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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

565/86

O.A. No. 656/1986
T.A. No.

198

DATE OF DECISION 11.12.1987

Jagdish Chander Jetli, Petitioner

In person. Advocate for the Petitioner(s)

Versus

The Secretary, Government of India, Respondent
Department of Textiles, Udyog Bhavan,
New Delhi & Ors.

Shri N.S. Mehta, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr.G.Sreedharan Nair, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

h.s.n
11-12-1987
(G.Sreedharan Nair)
Judicial Member

S.P.M
(S.P. Mukerji)
Administrative Member

(D)

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

O.A.565 of 1986.

Date of Judgment: 11-12-1987.

Jagdish Chander Jetli ... Applicant.

vs.

1. Secretary, Government of India,
Department of Textiles, Udyog Bhavan,
New Delhi and another ... Respondents.

For applicant: Appearng in person.

For respondents: Shri N.S.Mehta, counsel for R.l.

CORAM:

The Hon'ble Shri S.P.Mukerji, Administrative Member
and

The Hon'ble Shri G.Sreedharan Nair, Judicial Member.

(The Judgment of the Tribunal was delivered by
The Hon'ble Shri G.Sreedharan Nair)

The applicant, a Member of the Indian Administrative Service
(Bihar cadre) was appointed as Managing Director of the National
Textile Corporation Limited, New Delhi, until further orders,
in the scale of pay of Rs.2500 - 3000 by the order of Government

of India dated 30-9-1974. He continued in the post till ~~30-9-1976~~ 24-6-1976.

At the time of his appointment, the post was in Schedule 'C' in
the scale of Rs.2500 -100 - 3000. It was upgraded to Schedule 'B'
in the scale of Rs.3000 - 3500 with effect from 18-12-1974.

The deputation terms of the applicant were not fixed at the time of
his appointment. Nor was it done at any time of his tenure as
Managing Director of the Corporation. It was only by the order
dated 13-4-1977 that the deputation terms were fixed. By the said
order, a provision ^{was} also made regarding his pay in the

following terms:-

"Pay: Having regard to the duties and responsibilities attached to the post of Managing Director, National Textile Corporation Ltd., the Central Government have come to the conclusion that it is not possible to declare the post as equivalent in status and responsibility to any of the posts specified in Schedule III to the Indian Administrative Service (Pay) Rules, 1954 because there is no post of comparable status and responsibility in the said Schedule. In exercise of the powers conferred by sub-rule (4) of rule 9 of the said rules, the Central Government hereby dispenses with the requirements of the declaration that the said post of Managing Director, National Textile Corporation Ltd. is equivalent in status and responsibility to a post included in Schedule III to the Pay Rules. Under sub-rule (6) of rule 9 ibid, his initial pay will be fixed at Rs.2500/- per mensem in the scale of Rs.2500-100-3000."

The grievance of the applicant is that though the post was upgraded to the scale of Rs.3000 - 3500 with effect from 18-12-1974 by the aforesaid order, his pay was fixed for the entire period of deputation in the scale of Rs.2500 - 3000. It is urged that when the Government had dispensed with the declaration that the post is equivalent in status and responsibility to a post specified in Schedule III to the Indian Administrative Service (Pay) Rules, 1954, for short 'the Rules', in exercise of the powers conferred under Sub-rule (4) of Rule 9 of the Rules, in accordance with the provisions contained in Sub-rule (6) of Rule 9, the applicant should have been allowed the prescribed scale of pay of the post. He prays that the order dated 13-4-1977 may be so revised as to fix his pay at Rs.2500/- per mensem in the scale of Rs.2500 - 3000 from 30-9-1974 till 17-12-1974, and at Rs.3000/- per mensem in the

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scale of Rs.3000 - 3500 with effect from 18-12-1974 to 24-6-1976, and as a consequence, the second respondent, National Textile Corporation Limited, may be directed to pay the consequential arrears with interest at 12 percent per annum.

