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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. 1415/93

New Delhi, This the 19th Day of JANUARY 1994.

Shri J.P. Sharma, Member(J)

Shri S.R.Rao,
E8/2 MS Flats
RK Puram
New Delhi.

...Applicant

By Advocate Shri N Ranganathasamy

Versus

1. Union of India Through
the Cabinet Secretary,
Cabinet Secretariat,
New Delhi.
2. Director-General of Security,
Cabinet Secretariat,
East Block-V, RK Puram
New Delhi - 110066.
3. Director ARC
Directorate General of Security,
Cabinet Secretariat,
East Block-V, RK Puram
New Delhi-110066.
4. The Director of Accounts,
Cabinet Secretariat,
East Block-IX, RK Puram
New Delhi - 110066.
5. The Secretary
Ministry of Personnel,
Training & Pension,
North Block, New Delhi.

...Respondents

By Advocate None

O R D E R(oral)

Hon'ble Shri J.P. Sharma, Member(J)

The applicant was earlier employed in the Indian Air Force and retired from the post of Wing Commander on 31 July 1990. Further, when he was in the Indian Air Force he came in deputation in 1970 on the post of Asst. Director in ARC, Cabinet Secretariat, New Delhi. On re-employment considering the military pension and ignorable portion of the pension as well as the element equivalent to gratuity

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the pay of the applicant was fixed at Rs.1100 in the scale of Rs.1100-1600 for the post of Asst Director, but he was allowed DA at the maximum of the scale i.e. at Rs.1600/-. The applicant has since been promoted to the post of Joint Deputy Director on 18th August 1981 and the pay was fixed at Rs.1500 but, he was allowed DA at the maximum of the Scale Rs.2000/-. He was promoted to the post of Deputy Director on 22 Dec 1984 and in the revised pay scale introduced by Fourth Pay Commission with effect from 1-1-86 his pay was fixed at Rs.5100 when he was last drawing in the pre-revised scale Rs.2125/-. Of course, the element of pension was taken into account as he has been a re-employed pensioner, ex-service man. The claim of the applicant was that the period of deputation and past service was not counted for the purpose of fixation of pay initially on re-employment the services rendered earlier while on deputation should be counted for purpose of giving increment which is due to him on completion of 16 years of service as Class I officer.

2. The applicant in this application filed on 09 July 93 has prayed for the grant of relief that the respondent be directed to pay an amount of Rs.26,598/- on account of fixation of pay at Rs.5400 with effect from 1.1.86.

3. The calculation of the amount of Rs.26,598/- has been shown in the Annexure B where he claims his basic pay at Rs.5400/- with effect from 1.1.86 to 31 May 92 i.e. the increase in the basic pay per month at the rate of Rs.300 totalling to Rs.23,100/. From 1.6.92 to 17.6.92 the amount due is Rs.170/- and the amount due because of increase of DA from 1.1.86 to 17.6.92 is Rs.3,328/-.

4. A notice was issued to the respondent to file reply who contested the grounds of the relief to the applicant. The first point taken by the respondent has been that the

application is barred by limitation. On merits it is stated that the applicant was re-employed in ARC with effect from 1.8-1979 after his retirement from Air Force and the service rendered by him in Air Force prior to his retirement cannot not be counted as he has completed /net 17 years of service and for the purpose of granting basic pay at Rs.5400 he should have completed 17 years. The applicant came initially on deputation with effect from 15-1-1970 and he was re-employed as pensioner from 1.8.1970 and he was remployed as pensioner from 1-8-79 and his pay was fixed according to rules. He was promoted to the post of Joint Deputy Director on 13th August 81 and to the post of Deputy Director with effect from 22 Dec 1984 and further promoted to the post of Joint Director with effect from 17-6-92 in the pay scale of Rs. 5900-6700 in the revised scale. The pre revised scale of Rs.2200-2250/- was revised to Rs.5100-6150 with effect from 1.1.86. The pay of the applicant was fixed at Rs.5100 with reference to pre-revised basic pay which he was getting at the time of revision of pay scale. He was not entitled to have his pay fixed at Rs.5400 for having 4 years weightage for class II service, the applicant has therefore no case.

5. The applicant has also filed a rejoinder in which he has drawn certain similarity with two other officers who are also posted in ARC Cabinet Secretariat, Dr SR Raghavan and Dr PK Chaudhary. He has drawn a chart in para 13 of the rejoinder giving fixation of pay in the case of these officers and that of his own. The pay of these officers was fixed at Rs.5400/- on 1.1.86 while that of the applicant was fixed at Rs.5100/. He has also reiterated same facts which has already been averred in the application.

