the applicant's grievance, which arose beyond 3 years prior to the establishment of the Tribunal. They have also referred to the decision of the Cuttack Bench of this Tribunal in T.A. No.26/1987 delivered on 25.9.1987 in the case of P.P. Katari Vs UOI & Others (Katari's case for short) and submitted that the application is barred under the public policy and constructive resjudicata. The second objection taken by the respondents is that the application is bad for misjoinder of respondents, as Respondents nos. 2 to 4 are neither necessary nor proper parties and are liable to be deleted. They have stated that the applicant had never represented for the relief now prayed for in his application and the representation dated 10.1.1985 (Annexure-A2) was never received by respondent no.2. They have added that even though the question of anomaly in the pay scale of Zonal Inspector of Schools and the Head Master of Middle Schools consequent on the revision of the pay scale of the latter was considered by the Government, they did not agree to the same. The Cuttack Bench of this Tribunal did not also grant the request of revision of pay scales of Zonal Inspector of Schools in Katari's case (supra).

They have also taken the stand that the applicant was the senior most in the cadre and was rendered surplus in preference to his juniors to avail the redeployment benefits as per his own option dated 25.7.1983 (Annexure-Rf). They have, therefore, maintained that there are no grounds for revision of pay from Rs 425-700 to any higher scale. They have also maintained that the applicant has been absorbed correctly in the pay scale of Rs 425-700 as a junior Investigator in the Ministry of Food and Civil Supplies.

4. We have heard the counsel for both the parties and perused the records. Regarding the ~~the~~ preliminary objection of the respondents on the question of limitation, we are unable to agree with their submission. The cause of action regarding the anomaly in the pay scale of Zonal Inspector of Schools did not arise on 1.1.1973, but only on 5.6.1985, when the Government of India revised the pay scale of the Head Master of Middle School to Rs 500-900 with effect from 1.1.1973 pursuant to the judgement of the Orissa High Court. This order was implemented by the second respondent vide his order dated 23.7.1985 (Annexure-6), where as the applicant was released to the Surplus Cell on 15.7.1985. Further the Government of India took a final decision only in July 1987 on the question of grant of higher pay scale to the post of Zonal Inspector of Schools due to the anomaly created by granting higher pay scale to the post of Head Master, Middle School. Thus the grievance of the applicant is against the order of July, 1987 and this application filed in April 1988 cannot be hit by limitation. Regarding the other objection about misjoinder of respondents 2 to 4, the counsel for the respondents did not press this point during the arguments and rightly so, since the first relief asked for relates to the period he worked in the Dandakaranya project and the period

he spent in surplus cell.

5. During the arguments the counsel for the applicant stressed that the post of Zonal Inspector of Schools was a promotional post and the post of Head Master, Middle School, Trained Graduate Teacher and Sub Inspector of Schools, which were all in one common cadre in the pay scale of Rs 380-640, have since been segregated and the post of Head Master has been given the grade of Rs 550-900 with effect from 1.1.1973. He therefore, pleaded that in all fairness, post of Zonal Inspector of Schools should at least be given the same grade of Rs 550-900 with effect from 1.1.1973, particularly, since the applicant has been supervising the work of Head Masters and writing their confidential reports. These facts are not in dispute. The respondents have also accepted the anomaly created in the pay scale of Zonal Inspector of Schools consequent on the revision of pay scale of the Head Master, Middle School, but their submission is that the Government had considered this anomaly and did not agree to the revision of pay scale of Zonal Inspector of Schools to Rs 650-1200 from Rs 425-700, that is 2 stages above on the grounds that it did not flow directly from the judgement of the Orissa High Court in the case of the teaching staff of the Dandakaranya project and also the project itself was being wound up. The respondents have also referred to the judgement in Katari's case, where the grant of higher pay scale to the Zonal Inspector of Schools, to the applicant therein was not agreed to. However, on going through the above judgement, we find that Shri P.P. Katri, the applicant therein, was promoted to the post of Zonal Inspector of Schools from the post of Head Master, Middle Schools after 2.3.1977 and in another application, O.A. No.152/1986, the Cuttack Bench of this Tribunal had allowed his prayer for fixation of pay in scale Rs 550-900 as Head Master, Middle School with effect from 1.1.1973

to 2.3.1977. The Cuttack Bench has also conceded in Katari's case that by the promotion the applicant ^{therein as} was bound to receive lesser pay/Zonal Inspector than when he was Head Master. If at all the pay scale of the promotional post is lower than the feeder post, the employees in the feeder post can refuse the promotion to avoid monetary loss. It is also inconceivable as to how on promotion to a post involving higher duties and responsibilities, FR 22-C can be given effect to, if the scale of the promotional post is lower than that of the feeder post. We also observe that the applicant in the present case has restricted his relief to being given the pay scale of Rs 550-900 with effect from 1.1.1973. The respondents have already admitted that the applicant was the senior most Zonal Inspector of Schools in their project.

