

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2339
Ex-Ax No.

199 3

DATE OF DECISION _____

Shri M.P. Khosla

Petitioner

Ms. Raman Oberoi

Advocate for the Petitioner(s)

Versus

UOI & another

Respondent

Shri K.C.D. Gangwani

Advocate for the Respondent(s)

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

The Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? Yes2. Whether it needs to be circulated to other Benches of the Tribunal?

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
Member (J)

Central Administrative Tribunal
Principal Bench: New Delhi

19

OA No.2339/93

New Delhi this the 1st. July 1996.

Hon'ble Sh. S.R.Adige, Member (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri M.P.Khosla, I.A.S.(Retd.)
R/o C-II/19, Bapa Nagar
Zakir Hussain Marg
New Delhi.

...Applicant.

(By Advocate: Ms Raman Oberoi)

Versus

Union of India through

1. Secretary

Ministry of Personnel, Public Grievances & Pensions
Government of India
North Block
New Delhi.

2. Secretary

Department of Economic Affairs
Ministry of Finance
North Block
New Delhi.

...Respondents.

(By Advocate: Shri K.C.D.Gangwani)

O R D E R

Hon'ble Smt Lakshmi Swaminathan, Member (J)

The applicant, an IAS Officer of 1962/ in the Jammu & Kashmir Cadre and holding the post of Chief Secretary in the State Government was appointed as Secretary, Appellate Authority for Industrial Finance & Reconstruction (AAIFR) on 3.4.1991. He was given the pay scale of Rs. 7300-7600 as Additional Secretary under the Government of India and he has stated that his pay has not been properly fixed under the I.A.S.(Pay) Rules, 1954. The applicant is aggrieved by the order passed by the respondents dated 15th June 1993 rejecting his representations dated 21.8.91 and 19.9.91 which he has impugned in this application filed under Section 19 of the Administrative Tribunals Act, 1985.

The brief facts of the case are as follows:

(a) The applicant was working as Chief Secretary, Jammu & Kashmir, in the pay of Rs. 8000/-(Fixed) from June 1987 to May 1988. When he was appointed as Chairman-cum-Managing Director, J&K Industries till March, 1989, this post was equated with the Cadre post of Chief Secretary under Rule 9(1) of the I.A.S.(Pay) Rules, 1954 and he continued to draw the same pay. Then the applicant proceeded on study leave granted by the State Government w.e.f. March, 89 to March, 91, before he joined the post of Secretary in AAIFR offered by the Government of India w.e.f. 3.4.91. The applicant joined the post of Secretary, Appellate Authority for Industrial Finance & Reconstruction, ^(AAIFR) on 3.4.91 and superannuated on the same position on 31.3.1993. The applicant, therefore, claims that for about 4 years i.e. from 5.6.87 to 2.4.91, the applicant has been drawing a salary of Rs. 8000(fixed) whereas after he joined the post of Secretary, AAIFR, he has been put in the pay scale of Additional Secretary of Rs. 7300-7600.

(b) The respondents have taken the preliminary objection that the application is barred by limitation in as much as the posting of the applicant in the pay scale of Rs. 7300-7600 was made in April, 91 and the applicant joined the post on 3.4.91. Since the OA has been filed on 29th Oct., 93, they submit that the same is barred by limitation U/S 21 of the A.T. Act. They have stated that merely submitting reminders of the representations does not constitute a fresh cause of action nor extend the period of limitation as held by the Supreme Court in S.S.Rathore Vs. State of Punjab (AIR 1990 SCC P.10).

(c) Ms Raman Oberoi, learned counsel of the applicant, on the other hand, submits that the application is not barred by limitation. The representations made by the applicant dated 21.8.91, 19.9.91, 25.10.91 and 5.11.92 against fixation of his pay in violation of Rule 9 (1) of I.A.S. (Pay)

Rules, 1954, were finally disposed of by the respondents by order dated 15th June 1993. The OA being filed in October 1993, therefore, was clearly within the limitation. She further submits that the respondents had themselves stated as late as in November 1992 that the applicant's representations on the subject were in an advanced stage of consideration and would revert to him in the matter shortly, till which time, it was stated that "you may kindly bear with us". Learned counsel of the applicant submits that relying on the words and assurances held out by the respondents as late as in November 1992 that the matter was receiving sympathetic consideration, the applicant, being a senior officer, refrained from rushing to the Tribunal to file the application and did so, soon after the letter dated 15th June 1993 rejecting his representations. Learned counsel, therefore, submits that under Section 21 (1) (b) of the Administrative Tribunals Act, the application has been filed within 6 months of the passing of the final order dated 15th June 1993 and there was no delay at all on the part of the applicant.

