

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2119/91

New Delhi, this the 2nd day of April, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)
Hon'ble Shri S. P. Biswas, Member (A)

J.P.S.Saroha s/o Z.S.Saroha,
R/o Sector no. 4,
House No. 5r83, R.K.Puram,
New Delhi. ...Applicant

(In person)

Versus

Union of India through

1. Ministry of Defence,
through its Secretary,
Department of Defence Supplies(DGQA)
New Delhi.

2. Chief Administrative Officer &
Office of J.S.,
C II Hutmants, New Delhi.

3. Controller of Defence Accounts,
Ministry of Defence,
'G' Block,
New Delhi. ..Respondents

(By none)

O R D E R

By Hon'ble Dr. Jose P. Verghese, V.C.(J) --

The applicant in this case was holding the post of Senior Scientific Assistant (hereinafter called as SSA) w.e.f. 4.1.1974. The applicant and his colleagues had a grievance as to the pay scale that was made applicable to them and claim parity in the scales of pay with the cadre of foreman. In order to resolve the issue an Expert Classification Committee was constituted in the year 1975 to examine the matter. The report submitted by the said Expert Classification Committee was not pursued by the Govt. of India in the year 1979. Thereafter the matter

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was taken up in the Joint Consultative Machinery (hereinafter called as JCM). Since no agreeable solution could be found in the JCM the Govt. referred the matter to the Board of Arbitration. The award of the Arbitration Board was published on 12.8.1985 and the Board recommended the pay scale of 840-1040/- to be awarded to some of the SSAs w.e.f. 22.9.1982. But the Govt. of India decided to implement the award w.e.f. 1.1.1988 only with a view of the adverse effect that might arise on the national economy if the award was implemented w.e.f. 22.9.1982 and if the arrears were to be paid accordingly. Thus, the Govt. of India circulated its letter on 11.11.1988 implementing the award w.e.f. 1.1.1988.

Aggrieved with the decision of the Govt. not to implement the award w.e.f. 22.9.1982 the Scientific Workers Association (registered) Kanpur filed an OA No. 952/86 in the Principal Bench of Central Administrative Tribunal praying inter-alia for implementation of the award of the Board of Arbitration w.e.f. 22.9.1982. The OA was disposed of by the Tribunal on 10.8.1989 with the following directions:-

- (a) The respondents shall implement the award of the Board of Arbitration dated 12.8.1985 in Reference No. 9 of 1983 in respect of the Senior Scientific Assistants w.e.f. 22.09.1982, i.e. the date stipulated in the award and not with effect from 01.01.1988 mentioned in the letter No. 9(1)/85/D(ECG)/(IG)/1 of the Government of India.
- (b) The respondents shall pay the arrears of pay and allowances to the Senior Scientific Assistants on the basis of the revised pay scale as indicated in (a) above, together

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with interest at the rate of 10% per annum from 22.9.1982 to the date of payment.

- (c) The respondents shall comply with the above directions within a period of three months from the date of receipt of a copy of this order.
- (d) In the facts and circumstances of the case, we award a sum of Rs. 1,000 as token costs to the applicants.

In the meantime the Parliament approved the proposal of the Govt. to implement the award not with effect from 22.9.1982, rather 1.1.1988 only and the relevant Resolution was passed by both the Houses of the Parliament:

"That this House approves the proposal of the Government to modify the date of implementation from 22.9.1982 as given by the Arbitration Board to 01.01.1988 in respect of Award dtd 12.8.1985 in CA Reference Nos. 9 & 10 of 1983 laid on the Table of Lok Sabha on 13.10.1989 regarding grant of higher pay scales to the Senior Scientific Assistants, Draftsmen, Store Keeping Staff and Civilian Motor Drivers in Defence Establishments in terms of para 21 of the Scheme for Joint Consultative Machinery and Compulsory Arbitration as the high financial implications involved in acceptance of the Award were considered to the effect of National Economy."

The Union of India in the meantime filed an appeal against the judgement and order of this court in OA No. 952/86. The Hon'ble Supreme Court allowed the appeal and stated that the Parliament had the power under clause 21 of the JCM Scheme to fix the implementation of the award and the fixation now done w.e.f. 1.1.1988 is correct and accordingly the said appeal was allowed.

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It is relevant to have a look at the relevant rules of the SCM Scheme. The Scheme (on the pattern of the Whitely Machinery in the UK) was recommended by the Second Pay Commission. After working out the details in consultation with the leaders of the employees, the Scheme was introduced in the year 1966. At that time it broadly covered 2.5 million out of 2.6 million regular civil employees of the Central Government. The Scheme is a voluntary one and the Government as well as the Staff Associations/Unions participating in the Scheme were required to subscribe a Declaration of Joint Intent which, inter alia, provides for avoiding agitational methods by the Staff Unions/Associations for redressal of their grievances. Clauses 16 to 21 of the JCM Scheme which provide for the Machinery of Arbitration are reproduced hereunder:

"16. Compulsory arbitration be limited to:

- (i) Pay and allowances.
- (ii) Weekly hours of work, and
- (iii) leave

of a class or grade of employees.

17. Cases of individuals shall not be subject to compulsory arbitration.

18. A dispute shall not be referred to arbitration unless it has been considered by the National Council or the appropriate Departmental Council, as the case may be, and final disagreement between the two sides has been recorded. If there is a dispute relating to an arbitrable matter in a lower council it will be placed before the Departmental Council concerned.