Shri P.P.Katri, the applicant in O.A. No.152/1986 and T.A. No.26/87 before the Cuttack Bench was promoted to the post of Zonal Inspector of Schools on 2.3.1977 only, whereas the applicant in this case is working as Zonal Inspector of Schools from 1.3.1965 onwards. Further since the applicant was promoted as Zonal Inspector of Schools from the post of Sub-Inspector in 1965 itself and the pay scale of the Zonal Inspector of Schools has become lower than the Head Master by the order passed by the respondents in 1985 only, the applicant does not even get a chance to refuse the promotion to a promotional post with a lower scale of pay. Therefore, not granting the request of the applicant for giving him the pay scale of at least Rs 550-900 with effect from 1.1.1973 would amount to denial of equal pay for work of higher responsibility and duties. Even before the introduction of III Pay Commission scales of pay, the applicant was drawing higher pay than the Head Masters. Thus, this case is distinguishable from Katari's case. In the circumstances the applicant's request to grant him at least the pay scale of Rs 550 - 900 with effect from 1.1.1973 along

with all the arrears is very reasonable.

6. We also observe that the granting of higher pay scales to the Head Master of Middle School was implemented by an order dated 5.6.1985, whereas the applicant was rendered surplus from the project only on 15.7.1985. The respondents have stated that the applicant was the senior most and he was rendered surplus in preference to his juniors as per his own option. We do not see as to how such an option can affect the conditions for absorption of staff rendered surplus. We, therefore, do not find any grounds to reject the request of the applicant that he should be treated as having been rendered surplus in the grade of Rs 550-900 from 15.7.1985 and he should be absorbed against the post of Rs 550-900 in the Food and Civil Supplies from 11.10.1985, the date of his absorption in that Department. During the arguments it was brought out that the grade of Rs 550-900 in the Food and Civil Supplies is given to the post of Senior Investigator, whereas the post of Investigator is in the grade of Rs 425-700. Since he has been absorbed already as a Junior Investigator in scale Rs 425-700 with effect from 11.10.1985, and his prayer is not for granting any seniority in the grade of Rs 550-900 in the Food and Civil Supplies Department and in the peculiar circumstances of the case, we can grant him seniority in the grade of Senior Investigator only from the date he has filed this application.

7. In the conspectus and the circumstances of the case and the discussions above, we allow the application with the following directions;

1. The application is allowed.
2. The date of absorption is 11.10.1985.
3. The grade of Senior Investigator is granted.

i) The applicant will be treated as having been placed in the scale of Rs 550 - 900 with effect from 1.1.1973 and will be eligible for all arrears of pay consequent to the same till the date of his being rendered surplus from the project.

ii) The applicant will be treated as having placed under the disposal of the Central Surplus Staff Cell with effect from 15.7.1985 in the grade of Rs 550 -900 and paid all arrears of the same till his date of absorption on 11.10.1985 in the Food & Civil Supplies Department.

iii) The applicant will be absorbed with effect from 11.10.1985 in the Food and Civil Supplies Department as Senior Investigator or in any other equivalent post in grade Rs 550-900 and he will also be given the equivalent pay scales under the IV Pay Commission Scales of Pay with effect from 1.1.1986 with all arrears of pay. However, he will be given seniority in the grade of Rs 550-900/ 1640-2900 ^{only} from the date of filing this application, viz. 19.4.1988.. At the same time the service rendered by him in grade Rs 550-900/1640-2900 from 11.10.1985 in the Food & Civil Supplies Department will be counted as qualifying service for any future promotions from that grade to any higher post.

9.

The application is disposed of accordingly.

Gurusankaran
(S. GURUSANKARAN)
MEMBER(A)

Sreedharan Nair
(G. SREEDHARAN NAIR)
VICE CHAIRMAN

Mr.

Pronounced in open Court
on today the 18th of October 1991.

Chacko
Mr. Chacko