2. Before dealing with the merits of the case, we proceed to look at the preliminary objections on limitation.

It is ^{an} admitted fact that the applicant was posted as Secretary, AAIFR, under the Government of India in the pay scale of Rs. 7300-7600 in April 1991 and he joined that post on 3.4.1991. The applicant made his first representation against his pay fixation in this post on 21.8.1991. No doubt, he had sent reminders and further representations to the respondents to consider the matter under the provisions of the IAS (Pay) Rules, 1954, to protect his salary and to give him a basic pay of Rs. 8000/ as personal to him against the post of Secretary, AAIFR with effect from the date he assumed the charge of that post. No doubt the respondents had issued the letter dated 30.11.92 in which they had requested him to bear with them as the matter was under active consideration. ^{However,} Taking into account the facts

22

and circumstances of the case, including the fact that the applicant is a senior officer of the Government of India, such assurances cannot, on the face of it, be taken to extend the period of limitation prescribed under law, which he would have been otherwise well aware of. It is settled law that repeated representations cannot extend the period of limitation.

In SS. Rathore Vs. State of Punjab (Supra), the Supreme Court held that 'a cause of action will arise when the representation is made and the order is passed rejecting the representation and when no such order is made within 6 months after making the representation, the cause of action would arise from the date of expiry of 6 months' period'. (See also State of Punjab vs. Gurudev Singh (1991 SCC P.1) & Capt. Harish Uppal vs. UOI ~~WT~~ JT 1994(3) SC 126). Ms. Raman Oberoi, learned counsel for the applicant also submitted that if as finally held by the respondents they were merely considering the applicant's representations on the basis of the IAS (Cadre) Amendment Rules, 1988 which were notified on 20th May, 1988, there was no need for them to take such a long time to reject the applicant's representations, and they could have very well done so within a period of 6 months from the date of the applicant's first representation in August, 1991. We are not impressed by this argument, because if the applicant was aggrieved that the respondents were not responding to his representations well in time, he could have filed this application before the Tribunal within time, which might have incidentally also had the effect of eliciting a ~~timely~~ response from the respondents earlier. Having failed to do so, the applicant cannot now rely on the reasons given in the rejection letter to explain his own laches and delay. Therefore, having regard to Section 21(1) (a) & (b) of the A.T. Act, which is a self-contained Act prescribing the period of limitation in such cases, this application is beyond the period of limitation

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29

-5-

and no application for condonation of delay has also been filed in this case. Learned counsel ^{for} of the applicant relies on the assurances of the respondents that the matter is under consideration which she says cannot, therefore, be now held against the applicant. As already mentioned above, such assurances cannot ^{in any way} be held to extend the statutory period of limitation and the application is, therefore, liable to be dismissed on this ground alone.

3. We, however, proceed to deal with the application on merits.

The Ministry of Finance, Government of India, by notification No.4-2/91-F.II dated 22nd April 1991 appointed the applicant as Secretary, AAIFR in the pay scale of Rs. 7300-7600 w.e.f. 3.4.91 i.e. the date on which he took over the charge vice Shri K.S.Bains, IAS who had also held that post in the same pay scale. Ms Raman Oberoi, learned counsel ^{for} of the applicant, has submitted that the pay of the applicant as a member of the IAS should be fixed under Rule 9 of the IAS (Pay) Rules, 1954. The relevant portion of ^{the} Rule 9 of these Rules provides as follows:

9(1) No member of the Service shall be appointed to a post other than a post specified in Schedule III, unless the State Government concerned in respect of posts under its control, or the Central Government in respect of posts under its control as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule.

9(2) The pay of a member of the Service on appointment to a post other than a post specified in Schedule III shall be the same as he would have been entitled, had he been appointed in the post to which the said post is declared equivalent.

9(3) For the purpose of this rule 'post other than a post specified in Schedule III' includes a post under a body (incorporated or not which is wholly or substantially owned or controlled by the Government).

9(4) Notwithstanding anything contained in this rule, the State Government concerned in respect of any posts under its control, or the Central Government in respect of any posts under its control, may, for

sufficient reasons to be recorded in writing, where equation is not possible, appoint any member of the Service to any such post without making a declaration that the said post is equivalent in status and responsibility to a post specified in Schedule III.

9(5) A member of the Service on appointment to a post referred to in sub-rule (4), in respect of which no pay or scale has been prescribed, shall draw such rate of pay as the State Government, in consultation with the Central Government in the case of a post under the control of the State Government or as the Central Government in the case of a post under the control of the Central Government may, after taking into account the nature of duties and responsibilities involved in the post, determine.

9(6) A member of the Service on appointment to a post referred to in sub-rule (4) in respect of which any pay or scale of pay has been prescribed, shall draw where the pay has been prescribed, the prescribed pay and where scale of pay has been prescribed, such rate of pay not exceeding the maximum of the scale as may be fixed in this behalf by the State Government or as the case may be, by the Central Government:

Provided that the pay allowed to an officer under this sub-rule and sub-rule (5) shall not at any time be less than what he would have drawn had he not been appointed to a post referred to in sub-rule (4).

