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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.2117 of 1993

Date of Decision: 18th January, 1994

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

Shri G. S. Mahey
R/o 433/Sect-7
R. K. Puram-22
NEW DELHI

... Applicant

By Advocate None (Applicant
in person)

Vs.

1. Union of India
Through Secretary
Ministry of Defence
South Block
NEW DELHI-11

2. Chief Administrative Officer &
Joint Secretary C-II Hutments
DHQ, NEW DELHI-110011

... Respondents

By Advocate Shri M. S. Ramalingam,
Departmental Representative..

O R D E R (Oral)

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

The applicant was appointed as Tech Clerk (UD)
Signal
in the Directorate of Intelligence under CAO & JS,
AFHQ in the Ministry of Defence, New Delhi in
September, 1967 in the corresponding pay scale of
Second Pay Commission, Rs.130-280. The scale of the
Second Pay Commission was revised on the recommendation
of the Third Pay Commission w.e.f. 1.1.73 vide
Notification dated 22.12.73. The applicant got
promotion to the post of Tech Assistant which was
under Second Pay Commission in the scale of Rs.200-
530. This pay scale has since been revised by the

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Third Pay Commission to Rs.425-700. The applicant was promoted to the said post on 18.11.74 and thereafter he got subsequent promotion as Senior Tech Assistant in January 1980, Junior Research Officer in 1984 and finally Research Officer in 1989-90 which is a Class-I post.

2. The grievance of the applicant is that, at the time of the implementation of the Third Pay Commission which was given effect from 1.1.73, he opted the revised scale of Third Pay Commission. That option is annexed with the reply filed by the respondents dated 11.1.74 (Annexure R-1). Consequent to this option, the pay of the applicant was fixed on the post of Tech Clerk, on which the applicant was working at the relevant time.

3. The Ministry of Defence, on 29th May 1974, issued a Memorandum for fresh fixation of pay of Defence civilian employees who opted for the revised scale from the date subsequent to 1.1.73 and it was stated therein that the pay of Defence civilian employees who exercised their option for the revised scale w.e.f. any date after 31.12.74, shall be fixed in those scales under Rule 9 of the Rules i.e. CDS(RP) Rules, 1973.

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4. The applicant who appeared in person stated that the Ministry of Defence had issued a similar office Memorandum in the year 1978, 1984 and lastly in 1988. In pursuance to those Office Memoranda certain persons had given fresh option but the applicant was deprived as the aforesaid Office Memoranda were not brought to the applicant's notice. The applicant, therefore, made a representation to the CAO & JS, Ministry of Defence, New Delhi dated 24th November, 1992 (Annexure P-2), para-(ii) on this account. He again made another similar representation to the Secretary, Ministry of Defence, New Delhi on 27th January, 1993 (Annexure P-3), on the same matter. The applicant was informed about the rejection of his representation by the impugned order dated 8.10.92 and earlier also vide letter dated 16.6.92 which was received by the applicant on 19th October, 1992. The applicant, therefore, filed the present application for grant of the following reliefs:-

- (i) It may be declared that the basic pay of the applicant be fixed on 18.11.74 (his promotion date as Tech Asst) in the unrevised scale of Rs.200-530 before the Third Pay Commission Report;
- (ii) To refix the same in the revised pay scale of Rs.425-700 after Third Pay Commission Report; and
- (iii) The applicant be given all the subsequent benefits as the applicant has been promoted

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to higher ranks, along with arrears with effect from 18.11.74 together with interest at the rate of 18 per cent per annum till the date of payment.

5. The Departmental representative contested the application and filed the reply. The respondents have relied on Rule 5 of CDS (RP) Rules, 1973 (hereinafter called the Rules). The Rule has been quoted in para-1 of page-2 of the reply filed by the respondents. The respondents have clearly stated that the contention of the applicant for fixation of his pay - first, in the promotional post in the unrevised pay scale and, then give him benefit in the revised pay scale, is not permissible under law or the relevant Rules. The pay of the applicant has been rightly fixed taking into account the old Fundamental Rule 22(c) while giving benefit of Tech. Clerk which the applicant was holding on 1.1.73.

