

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 2171/93

New Delhi this 8th June, 1994.

CORAM:

Hon'ble Mr. S. R. Adige, Member (A)

Retd. ACIO-I (G) Sardar Singh Yadav,
s/o Late Shri Harm Saran Yadav,
aged about 59 years, lastly on deputation
to Subsidiary Intelligence Bureau, Govt. of India,
having parent department of Delhi Police,
r/o Village Nangalia Ranmokh P.O. Karawara Manakpur,
Distt. Rewari (Haryana).

.....Applicant.

By Advocate Shri Shankar Raju.

Versus

1. Ministry of Home Affairs,
through its Secretary/
Deputy Director Subsidiary Intelligence Bureau,
Govt. of India, 5, Motilal Nehru Place,
Akbar Road, New Delhi.
2. Delhi Administration,
through its Secretary (Finance),
5, Alipur Road, Delhi.
3. Dy. Commissioner of Police,
(Special Branch) Police Headquarters,
MSO Building, IP Estate,
New Delhi

... Respondents.

By Advocate Shri N. S. Mehta

JUDGMENT

In this application, Shri S. S. Yadav, retired ACIO-I (G), Delhi Police has prayed for setting aside the orders dated 5.1.93 (Annexure-A4), 21.9.92 (Annexure-A6), 4.11.92 (Annexure-A8), 16.6.93 (Annexure-A11), and 26.8.93 (Annexure-A16) and to refix his pension on the pay last drawn by him in SIB, Govt. of India, under old pay scale and to pay him the different of amount in old pay scale and revised pay scale together with interest @ 12% per annum thereon.

2. The applicant was appointed as a Constable in the Delhi Police on 24.9.53 and in August, 1983 while working as a Sub-Inspector, he was sent on deputation to the higher post of ACIO-I(G) in SIB, Ministry of Home Affairs, Government of India. At the time of being deputed in SIB, which is a Central Authority, the pay scales of both the Centre and the State prevalent at that time, were identical. On 18.12.86, at the time of being deputed he claims that he opted for the old scale, as the same was higher than that of the revised pay scale and the said option was duly communicated to the borrowing department. He states that he also opted afresh for retention for old pay scale in view of O.M. dated 10.9.90 whereby it was laid down that the State Police Personnel already on deputation to IB may be allowed to exercise option within three months from 1.9.90. Hence, he states that despite filing his option to retain old pay scale on 18.12.86, he opted for retention of old pay scale afresh. He further states that according to the old pay scales, he was eligible for arrears of deputation allowance in view of the IV Pay Commission's recommendations but as the department did not implement the same, he represented, and after his representation was examined in consultation with the Ministry of Home Affairs, the SIB allowed the benefit of deputation allowances w.e.f. 1.7.86 vide letter dated 6.2.91 (Annexure-A3). He states that he continued to draw salary on the old pay scale till his retirement on 30.9.1992.

Meanwhile, in pursuance of the ante-dated promotion of the applicant w.e.f. 29.7.87, on 17.6.92, his pay was revised by the borrowing department w.e.f. 1.1.86 vide letter dated 6.1.93 and the last pay drawn according to the revised pay scale, was Rs.2450/- p.m. (Annexure-A4). Consequent to the applicant's retirement from SIB w.e.f. 30.9.92 (AN), he was repatriated to his parent department viz. Delhi Police on that date itself i.e. 30.9.92(AN). His last pay Certificate, prepared by the SIB, however, showed that his last salary drawn was Rs.2777/- p.m. vide Annexure-A7. He states that he objected to his being retired from Delhi Police and requested the borrowing department to prepare the pension according to the last pay drawn in SIB because the applicant stood retired from SIB on 30.9.92 (AN) and as such his repatriation to Delhi Police w.e.f. 30.9.92(AN), which was a subsequent event, was not legally sustainable. He states that the borrowing department directed that his pensionary benefits would be finalised by the Delhi Police under Rule 67(1) of CCS(Pension) Rules, 1972. He alleges that SIB by memo dated 14.1.93 (Annexure-A9) observed that the applicant's pay had been revised w.e.f. 1.1.86 and an over-payment of Rs.27,891/- w.e.f. 1.1.86 to 30.9.92 was to be recovered from his gratuity. He further states that he represented against this allegedly illegal recovery from his gratuity but the same was rejected. Although his case for the purposes of pension was to be decided by the borrowing department, it had been actually decided by his parent department. He alleges that his pension has been fixed on revised pay scale of Rs.2450/- and not according to the last pay certificate showing the pay as

Rs.2777/- and his gratuity had also been reduced, and recovery of Rs.27891/- was made on account of difference of salary in the old pay scale and revised pay scale. He also alleges that he had not been paid leave encashment, CGE, GIS and an amount of Rs.4024/- has been withheld for retention of quarter due to non-production of certificate.

