

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O.A.2608/92

Date of decision: 30.4.93

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P.N.Gulati

.. Applicant.

versus

Union of India

.. Respondent.

Sh.D.C.Vohra

.. Counsel for the applicant.

Sh.N.S.Mahta

.. Counsel for the respondent.

Coram:

The Hon'ble Sh.N.V.Krishnan, Vice Chairman(A).

The Hon'ble Sh.C.J.Roy, Member(J).

1. Whether to be reporters of the local papers
be allowed to see the judgement or not? ✓
2. To be referred to the reporters or not? ✗

J U D G E M E N T

(Hon'ble Sh.N.V.Krishnan, Vice Chairman(A)).

The applicant has retired as a Section Officer from the Ministry of External Affairs. The case relates to the non-payment of certain dues arising out of the grant of advance increments to him for the period from 1.4.63 to 31.3.64. The case has a protracted history, but the counsel for the applicant has given in a nutshell circumstances in which this O.A. has been filed.

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2. The memorandum dated 27.4.79 at annexure A-1 is the starting point. It reads as follows:

"Subject: Grant of advance increments to Sh.P.N.Gulati, Assistant, Ministry of External Affairs, New Delhi

Shri P.N.Gulati, Assistant in the Ministry of External Affairs was granted two advance increments for superior performance of his duties during 1962-63, for a period of one year from 1.4.63 to 31.3.64, without cumulative effect vide this Ministry's sanction letter No.Q(PC)551/128/63, dated 22.10.63.

2. On further consideration of Shri Gulati's case it has now been decided to allow him the benefits of two advance increments granted to him with effect from 1.4.63 with cumulative effect. Sanction of the President is accordingly accorded to the grant of two advance increments, with cumulative effect, with effect from 1.4.63, in lieu of the two increments granted to him from that date without cumulative effect, to Shri P.N.Gulati, Assistant, in the pre-revised scale of F.R.27. Shri Gulati will continue to draw his annual increments in his post on the dates on which they fall due in the normal course.

3. Shri Gulati will not be entitled to draw arrears on account of the grant of two advance increments for the period from 1.4.64 to 19.2.79. Orders for the refixation of Shri Gulati's pay in the revised scale i.e. Rs.425-800, giving him the benefit of the two advance increments will be issued later.

4. This issues with the concurrence of Finance Branch of this Ministry vide their Dy.No.SD-180/Fin.III/79, dated 6.4.79."

It is clear that the benefit of the advance increments was given to the applicant only from 20.2.1979 and no arrears for the period from 1.4.64 to 27.4.79 was given to him.

3. It is to be noted straight away that it was open to him to assail this decision in an appropriate court. Instead, as is clear from para 4.11, of the OA, he went on representing to government and admittedly, his representations were turned down, as stated in para 4.12. Even then, he did not approach any court of law.

4. Instead, he sent a petition to the Committee on Petitions of the Lok Sabha on 14.10.85. During the pendency of that petition, the applicant was called by the Foreign Secretary on 24.6.86 and was informed that the earlier offer of exgratia payment of Rs.10,000/- was recalculated and it came to Rs.15201.05, penny for penny. He was advised to accept it. He declined it because this was an exgratia payment.

5. The Committee on Petitions, Lok Sabha, presented its first Report to the Tenth Lok Sabha in March, 1992. A copy of that Report was sent to the applicant by the Lok Sabha Secretariat (Annexure A-3). The Report runs into 10 printed pages. It transpires from that Report that the applicants' petition was also considered earlier by the Committee in their Third Report presented to the Eighth Lok Sabha. On the applicants' further representation, the Committee reconsidered the whole matter in March, 1990 and decided to take oral evidence of the applicant and the Report was finalized thereafter.

(1)

6. Paras 3.16 to 3.21 of this report are relevant and are reproduced below:

3.16. Shri P.N.Gulati, a retired officer of the Ministry of External Affairs, through a representation submitted to the Committee on 14 October, 1985 stated that his immediate boss viz. Chief of Protocol had recommended grant of 3 advance increments to him in 1964. During processing of the case, the file was lost which was retrieved from their Record Room after a lapse of 14 years. He was then given two advance increments from back date but the arrear payment for 14 years was denied to him.

3.17. The Committee (1986-87) were informed by the Ministry of External Affairs that in 1984 the then Finance Secretary agreed to an ex-gratia payment of an amount not exceeding Rs.10,000/- in full and final settlement of the case but the petitioner refused any ex-gratia payment and a decision to close the case was taken by the Ministry.

The petitioner, however, informed the Committee in October, 1985 that he had been offered Rs.15,000/- as ex-gratia payment by the Foreign Secretary but he did not want to accept any ex-gratia payment. (emphasis ours)

3.18. The previous Committee in their Third Report observed that in view of the offer of Rs.15,000/- which was not a paltry sum, no further intervention on their part was required in the matter.