The National Textile Corporation Limited, the second respondent, even after acceptance of notice of the application does not resist the same. A reply has been filed on behalf of the Union of India, the first respondent, by the Director in the Ministry of Textiles, New Delhi. It is contended that the upgrading of the post was after the appointment of the applicant and that the initial appointment of the applicant was only for a term of one year. When the Public Enterprises Selection Board was requested to recommend a panel of names for appointment of a successor to the applicant, two names including that of the applicant were recommended. However, the recommendation regarding the applicant was subject to his willingness to get absorbed in the Corporation on appointment, and though the term of appointment of the applicant was extended beyond 30-9-1975, it was made clear to him that he would continue to draw pay in the scale of Rs.2500 - 3000 until he permanently gets himself absorbed in the Corporation, irrespective of the fact that the post had been upgraded to Schedule 'B'. Since the applicant was not prepared for permanent absorption, he was repatriated with effect from

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24-6-1976. It is also stated that the pay of the I.A.S. Officers irrespective of empanelment for appointment in public sector undertakings has to be related to the level for which he is empanelled for Central deputation and as the applicant was empanelled for the post of Joint Secretary in the Centre he was not eligible for a pay of Rs.3000/- per mensem. The representations submitted by the applicant for fixation of his pay in Schedule B were duly considered and have been rejected.

In view of sub-rule (1) of Rule 9 of the Rules, no Member of the Indian Administrative Service shall be appointed to the post other than a post specified in Schedule III, unless the Government concerned make a declaration that the said post is equivalent in status and responsibility to a post specified in Schedule III. However, where such equation is not possible, sub-rule (4) enables the Government, for sufficient reasons to be recorded in writing, to appoint a Member of the Service to any such post without making the declaration. On such appointment, the Member of the Service is entitled to draw the prescribed pay of the post, and in a case where a scale of pay has been prescribed for the post, such rate of pay not exceeding the maximum of the scale as may be fixed by the Government. Provision to this effect has been specifically made in Sub-rule (6) of Rule 9 of the Rules.

Admittedly, the post of Managing Director of the National Textile Corporation Limited is not one specified in Schedule III to the Rules. When the applicant was appointed on this post on 30-9-1974, it was in Schedule 'C' in the scale of pay of Rs.2500/- - Rs.3000/-. It was upgraded to Schedule 'B' in the scale of Rs.3000 - 3500, while the applicant was holding the post with

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effect from 18-12-1974. Though the applicant worked on the post till 24-6-1976, his deputation terms were not issued during the period while he was holding the post. They were issued only on 13-4-1977, about nine months after the applicant left the post.

It was by the said order that the declaration relating to equation of the post was dispensed with. Simultaneously, under Sub-rule (6) of Rule 9 of the Rules, Government fixed the initial pay of the applicant at Rs.2500/- per mensem in the scale of Rs.2500 - 3000.

The circumstance that with effect from 18-12-1974, the post had been upgraded to Schedule 'B' in the scale of Rs.3000 - 3500 was not taken into consideration in the matter of fixation of pay of the applicant. ~~However~~ Sub-rule (6) clearly provides that the Member of the Service on appointment to a post referred to in Sub-rule (4) in respect of which a scale of pay has been prescribed, ~~he~~ shall draw such rate of pay not exceeding the maximum of the scale, though the fixation of initial pay at Rs.2500/- per mensem in the scale of Rs.2500 - 3000 is in order, the failure to fix the pay in the revised scale of Rs.3000 - 3500 with effect from 18-12-1974 cannot be accepted, as the Member of the service has the statutory right to draw the pay in accordance with the existing scale of pay of the post.

It was argued by Advocate Shri N.S.Mehta appearing on behalf of the first respondent that the provision in Sub-rule (6) of Rule 9 has application only to the initial fixation of pay and that since the applicant was allowed a pay of Rs.2500/- per mensem in the scale of Rs.2500 - 3000 with effect from the date of his appointment, there is no violation of the provision in the Sub-rule. We are not persuaded to agree, for, a reading of the Sub-rule leaves no doubt

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that it governs not only the fixation of the initial pay on appointment, but relates to the drawal of pay throughout the period during which a Member of the service holds the post.