3. In reply the respondents have challenged the contents of the O.A. and have pointed out that while on deputation to SIB Delhi, the applicant was allowed to draw the pay and allowances in the rationalised terms and conditions of deputation as contained in MHA OM dated 31.12.76 (Annexure-R1). Accordingly, he was entitled to draw the pay in the scale attached to the post of Inspector of Delhi Police as applicable from time to time w.e.f. August, 1983 i.e. the date of his appointment to the ex-cadre post of ACIO-I(G) in SIB Delhi. The pay scales of Delhi Police personnel were revised w.e.f. 1.1.86 and the applicant was entitled to draw pay in the revised pay scale of Inspector of Delhi Police (Rs.2000 to 3200/-) as per option dated 18.12.86 exercised by him. On the basis of his option dated 18.12.86, his pay was fixed in the revised pay scales by his parent department vide Office order dated 15.4.87 (Annexure-R2) and dated 24.4.87 (Annexure-R3). The respondents state that after Shri Yadav's pay was fixed by the parent department, he submitted another option of the same date (18.12.86) opting to retain the old pay scales and accordingly he continued to be paid by SIB Delhi the pay and

allowances in the pre-revised scale irregularly till the date of his superannuation i.e. 30.9.92. The respondents point out that para 4 of Finance Ministry's notification dated 13.9.86 (Annexure-R4) clearly states that the option once exercised would be final and thus, the applicant's option to retain the pre-revised scale was illegal and could not be accepted. The respondents contend that Shri Yadav's claim to exercise option in favour of the old pay scale in terms of MHA O.M. dated 10.9.90 is not tenable as this O.M. did not provide for option to retain the pre-revised scale. This O.M. provided for option, inter alia, to the State Police Officers already on deputation to I.B. for pay fixation in the scale of pay attached to the post in the Central Government i.e. I.B within three months. Since no option was available on 10.9.90 to retain the pre-revised scales, the option dated 23.10.90 given by the applicant was not in accordance with the provisions of O.M. dated 10.9.90 and, therefore, was illegal.

4. I have heard Shri Shankar Raju, learned counsel for the applicant and Shri N.S. Mehta, learned counsel for the respondents. I have also perused the relevant departmental file produced for my inspection by the respondents.

5. Admittedly, while on deputation to SIB, Delhi, the applicant was entitled to draw pay and allowances as per terms and conditions of deputation contained in MHA's O.M. dated 31.12.76 as amended from time to time. Accordingly, he was

entitled to draw pay in the scale attached to the post of Inspector of Delhi Police as applicable from time to time, with effect from the date of his appointment to the cadre post of ACIO-I(G) in SIB Delhi. The pay scales of Delhi Police Personnel were revised w.e.f. 1.1.86 in accordance with the CCS(Revised Pay) Rules, 1986 notified on 12.9.86(Ann.-R-4), the applicant was given the option to continue in the existing pay scale, or elect for the revised pay scale w.e.f. 1.1.86. The applicant exercised his option for the revised pay scale w.e.f. 1.1.86, but added in the prescribed option form signed by him on 18.12.86 that he elected for the revised scale " provided the drawal in the old scale be protected" (Page 72/C of MHA(SIB) File No.22/PF/83 (167) titled Personal File of Shri S.S.Yadav, ACIO-I(G) joined SIB Delhi w.e.f. 12.8.83). The SIB forwarded the application to his parent department (Delhi Police) with a covering memo dated 24.3.87 stating that the applicant, who was drawing Rs.675/- p.m. as pay in the scale Rs.550-900/- had opted for the revised pay scale w.e.f. 1.1.86 and requested that his pay be fixed in the revised pay scale and pay fixation order sent to them along with return of service book after making entry of this revised pay fixation therein (paper 9/N and 71/C of above file).

