

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(13)

O.A. No. 1040/1991

New Delhi, dated the 17th May, 1995

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Som Dutt Sharma
s/o late Pt.H.S. Sharma,
Assistant Superintendent,
Office of Regional Asstt.Director,
National Sample Survey Organisation,
(NSSO), Aimer.

... Applicant

(By Advocate Shri S.C. Luthra)

Vs.

1. Union of India
through Secretary,
Ministry of Planning (Deptt.of Statistics)
2. The Regional Assistant Director,
National Sample Survey Organisation,
Field Operation Division,
4/29, Asafali Road,
New Delhi-110002

... Respondents

(None for the respondents)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J)

This case was listed at serial No.2
for final hearing today. This case has been coming
up for hearing on a number of occasions, namely,
28-3-1995, 29-3-1995, 12-4-1995 and 17-4-1995 but
respondents have not appeared. On 12-4-1995, a copy
of the order dated 29-3-1995 had been ordered to be
served to the counsel for the respondents which has
been sent on 31-3-1995 by ¹³ Regd. A/D. It is,
therefore, presumed that the same has been received
by the learned counsel for the respondents.

(A)

2. In the above circumstances, I have heard Shri S.C. Luthra, learned counsel for the applicant and perused the records.

3. The grievance of the applicant in this case is that in pursuance of the decision of this Tribunal in OA 54/1986 on 29-7-1987, he has not been given notional increment in the pay for the period between 9-9-1985 to 31-8-1987. According to the applicant, even though, as per orders of the Tribunal in the earlier O.A., he was not received any arrears of salary during this period, he ought to have been given increment in his salary which was due to him on 1-5-1986 and 1-5-1987 which has been wrongly denied to him by the respondents in the impugned orders dated 13.9.1989 and 29.7.87 (Annexure A-1 and Annexure A-2).

4. Respondents have in their reply stated that the pay of the applicant was to be fixed at Rs 1480/- in the revised pay scale of Rs 1400-2300 which was erroneously fixed at Rs 1440/-, which has, however, now been refixed correctly at Rs 1480/- by the order dated 6/8-8-1991 (Annexure B-1). They have, however, submitted that the applicant is not entitled to any benefit of notional increments on reinstatement w.e.f. 1.9.1987 taking into account the order passed by the Tribunal.

5. The Tribunal in its order dated 29-7-1987 disposed of the application with the following directions:-

"
(i) We quash Order No. 2/2/E/DR/85/5070 dated 09-09-1985 (Annexure VI) of the Assistant Director, Department of Statistics, Ministry of Planning, National Sample Survey Organisation, New Delhi. We, however, deny all the arrears of salary due to the applicant from 9-9-1985 to 31-8-1987 or till he

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(5)

is reinstated to service, whichever is earlier. But, notwithstanding this, the applicant is entitled for continuity of service from 9.9.1985 and the same will not affect in determining the seniority and other matters in accordance with law.

(iii) We direct the respondents to reinstate the applicant to his original post with all such expedition as is possible in the circumstances and in any event not later than 1.9.1987."

6. Shri Luthra, learned counsel for the applicant submits that on a plain reading of the Tribunals' order referred to above, the Tribunal had directed that the applicant is entitled for continuity of service from 9.9.85 and the denial of salary for the intervening period will not also affect his seniority, and other matters in accordance with law. Accordingly, the applicant was entitled to the notional increments for the period in question. He has also relied on the decision of this Tribunal in another case 344/92 in TA No.558/86 where the Tribunal had observed that although in the peculiar facts and circumstances of the case, the Tribunal had denied the back wages to the petitioner prior to the date of the institution of the original suit in the year, 1983, the petitioner would be entitled to the benefit of arrears from 22.3.1985. This did not, however, prevent the respondents to grant notional increments for the period from 16.7.1976 to 22-3-1983 for which period the arrears were denied.

7. In this case the Tribunal had the discretion,

no doubt, to deny the payment of arrears of salary to the applicant from 9.9.1985 to 31.8.1987 or till the date when he was reinstated which was to be not later than 1.9.1987. Shri Luthra has confirmed that the applicant was actually reinstated on 1.9.1987 as per the order of the Tribunal. In the further clarifications given by the Tribunal it has been stated that the applicant is entitled to continuity of service, including seniority and other matters in accordance with law.

8. Having regard to the Tribunal's order, I am of the view that the respondents cannot in the circumstances, deny grant of notional increments due to the applicant for the period from 9.9.1985 to 31.8.1987 which he would have otherwise earned, in accordance with law. In the facts and circumstances of the case, the application is allowed. The respondents are directed to take necessary action to grant the increments falling due to the applicant for the intervening period in accordance with law, within a period of three months from the date of receipt of a copy of this order.

98 No order as to costs.

Lakshmi-Swaminathan
(Lakshmi-Swaminathan)
Member (J)