6. The respondents also opposed the limitation on the ground that the request of the applicant dated December 1988 for revised exercise of option is deemed to have been rejected in June 1989 and the cause of action, if any, arose more than five years before the filing of the O.A.

6 The applicant
7. He was heard at length yesterday and the Departmental representative, Shri Ramalingam was directed to find out from the records the two

cases pointed out by the applicant in the rejoinder viz. Shri S. R. Sharma and Shri Dhiraj Singh where the benefit of double fixation was given, first in unrevised pay scale and then in revised pay scale of Third Pay Commission. In the case of Shri S. R. Sharma, the service records were shown to the applicant also. From the record, it is evident that benefit was given to Shri S. R. Sharma. But subsequently, the error was rectified by the respondents and the Pay of Shri S. R. Sharma was fixed as per rule in the promotional post of UDC, as per formula given in fixation of pay of Third Pay Commission under the Rules.

8. The applicant has firstly pointed out that the Rule 10 provides for fixation of pay in a manner that a person officiating on a prior post before the date of the notification for implementation of the Third Pay Commission was issued, the benefit of that officiation should be given and the cut-off date be taken to be as December 1973. Since the applicant was promoted in November 1973, he is entitled to the benefit of revised fixation of pay on the promotional post. Even if this contention is accepted, the pay of the applicant cannot be fixed twice: first, in the old pay scale and then, in the new pay scale. That will be against the concept of the rules for fixation of pay. Rule 10,

therefore, does not hold the applicant in as much as 1.1.73 he hold a post of Tech Clerk and for a short period in September 1973 he was promoted as Tech Assistant, again reverted in October, 1973 into the post of Tech Clerk. If his contention is accepted then what would be his pay in November 1973 when he was not holding the post of Technical Assistant and was only holding the post of Tech Clerk.

9. The applicant referred to relaxation under the Rules given in Rule 12. Firstly, it is discretionary on the part of the authorities to give benefit by relaxation of the Rules. Relaxation normally is given in cases where anomaly in fixation of pay is causing hardship. The respondents do not find any cause of hardship in the case of the applicant. I have also tried to calculate the various feasibility of fixation of pay in the case of the applicant on 1.1.73, on the date of his first increment and on the date of promotion as Tech Assistant in November, 74. It is not such a case of hardship where invocation of Rule 12 is involved and the act of the respondents, therefore, cannot be said, in any way, arbitrary or unfair.

10. The next contention of the applicant is that para 10 page-94 of Chapter 67 of Vol. IV of Third Pay Commission Report, the benefit of pay fixation from promotion date under Rules, 1973 was required to



be given on the next grade of promotion. The applicant has not given any example whether he has not been given any benefit or that any junior to him who has been fixed higher to him in the pay. If by virtue of length of service, any disadvantage has occurred to the applicant, then the respondents have already taken into account while fixing pay of the applicant as Tech Assistant on 18.11.74. Taking into account his length of service, the applicant joined only in 1967 and he was working on the lowest post of Tech Clerk when the revised rules came into force. Normally, juniors are benefited more on the implementation of the revised pay scale, than the seniors. Thus, this contention of the applicant also does not warrant any interference in the impugned order.

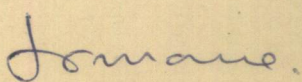
11. The next contention of the applicant is regarding discrimination in regard to pay fixation.

The service record of Shri Dhiraj Singh is not available as he has since been transferred to Bombay Naval HQRs. The records of Shri S. R. Sharma are available and his pay has been fixed according to the rules. There is no discrimination vis-a-vis the applicant.

12. Taking all the facts into account, I find that the present application has no case and accordingly it is dismissed as devoid of merit.

Cost on parties.

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(J. P. Sharma)
Member (J)