6. By Delhi Police Order dated 15.4.87 and dated 22.4.87 (pages 78/C and 79/C of the above file), the applicant's pay fixation by the Delhi Police in the revised scale was received by SIB but it appears that meanwhile the applicant had weighed the pros and cons of pay fixation in the revised pay

scale and sensing a loss, he gave a revised option for remaining in the old scale, but bearing the same date i.e. 18.12.86 (page 83/C of said file). The notings at page 11/N of said file indicate that approval to allow him to retain the old scale was granted on 28.7.87 by some relatively low level functionary (perhaps S.O(E), in SIB without seeking orders of the superior officers or making any reference to his parent department (Delhi Police).

7. It is only on 24.9.90 on a perusal of the applicant's personal file that it came to the department's notice that he had changed his option and it was ordered to be checked up whether it was permissible. Further notings indicate that it was pointed out that the option for revised scale once exercised was final, but the office had/allowed him to switch back to the pre-revised scale, and he was continuing to draw his pay in the pre-revised scale, and upon clearance being given by the IB(HQ) the applicant was also entitled to draw DA on the increments earned by him subsequent to 31.12.85 in the pre-revised pay scale, but no D.A. would be admissible on the deputation allowance drawn by him. The position appears to have been explained to the applicant on 11.10.90 who promised to let the authorities know whether he would like to retain the old scale (with no DA on deputation allowance which was being drawn by him) or the revised scale w.e.f. 1.1.86, the option for which was available in his personal file. On 26.10.90, a further noting indicates that the applicant had conveyed to the authorities that day that he was thinking of exercising his option in favour of the revised scale.

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Meanwhile, it appears that the applicant contested the non-inclusion of deputation allowance for calculation of DA and upon a further reference to IB(HQ) they informed the SIB that dearness allowance was admissible to the applicant on the deputation allowance drawn by him and the same which was ordered to be discontinued w.e.f. 1.7.86 was resumed vide order dated 6.2.91 (page No.18 /C of above file).

On 8.2.91, a further noting at page 21/N of the above file indicates that a suggestion was made to seek confirmation from Delhi Police about the applicant being paid according to pre-revised scales, but as it was felt that this would run counter in to the correspondence where the applicant had opted for the revised scales and approval of Delhi Police had been obtained on that basis, it was decided not to seek confirmation at that stage.

8. It was only when the applicant was about to retire and the MHA's advice was sought as to which department i.e. IB or Delhi Police would finalise the applicant's pension case, that it was noted that the SIB, Delhi instead of paying the applicant the revised pay scale in accordance with the pay fixation done by his parent department on the basis of the earlier option exercised by him, they had acted upon the subsequent option submitted by the applicant to retain the pre-revised scale, which MHA held to be irregular, as the subsequent option was invalid and unacceptable.

9. In accordance with MHA's advice, the applicant's services were returned to his parent department (Delhi Police) on his retirement on 30.11.92(AN). Delhi Police prepared his pension papers as per revised scales and sent them to SIB. Meanwhile the SIB issued impugned order dated 5.1.93 refixing the

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applicant's pay in the revised scale w.e.f. 1.1.86 in line with the earlier option exercised by the applicant for pay in the revised scale, and while doing so, SIB noted that this involved recovery of Rs.27,891/- . At one stage , the SIB wondered whether only the applicant should suffer recovery of such huge amount, but it was noted that both the Dealing Assistant and the S.O. who had permitted the applicant to exercise fresh option in violation of instructions and on which basis over payments had been made to the applicant, had since retired from service. Some further time elapsed since a controversy arose whether it was Delhi Administration or SIB who was to finalise the pension papers and pay the same to the applicant, and meanwhile the applicant filed this O.A.

10. The first question to be decided is whether it is Delhi Administration or SIB who will finalise the applicant's pension papers and release the pension to him. The applicant has prayed that the SIB be directed to finalise the same but this prayer has to be rejected because the applicant was only on deputation with the SIB and his parent department was Delhi Administration. It will, therefore, be the Delhi Administration and not SIB who will have to finalise the applicant's pensionary benefits.

