

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1366/90
T.A. No.

199

DATE OF DECISION 26.7.91

Shri P.N.Kohli,

Petitioner Applicant.

Shri S.N.Sharma

Advocate for the Petitioner(s) Applicant

Versus

Sacy.Ministry of Defence & ors.

Respondents

Shri M.L.Verma,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K.KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. B.N.DHOUNDIYAL, MEMBER(A)

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 ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE MR.B.N.
DHOUNDIYAL, MEMBER(A))

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, Sh.P.N.Kohli, who retired as an UDC on 30th June, 1983 from the Central Ordinance Depot, Delhi Cantt. has challenged the order of the respondents denying him the benefit of the service in ex-cadre post rendered on identical time scale for the purpose of pay fixation.

2. The applicant was appointed as a Civilian Clerk in Army Ordinance Corps on 23rd May, 1943 and proceeded on deputation to the General Reserve Engineer Force on 14th August, 1961 on a higher grade of U.D.C. When he was reverted to his parent department on 19.4.69, his basic pay had reached Rs.240 per month in the pay scale of Rs.130-300. However, his basic salary was fixed at Rs.181 per month in the pay scale of LDC Selection Grade. On being promoted as U.D.C on 1st December, 1969, his basic pay was fixed at Rs.200 per month. Thus no benefit of previous service rendered on identical time scale was allowed to him. The

applicant retired on 30.6.1983 and was advised by the Commandant Ordinance Depot, Delhi that action with regard to the payment of leave encashment and pensionary benefits would be initiated after finalisation of his pay fixation case.

3. The relief sought by the applicant is that the following factors may be taken into account while fixing his pay:-

- (a) Service from 14th August, 1961 to 29th November, 1965 under the proviso F.R.22 and Government of India order No.(8) under F.R.22; and
- (b) Service from 1st April, 1968 to 18th April, 1969 under provisions of decision No.16 of the Article 156 (CSR) Vol.I.

4. The respondents have stated that on representations being received from the applicant, it was decided that he should be given his original seniority as Lower Division Clerk(OG) and was treated as having been absorbed as UDC with effect from 19th March, 1969. His case for fixation of pay as Upper Division Clerk on reversion after allowing him to count the service rendered by him as UDC prior to 1st April, 1968 in the GREF was not accepted. The view expressed by the audit authorities was that the Government of India decision No.7 under Article 156(A) of the CSR Vol.I is applicable only in those cases where the individual has officiated in the higher scale in the parent department and promoted in the same identical scale at a later date on regular basis. His immediate junior and immediate senior in his parent office were promoted as UDC on 1.4.68. If he had not gone on deputation, he could have not been promoted as UDC before 1.4.68. According to first proviso to FR 22, service rendered on an identical time scale shall on reversion to the parent cadre count towards initial fixation of pay to the extent the service from the date at least one junior is promoted and benefit will be limited to the period the Government servant could have held the post in his parent cadre, had he not been appointed to ex-cadre post. The Ministry of Defence agreed with this view.

5. We have gone through the records of the case and heard the rival contentions. In F.R.22, certain provisions have been made for allowing the benefit of working on a higher scale post. Proviso (c) reads "the service will count from the date his junior is promoted and the benefit will be limited to the period the Government servant would have held the post in his parent cadre had he not been appointed to the ex-cadre post". However, these provisions became applicable in November, 1965 and the following clarifications were given in G.I. M.F.O.M.Nb.F.1(25)-E.III(A)/64, dated 26th February, 1970:-

"A question has been raised whether in case of Govt. servants already on deputation prior to 30th November, 1965 but reverting back to parent cadre subsequent to that date, the service rendered up to 29th November, 1965 in ex-cadre posts/carrying scales of pay identical with or higher than that of the post to which the officer is appointed in the parent cadre on reversion would count for the purpose of fixation of pay and increment, under provisions of proviso (1)(iii) to F.R.26 (as these stood prior to amendment by the Office Memorandum, dated the 30th November, 1965). It has been decided that in such cases the benefit of the ex-cadre service rendered in identical time-scale of pay or on higher scales up to 29th November, 1965 should count for pay fixation and increments in the post in the parent service/cadre to which the officer reverts to the extent admissible under the orders in force prior to 30th November, 1965."

6. In accordance with the decision Nb.16 to Article 156 of Civil Services, in such cases the services will count from the date the junior is promoted in the Department and the benefit will be limited to the period a Government servant would have held the post under Government in his parent cadre, had he not been appointed to the ex-cadre post in higher identical time scale.

7. The applicant has cited the case of UDC Shri G.S.Kohli, who had served in the ex-cadre post on identical time scale from

5th November, 1962 to 16th March, 1969 and had been allowed the benefit of ex-cadre service for the purpose of pay fixation and increments in his parent cadre. The respondents have also admitted that "in a similar case of E.No.16767 UDC Shri G.S. Kehli who was reverted to ACG from 17th March, 1969, his pay has been fixed after allowing him to count his previous service rendered as UDC in MCC for the purpose of pay fixation". No satisfactory explanation has been given as to why similar benefit has not been given to the applicant who is similarly situated.

8. The respondents have admitted that 'had he not gone on deputation, he would not have been promoted as U.D.C before 1.4.68'. At that time, he was drawing a basic pay of Rs.240 per month in the scale of U.D.C in an ex-cadre post. He, therefore, give/following the directions regarding fixing of his pay:-

- (a) The respondents shall fix the pay of the applicant on the same basis as was done in the case of Shri G.S. Kehli taking into consideration the proviso F.R.22 and Government of India Order No.8 thereunder. The date for fixation of his pay in the higher grade of U.D.C in his parent department will be taken as 1.4.68 i.e. the date on which his junior was promoted to this scale. While fixing his pay in the U.D.C grade on that date, credit shall be given for the period of service from 14.8.61 to 29.11.65 under the proviso F.R.22 and Government Order No.8 under F.R.22. After so fixing his pay, his pension, gratuity and other retirement benefits shall be calculated on the basis of the revised pay; and
- (b) The respondents shall take all necessary steps to comply with this order within three months from the date of its receipt by them.

There will be no order as to costs.

B.N. Doundiyal
(B.N.DHOUNDIYAL)
MEMBER(A)
26/7/81

P.K. Kartha
(P.K.KARTHA)
VICE CHAIRMAN(J)
26/7/81