

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Date of Decision: 4-9-92 15

OA 2598/91

L.M. TIWARI

... APPLICANT.

Vs.

UNION OF IDNAI & ORS.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant

... SHRI O.P. SOOD.

For the Respondents

... SHRI M.L. VERMA.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y

2. To be referred to the Reporters or not ? N

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant retired as an IPS Officer of the Utter Pradesh Cadre w.e.f. 30.4.81. Initially he joined the Utter Pradesh Police Service on 26.9.47 and promoted as Supdt. of Police in August, 1971 in the scale of Rs.750-1300. The pay scale was revised to Rs.1200-1700, which has been the special grade. The grievance of the applicant is that he was promoted in the IPS Cadre on 5.4.78 and at that time he

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was already drawing the basic salary of Rs.1600/- in the grade of Rs.1200-1700. His pay on promotion was fixed on 1.1.79 as Rs.1650/- and on 1.1.80 Rs.1700/- which he had drawn till 31.3.81. However, for the last month of service i.e. April, 81, a deduction was made on account of excess payment and his pay was calculated at Rs.1600/- p.m. and deduction of Rs.2100/- were made and adjusted against the salary of April, 81. It is alleged ^{that} excessive pay which was drawn by the applicant from April, 79 to March, 81. As according to the respondents, the pay in the IPS Cadre should have been fixed according to the IPS Pay Rules, 1954 and the formula is given in Section 4 (Clause 3) of IPS Pay Rules, 1954 read with Section 1 Schedule II and Sub- Clause 3 of Section 1 of the same Schedule. The applicant made representations but to no effect. The applicant was made to draw his pensionary benefits on the basis of last pay drawn which was revised at Rs.1600/- p.m. In the application, the applicant has prayed the following reliefs that the respondents be directed to fix and calculate the pensionary benefits on the basis of Rs.1700/- p.m. quashing the order or deduction of pay from Rs.1700/- to Rs.1600/- p.m. as reflected in the

salary slip of April, 81 and refund a sum of Rs.2100/-,

recovered from him. He has also claimed interest as well as damages for harrassment.

2. The respondents contested the application and stated that the present application is barred by limitation as laid down under Section 21 of the Administrative Tribunals Act, 1985 and further, the pay of the applicant was rightly fixed as per IPS Pay Rules, 1954 as FR 22C is not applicable when the State Police Officer is promoted to IPS cadre. It is stated that the pay of the applicant was rightly fixed under IPS Pay Rules, 1954. The applicant has no cause of action and the application is devoid of merit.

3. I have heard the learned counsel for both the parties at length and have gone through the records of the case. The applicant retired on 30.4.81 and his pay was re-fixed before his retirement in the month of April, 81. Upto March, 81 he was getting Rs.1700/- but it was reduced to Rs.1600/- on the basis of refixation of his pay because the applicant was getting in 1978 Rs.1600/- in the scale of Rs.550-1200 and was in the special grade of Rs.1200-1700 of the State Police Service. According to IPS Pay Rules, 1954, Section 1(Clause 3)

of Schedule II of the IPS Pay Rules, 1954, the pay of State Police Officer when promoted to IPS Cadre shall be fixed at the stage of the Senior Time Scale of the IPS equal to his actual pay in the lower scale of his organisation pay in the lower scale, as the case may be, increase at the rate of one increment in the Senior Time Scale of IPS for every three years of service in the State Police Service. The resultant increase shall be subject to a minimum of Rs.150/- and a maximum of Rs.200/- over his pay in the State Police Service. The Sub-clause 3 of Section I of Schedule II provides that a promoted Officer, who at the time of his appointment to the IPS was officiating in the higher scale of the State Police Service and whose pay in the Senior Time Scale of IPS is fixed in accordance with the clause I, shall, in case his officiating pay in higher scale is higher than the initial pay so fixed in the Senior Time Scale of IPS, be entitled to a personal pay equal to the difference provided that the State Government certifies that the promoted officer would have continued to officiate in the higher scale but for his appointment to the IPS. The Personal pay shall be absorbed in future increments and

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increases in his pay, if any, including special pay, additional pay and any other form of pay. It is clearly stated in the reply by the respondents that the applicant was confirmed in Uttar Pradesh Police Service Lower Scale of Rs.550-1200/- as revised from 1.8.72 and his pay in that scale on the date of promotion to IPS was Rs.1200/- (maximum of the scale) and that he was officiating in the U.P. Police Service special grade of Rs.1200-1700 as revised from 1.1.73 and his officiating pay in that grade on the date of his promotion to IPS was Rs.1600/-. Thus, the pay of the applicant on promotion to IPS on 5.4.78 was fixed in the IPS Senior Time Scale of Rs.1200-1700 after giving maximum increase of Rs.200/- over his pay of Rs.1200/- i.e. maximum of the U.P. State Police Service scale at Rs.1450/- as laid down in Section I(i) of Schedule II of IPS (Pay) Rules, 1954. Since the applicant was drawing Rs.1600/- as officiating pay, a personal pay of Rs.150/- equal to difference to be observed in the future increment was given on that date according to provisions of Clause (3) of Section I ibid. Thus, the respondents have stated and the learned counsel has also argued that the pay of the

applicant which was wrongly fixed, has been corrected just before his retirement.

4. However, it cannot be ignored that the applicant as is evident was sleeping and did not claim any relief in any court and was contended by his representations made in 1981, 82, 83, 84, 85, 87 and 89. This application has been filed on 14.3.91. It is, therefore, a very stale claim, if at all the applicant's case has some merit. The applicant has also been informed by the U.P. Govt. by the letter dated 10.1.83 and also by the Ministry of Personnel, Govt. of India, in 1989. The applicant cannot agitate such a stale claim regarding his fixation of pension at a pay which ^{he} has not drawn because in April, 81 the excess amount paid to the applicant was adjusted in the salary of April, 1981. The applicant did not agitate the matter at that time. In the case of State of Uttar Pradesh Vs. Bahadur Singh (1983(3)SCC73) the Hon'ble Supreme Court observed that the stale cases cannot be considered as the court helps those who are vigilant and not indolent. The same view has been taken in the case of Amrit Lal Berry Vs. Collector Central Excise

(1975 (4) SCC 714).

5. In a recent decision the Hon'ble Supreme Court in the case of State of Punjab Vs. Gurudev Singh (1991 (4) SCC 1) held that even in the service matters the claim should be made within the period of limitation. The Hon'ble Supreme Court also in the case of S.S. Rathore Vs. State of Madhya Pradesh (AIR 1990 10) laid down while interpreting Section 21 of the Administrative Tribunals Act, 1985 that the applicant could come within one year after an order has been passed against him. The A.T. Act came into force from 1.11.85. The applicant has already been retired on 30.4.81. Under Indian Limitation Act, 1963 Article 58 of the Schedule governed the period of limitation which was three years. The applicant could have filed his claim in the competent court by 1984. The applicant has not done that. Even when the State Govt. on 10.1.83 communicating to the applicant that the pension has been fixed as per instructions of Govt. of India the applicant did not agitate the matter and also did not file an application under Administrative Tribunals Act, 1985

though the cause of action has arisen to him by the letter of U.P. Govt. in 1983.

6. Thus, the present application is hopelessly barred by limitation and the application is, therefore, dismissed as barred by time and devoid of merit.

In the circumstances, parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)