6. I heard the learned counsel at length. The question of limitation comes foremost. Limitation gives valuable right to the adversary to non suit the petitioner. In the middle of 1993 the applicant has rised the issue of wrong fixation of pay on 1.1.86. The learned counsel

for the applicant argues that there is no limitation provided in the matter of salary and pension. This proposition of law if accepted will give adverse results. Even in service matters one has to come within limitation otherwise, if any remedy was available to him that is lost by lapse of time. ~~and when~~ remedy is lost for any right existed that cannot be said to be subsisting as no relief can be granted at that point of time. The Hon'ble Supreme Court considered the point of limitation in a number of cases. In the case of Gurdev Singh reported in 1991 SC Volume 4 page 1 it has been held that even in case of service matters the party has to approach within the statutory period provided under law. Under section 21 of CAT Act 1985 the period of limitation is one year from the date of the order and if a representation has been made after waiting for six months; thereafter one year for judicial review. Thus this application cannot be said to be within time.

7. The learned counsel further argued that the applicant had been making representations and the respondents are at fault in not considering the matter earlier and only conveyed to the applicant finally by the order dated 16-2-93. In this connection it may be reasoned that after making a representation the law provides a waiting period of 6 months then to ventilate the grievances within a period of one year. The applicant had been sleeping all these years awaiting for a result which ultimately came against him. None but he is to be blamed.

8. The Hon'ble Supreme Court considered the similar matter on repeated representations in the case of SS Rathore Vs State of MP reported in AIR 1990 SC page 10 and has laid down that the repeated representations do not add to the period of limitation. Thus this contention of the learned counsel also has no force.

9. Further the applicant has been heard on merits too. What the applicant wants is equity with the officers

who are borne on the cadre of the Cabinet Secretariat and working in ARC sometimes from 1971. or beyond that date.

The applicant has been in AirForce service till July 1979 and he has been drawing the benefit of the deputation allowance with special pay and allowances retaining his pay which he was getting in the Air Force service and also getting usual premations in the parent cadre upto the stage of Wing Commander. He cannot claim the benefit of both the services. At one point of time he has drawn the benefit of Air Force Services and now at the fag end of his retirement he choses the benefit of continuous service of deputation on the civilian posts. That is not permissible under law and also on principles of equity and fairness.

10. Regarding the fixation of the pay of the applicant at the stage of Rs.5100 that pay has been fixed on the basis of last pay drawn in the pre-revised scale. It is not made out from record that according to the pay rules of 1987 which laid down that the fixation of pay in the revised pay scale on the recommendations of the Fourth Pay Commission has not been fairly applied in his case. The learned counsel has argued at length and he could not point out the breach of any rule under which he could have been given the higher fixation. He has shown only an analogy with the fixation of pay ~~xxxxxxxxxx~~ with the officers named above. Thus on this account also the pay of the applicant has been rightly fixed by the respondents on the basis of the pay he has drawn in the pre revised scale. The learned counsel wants to assail that initially when he was fixed at the stage of 1000-1600 at the post of Asst Director the element of pension was not taken into account. And on that basis he is entitled to DA etc separately on the element of pension. The learned counsel also highlighted that the deductions of the enhanced pension on account of the recommendation of the Fourth Pay Commission from his salary is unjustified. For this the applicant had also filed another application which has been considered

and rejected by the order of even date.

11. Coming to the conclusion drawn by the applicant that is his own imagination. The learned counsel while dictating the judgement desired to mentioned that he informed the respondent of getting DA on the pension also. But according to law only one set of DA can be allowed for a pensioner and that should have been done in the case of applicant. Though it is not on record in this case but, in the other case it has come on record that though the applicant was getting lesser pay as basic pay but he was given DA on the maximum of the scale of pay in that grade. To clarify in the scale of Asst Director Rs.1100-1600 thought the basic pay was Rs.1100 but he was getting DA on the maximum scale of pay of Rs.1600/-. Similarly when he was posted to the post of Joint Deputy Director his pay was fixed at Rs.1500/- but he was getting DA on the maximum scale of Rs.2000/-.

12. In view of the above circumstances the application is devoid of merit and dismissed. No costs.

Sharma.

(JP Sharma)
Member (J)

LCP