19. On a final disagreement being recorded as mentioned in clause 18, the Government shall appoint a Board of Arbitration as soon as possible. The Board will consist of 3 members, one drawn from a panel of 5 names submitted by the official side, one from a similar panel submitted by the staff side of the National Council, and a chairman who will



independent person. The members and the Chairman will be selected by the Minsiter of Labour.

20(i) In determining a dispute the Board of Arbitration shall examine the merits of the case presented by both the official and staff sides, and take into account all other relevant factors including the principles enunciated in any recent report of a Commission of enquiry etc.

(ii) Matters, determined by the Government in accordance with the recommendations of a Commission will not be subject to arbitration for a period of 5 years from the date of the recommendations, after which they will become arbitrable with reference, as far as possible, to the factors referred to in (i) above.

21. Subject to the overriding authority of Parliament, recommendations of the Board of Arbitration will be binding on both sides.

If, for reasons to be recorded in writing, the Central Government is of opinion that all or any of the recommendations of Board of Arbitration should on grounds affecting national economy or social justice be modified, the Central Government shall, as soon as may be, lay before each House of Parliament the report of the Board containing such recommendations together with the modifications proposed and the reasons, therefor, and thereupon Parliament may make such modifications in the recommendations as it may deem fit. Modification may extend to the rejection of a recommendations".

It is under clause 21 that the Supreme Court has set at rest the issue whether the Parliament has power to change the date of implementation of the Award from 1982 to 1988.

The respondents in the meantime, after the passing of the said Resolution, looked into all the cases for revision of pay scales including that of the petitioner. Accordingly on 21.8.1991 the respondents passed the following order:-



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"The undersigned is directed to say that with reference to CA No. 9 and 10 of 1983, the Board of Arbitration had recommended that Senior Scientific Assistants in R&D Organisation and DGQA may be given III pay Commission's scale of Rs. 840-1040 in the same proportion as that obtaining on the date of Award between Foreman and Asstt. Foreman in those organisations. The Govt. accepted the Award and sanctioned upgradation of 101 posts of SSA's in the DGQA Organisation in the pay scale of Rs. 840-1040 and Rs. 2375-3500 according to III pay commission Report and IV Pay Commission respectively. The orders took effect from 1.1.1988. Subsequently the parliament approved the proposal of the Govt. to implement the Award w.e.f. 1.1.1988.

Shri JPS Saroha is holding the post of SSA w.e.f. 4.1.1974. In accordance with the above provisions, he was to be placed in the scale of Rs. 2375-3500/- w.e.f. 1.1.1988. However, this pay in the revised scale of Rs. 840-1040 was fixed wrongly w.e.f. 22.9.1982 and in the revised scale of Rs. 2375/3500 w.e.f. 1.1.1986 and he was authorised Basic pay of Rs. 3050/- w.e.f. 1.1.1986 vide DOP&T II No. 4/DPIE/91. His subsequent Annual Increment have been released on the basis of his basic pay so arrived at.

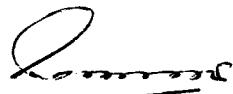
In view of the fact that Shri Saroha's pay in the higher scale of Rs./ 2375-3500 was to be fixed w.e.f. 1.1.1988, his pay fixation erroneously ordered earlier needs modification and he will be entitled the benefit of the higher scale of pay from 1.1.1988 only."

It was also mentioned in the said order that the petitioner is given an opportunity to explain as to why his pay in the revised pay scale should not be fixed from 1.1.1988 and the excess payment already made on account of erroneous fixation of pay be not recovered. He was to file a reply within ten days from the date of receipt of a copy of the said order and accordingly reply was filed on 28.9.1991. After receipt of reply from the petitioner, the respondents proceeded to implement their orders dated 21.8.1991 against which the present OA has been filed.

The short question involved in this case is whether in ^{the} case of the petitioner the fixation of pay in accordance with the IIIrd Pay Commission as well as IVth Pay Commission has to be effected w.e.f. 1.1.1982 or w.e.f. 1.1.1988 and the next question that follows this is whether the notional fixation is to be done w.e.f. 1982 and without payment of any arrears the monetary benefit is to be granted only w.e.f. 1.1.1988 or not.

We have perused the records and the previous decisions of this Tribunal as well as that of the Supreme Court and we are of the opinion that the present OA is to be rejected. It is the case of the petitioner that since the implementation of the Award has been rightly made effective from 1.1.1988 by competent authority, the monetary relief only is to be given w.e.f. that date and the respondents should have proceeded to notionally fix the pay w.e.f. 1982 as was provided in the Award itself. We cannot agree with this contention of the petitioner for the reason that both the Government, the two Houses of Parliament as well as the Hon'ble Supreme court was aware whether notional fixation is to be done w.e. f 1.1.1982 even though the award as a whole is to be implemented w.e.f. 1.1.1988. Once the courts have approved that the award is to be implemented only from 1.1.1988 after finding that the Parliament has power to postpone the date of implementation from 1982 to 1988, not only for the purpose of payment of arrears but also for the purpose of notional fixation for the reason that they will have substantial financial burden on the national economy. That being so, both the contentions of the petitioner namely that even though the petitioner may not be entitled

for arrears of payments from 1982 to 1988 atleast he would be entitled to notional fixation of pay w.e.f. 1.1.1982 and a final fixation as on 1.1.1988 ~~with a~~ higher payment that would arise out of such fixation is his entitlement, cannot stand. We reject both these contentions and since nothing else ~~for our consideration~~ remains in this OA, this OA is dismissed with no order as to costs.



(S.P.Biswas)

Member (A)


(Dr. Jose P. Verghese)

Vice-Chairman(J)