3.19. The Committee regret to note that the Ministry had gone back on their Commitment and issued sanction of Rs.10,000/- only in August, 1989.

3.20. As per calculations of the Ministry of External Affairs, even if the petitioner had been granted three advance increments, the arrears would have amounted to Rs.11,7000. Moreover, he had been appointed as Section Officer with effect from 6.9.1980 and even after grant of three increments, his pensionary benefits would have been the same which he is getting now.

3.21. Taking into consideration all the facts, the Committee are of the final view that Shri Gulati might be paid Rs.15,000/- as full and

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final payment particularly when the Foreign Secretary had agreed to the payment of this amount." (emphasis ours)

7. The Committee was fully aware that an important, if not the only objection the applicant ^{a fact} was to the acceptance of any amount as "ex gratia" payment as is clear from para 3.17 of the Report. Nevertheless, after considering the applicant's petition, the Committee felt that the applicant be paid Rs.15,000/- as full and final settlement. It did not say that the amount should be paid otherwise than as ex-gratia payment

8. It is in these circumstances that the applicant has filed this O.A. for the following reliefs:

"8.1 Acceptance of proposal in full (for three increments) which was made by an additional Secretary and for which he himself is empowered to sanction such increments. (It is for information and record that in the case of Protocol Assistants : these increments were proposed by Joint Secretary, Sh.Bikram Shah and were approved by Addl. Secretary, Sh.Azim Husain in 1967 (REF.F.Q./PC/702/1/67)).

8.2 Pay and allowances from 1.4.64 on basis of 3 increments."

He has also asked for interest, costs and damages.

9. Before us also the main question raised by the learned counsel for the applicant is whether the applicant had a right to receive the arrears of pay and allowances arising out of the sanction of advance increments. If so, the amount should be paid as amounts due as of right and not as ex-gratia payment as sanctioned by Government, as if the applicant was asking for charity.

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10. We have seen the reply filed by the respondents. It is stated that though the advance increments were recommended in 1964, no decision was taken and no sanction was ever issued. The applicant went on a posting abroad. He did not raise the matter till 1977, which is denied by the applicant. It was thereafter that the sanction (Annexure A-1) was issued on 27.4.79. He enjoyed the benefit of these increments prospectively till he retired in 1982 and its benefit resulted in some extra pension. It appears that the power to give advance increment had been withdrawn by the Ministry of Finance from all Ministries, and therefore, even the A-1 sanction is a mistake, ~~from 1968~~^{from 1962}. Nevertheless, the Department took up the matter with the Finance Ministry which agreed that the applicant be paid Rs.15,000/- by way of ex-gratia payment for the period. If he had been given the three advance increments, as claimed by him the amount payable to him would have been Rs.12,836/- only.

11. We have carefully considered the matter. If the applicant felt aggrieved by the Annexure A-1 order denying him arrears from 1.4.64 to 19.2.79 or by any of the subsequent orders of government, it was open to him to approach a competent court of law to seek the appropriate remedy. He did not do so. Instead, he approached another powerful forum viz. the Lok Sabha - the institution to which the Executive is accountable for

all its actions and inactions-by making a petition to the Committee on Petitions . That Committee considered the case not once, but twice and on the second occasion the applicants oral evidence was recorded. The Committee's conclusions are reproduced earlier.

12. We are firmly of the view that having chosen that forum of remedy, the applicant cannot approach the Tribunal for any further relief such as interests, costs, damages etc.

13. In the light of the explanation given in the departmental reply, which was also given to the Committee on Petitions, the description of the payment as 'ex-gratia' is entirely justified because the power to sanction advance increment was not available. The sanction could not have been issued and no payment could have been made on that basis. The mere fact that it is called 'ex-gratia' does not either mean that it is charity or that any slight or stigma is intended. It only describes the situation in which government states it found itself viz. that a commitment had been made without authority, but yet it was being honoured. We have, for example, similar orders of Government granting 'ex-gratia' payment of bonus to government employees who, otherwise, are not entitled to such bonus under any law.

Such bonus is not intended to be a charity. It is in this light that this expression has to be construed. We also notice that the Committee on Petitions of the Lok Sabha also did not choose to vary the description, notwithstanding their full awareness of the applicant's objection to the use of this expression.

14. In the circumstances, we dispose of this application with the direction to the applicant that, if he chooses to accept the amount of Rs.15,000/- as ex-gratia payment, he should intimate the respondents about his willingness within a period of one month from the date of receipt of this order and in case such willingness is given by the applicant, the respondents shall pay the said amount to the applicant within a period of one month thereafter and such payment shall be in full and final settlement of the applicant's claims in this behalf.

15. There will be no order as to costs.

C.S.Roy
(C.S.Roy)
Member(J)

N.V.Krishnan
30.4.93
(N.V.Krishnan)
Vice Chairman(A)