11. The next question to be decided is whether the pensionary benefits will be admissible on the revised pay scale or on the old pay scale. Shri Raju for the applicant has stated that the applicant will be entitled to pensionary benefits under Rule 67(1) CCS Pension Rules,1972 by computing the pension on the last pay drawn by the applicant under the old pay scale. Shri Raju stated that the applicant's pay could not have

been refixed in the old pay scale to his disadvantage retrospectively, after he had superannuated without even giving him an opportunity to show cause. In this connection, Shri Raju has invoked the doctrine of legitimate expectancy and has referred to certain rulings including Navjyoti Housing Corporation Vs. Union of India-JT 1992 (5) 621; Smt. Novendra Marwah Vs. Union of India-AIC 1994(26) 179; B. Shankaraiyya Vs. Union of India - AIC 1993 (24) 910; and D. K. Yadav Vs. JMA Industries-1993 SC Labour & Service Cases. Shri Raju also stated that the doctrine of promissory estoppel operates in this case, and the respondents are now estopped from altering the applicant's pay scale.

12. It is clear that the applicant exercised his option on 18.12.86 in favour of the revised pay scale and his parent department on 15.4.87 and 22.4.87 fixed his pay in the revised pay scale. Once the option is exercised, Rule 6(4) of the CCS(Revised Pay) Rules, 1986 clearly states that the same shall be final. However, sensing some loss, the applicant filed a revised option, but ante-dated it to the same date i.e. 18.12.86 and this time the option was in favour of old scales. The dealing Assistant and the S.O concerned should have brought this fact to the notice of their superior officers that the applicant had already exercised option in favour of revised scale which was paid and the Delhi Police had also fixed his pay on that basis, but instead of doing that they noted on the file that the applicant may be allowed to exercise his fresh option of remaining in the old scale

and on that basis the applicant continued to draw salary in the old scale. Meanwhile, the issue got diverted into the question whether D.A. on deputation allowance was admissible or not. Once the applicant had exercised his option in the revised scale, the respondents should not have allowed him to draw his pay in the old scale. The respondents have correctly pointed out that the applicant's contention that he opted to retain the old pay scale in terms of MHA O.M.'s letter dated 10.9.90 is not tenable as this O.M. did not provide for option to retain pre-revised scale. The O.M. dated 10.9.90 provided for option, inter-alia to the State Police Officers already on deputation to I.B. for pay fixation in the scale of pay attached to the post in the Central Govt., i.e. I.B. within three months. Since there no option available on 10.9.90 to retain the pre-revised scale, the option dated 23.10.90 given by the applicant was not in accordance with the provisions of the said O.M.

13. In the light of the rule position as explained above, neither the doctrine of legitimate expectancy or that of promissory estoppel, relied upon by Shri Raju can help the applicant very much. The rule position makes it clear that the option once exercised shall be final and the first option exercised by the applicant was for pay fixation according to the revised scale, and his pay was accordingly fixed by his parent department (Delhi Police) under intimation to SIB. Hence, under law, it is this

option that would prevail.

14. However, there is one aspect of the matter which needs to be touched upon. Rule 13 of the CCS (Revised Pay) Rules, 1986 empowers the President to relax the requirements of any rule if he is satisfied that the operation of the same would cause undue hardship in any particular case. The applicant is a pensioner, and there is little doubt that the fixation of pay in the revised scale, will not only ^{lead to} a diminution in his retirement benefits, but would also entail recovery of nearly Rs.28,000/-, which any person, more so a pensioner, can ill afford in these hard times. There is also little doubt that if the applicant drew salary on the basis of the old scale, it is because functionaries at different levels in the office of SIB allowed him to do so, and the question naturally arises whether it is the applicant alone who should be saddled with the burden of recovery of such a large amount. As the Rule 13 CCS (Revised Pay) Rules, 1986 expressly grants the President the power to relax the same in deserving cases where he is satisfied that it will cause undue hardship in any particular case, it will be open to the respondents to ^{take a} fresh representation from the applicant and thereafter ⁱⁿ consider, in the facts and circumstances of this particular case, the appropriateness of relaxing ~~the~~ the Rule that the option once exercised becomes final, through a reasoned order, within ^{four} ~~two~~ months from the date of receipt of a copy of this judgment.

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15. This O.A. is disposed of accordingly
in terms of paragraph 14 above.

16. No costs.

Adige
(S.R. ADIGE)
MEMBER (A)

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