In the reply filed by the first respondent, it is contended that the appointment of the applicant was approved only for a period of one year or till finding out a successor for the post whichever is earlier, on a pay of Rs.2500/- per mensem in the scale of Rs.2500 - 3000 and that after the post was upgraded, the Public Enterprises Selection Board had recommended the name of the applicant for the post, only subject to his willingness to get absorbed in the Corporation. It is also stated that when his term of appointment was extended, the Government had made it clear to the applicant that he would continue to draw pay in the scale of Rs.2500 - 3000 until he permanently gets himself absorbed in the Corporation and that since he was not prepared for permanent absorption, he was repatriated.

In the rejoinder, the applicant has denied these statements. The order of appointment of the applicant shows that it was not for any fixed period on a fixed pay, but it was to be operative 'until further orders'. There is nothing on record to show that any order of extension as such was issued by the Government. The applicant has specifically stated that no such order has been communicated to him. Similarly, there is no material to show that a formal offer of appointment was made to the applicant by the Government for immediate absorption on permanent basis as the Managing Director of the Corporation.

The letter dated 17-4-1976 addressed to the applicant is the

earliest document in that respect which is on record. Evidently, as the terms and conditions of the absorption were not communicated in that letter, the applicant is seen to have sought the details. But it is stated by him that no reply was received to the letter he has sent on 24-4-1976 and that what transpired thereafter was his repatriation. In the circumstances, we cannot accept the contention that after the post was upgraded to Schedule 'B', the continuance of the applicant on the post was subject to the condition that he shall continue to draw pay in the earlier scale of pay of the post. When it is admitted that even after the upgradation of the post, the Public Enterprises Selection Board found the applicant suitable for holding the post and when the applicant was continuing on the post, we find no justification for denying him the revised scale of pay of the post when once the upgradation was made. The Schedule 'C' post that was in existence earlier was no longer thereafter 18-12-1974; thereafter, it was only the Schedule 'B' post in the scale of pay of Rs.3000 - 3500 that was in existence, and as such the pay of the applicant has necessarily to relate to that post, and in the face of the right that is conferred under Sub-rule (6) of Rule 9 to draw the said pay, the denial of the same cannot be upheld.

It was submitted on behalf of the first respondent that when once the applicant had continued to draw the pay of Rs.2500/- even after the upgradation of the post, the present claim is not sustainable in view of the principle of waiver. But this submission does not appeal to us. As has been communicated earlier, the right to draw the prescribed scale of pay of the post is a right that has been statutorily conferred on the Member of the Service under Sub-rule (6) of

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Rule 9 of the Rules. Though the applicant had been holding the post from 30-9-1974, Government had fixed the terms and conditions of his deputation only on 13-4-1977 about nine months after the repatriation of the applicant. As has been stated by the applicant, he could not have inferred or imagined that the terms to be issued by the Government would not be in accordance with the statutory rule. As such, even if he had continued to draw the earlier scale of pay which was in force on the date of his appointment, it cannot be said that there is any waiver on his part so as to reject his claim.

We hold that when the applicant was adjudged fit to hold the upgraded post and was made to perform the duties of the said post, he cannot be denied the statutory right conferred on him to draw the pay of the post in view of Sub-rule (6) of Rule 9 of the Rules.

We hereby direct the first respondent to modify the order dated 13-4-1977 so as to fix the pay of the applicant at Rs.2500/- in the scale of Rs.2500 - 100 - 3000 ~~per~~ from the afternoon of 30-9-1974 to 17-12-1974 and ~~that~~ at Rs.3000/- per mensem in the scale of pay of Rs.3000 - 100 - 3500 with effect from 13-12-1974 to the afternoon of 24-6-1976. The revised order shall be issued within a period of one month from the date of receipt of a copy of this order. On the issue of the revised order as above, the second respondent shall pay the applicant the arrears of pay within one month thereof, failing which the amount shall bear interest at the rate of 12 percent per annum from that date.

This application is allowed as above.

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11.12.1987
(G. SREEDHARAN NAIR)
MEMBER (J)

52/11.XII.87
(S. P. MUKERJI)
MEMBER (A)

S. V.