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4. ¹³ Ms Raman Oberoi, learned counsel for the applicant also relies on a judgement of the Hon'ble Supreme Court in R.P. Royappa Vs: State of Tamil Nadu, (1974 (4) SCC. p.1) Learned counsel submits that the pay of the applicant could only be fixed under these Rules and cannot be done under the IAS Cadre Rules, as amended, which is relied upon by the respondents. She submits that in Royappa's case, the Supreme Court has held that if the State Government wants to appoint a member of the IAS to a non-Cadre post created by it, it cannot do so unless it makes a declaration setting out which is the Cadre post to which such non-Cadre post is equivalent in status and responsibilities. She further submits that as held by the Supreme Court in the case of Royappa, "the making of such declaration is sine-qua-non of the exercise of power under sub-rule (1) of Rule 9. It is not an idle formality which can be dispensed with at the sweet will of the Government." The purpose behind such a declaration is to

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ensure that a member of the IAS is not pushed off to a non-cadre post which is inferior in status and responsibility to that occupied by him. So far as cadre posts are concerned, their hierarchy would be known, but non-cadre posts created by the Government would be a stranger in the hierarchy and that is why sub-rule (1) requires that before appointing a member of the IAS to such non-cadre posts, the Government must declare which is the cadre post to which such non-cadre post is equivalent in status and responsibility so that the member of the IAS who is appointed to such non-cadre post would know what is the status and responsibility of his post in terms of the cadre-post and whether he is placed in a superior or equal post or he is brought down to an inferior post. Ms. Raman Oberoi, learned counsel for the applicant has strenuously argued that in the case of the applicant, the Government had made no declaration of the equivalence in status and responsibility of the post to which the applicant was appointed as Secretary, AAIFR. Therefore, without such a declaration as required under Rule 9(1) of the IAS (Pay) Rules, his pay ought to have been fixed under the proviso to sub-rule (6), i.e. his pay cannot be at any time less than what he would have drawn had he not been appointed to a post referred to under sub-rule(4). As the applicant was at the time of his appointment as Secretary, AAIFR, drawing a fixed pay of Rs.8000/- and his pay should have been fixed at the same pay of Rs.8000/- and could not in any case be fixed lower than that pay to Rs.7300-7600 in the Additional Secretary's scale.

5. Ms. Raman Oberoi, learned counsel submits that if the respondents had rejected the applicant's representation within a reasonable time and not in 1993, or at least 11 months prior to his superannuation, he would have sought repatriation to his parent cadre so as to ensure his retirement benefits in the pay of Rs.8000/-. Since the respondents had assured him from time to time that his representations were under consideration, he continued in that post drawing the lower salary than what he was entitled to, and such

delay on the part of the respondents should, therefore, be viewed as being unwarranted and unjustifiable. She relies on the following cases:

DB Gandhi vs. UOI [1992] (2) SCC 392; and
UOI vs. Upendra Singh (JT) 1994 SC P.658.

She has also submitted that the judgement of this Tribunal in R.K.Takkar vs. UOI & Ors. in OA 1259/94 decided on 19th May, 1995 is distinguishable, as in that case, there was a proper order regarding the status of the post to which Shri Thakkar was deputed, which is absent in this case. The learned counsel for the applicant has also cited the case of Sheik Gulam Razool who was an IAS officer, junior to the applicant. In the appoint of Shri Razool, the Govt. of India by order dated 13th April, 1994 had fixed his pay at Rs. 8000/- as personal to him in order to protect his pay as Chief Secretary, Govt. of J & K. The learned counsel submits that the applicant, ~~therefore~~ ^{therefore 13} should also be given a salary of Rs. 8000/- (fixed), if necessary, as personal to him, as has been given in the case of Mr. Razool.

6. The respondents have filed a reply disputing the above claims made by the applicant. We have already dealt with the preliminary objections raised by the respondents. The respondents contend that the applicant having accepted the post of Secretary, AAIFR, which carries the pay scale of Rs. 7300-7600 is estopped from challenging the said posting or the scale of pay fixed according to the statute. They have not disputed the fact that the applicant received pay of Rs. 8000/- for

V2

the period 6.5.1987 to 2.4.1991 by virtue of having held various posts in that grade under the State Government and during the period of his study leave. They submit that these postings were done by the State Government under their own powers, subject to the condition laid down under Rule 9(1) of the IAS (Pay) Rules, which restricts the number of ex-cadre posts in the scale of Rs. 8000/- except with the prior approval of the Government of India. They submit that when he was appointed on Central Government deputation in the post of Secretary, AAIFR from 3.4.1991 till he retired on 31.3.1993, the post carried the pay scale of Rs. 7300-7600. Shri K.C.D.Gangwani, learned counsel for the respondents submits that the proviso to Rule 9(6) of IAS (Pay) Rules 1954 is not relevant in this case. He submits that Rule 9(1) does not deal with fixation of pay but deals with declaration of equivalence of posts in status and responsibility to a post specified in Schedule (III). Sub-rule (4) of Rule 9 deals with situations where the State Government concerned or the Central Government in respect of any posts under its control is empowered to appoint any member of the IAS to any such post without making such a declaration, for sufficient reasons to be recorded in writing. The learned counsel submits that this is not the situation here. When the applicant was appointed as Secretary, AAIFR, which is a statutory post under Section 8 of the Sick Industrial Companies (Special Provisions) Act, 1985, he was aware that he would receive pay as admissible to an Additional Secretary to the Govt. of India as provided in clause 3 of the Ministry of Finance's notification dated 7.3.1989. Since the proviso to sub-rule (6) of Rule 9 of the Pay Rules under

18

which the applicant claims the relief applies in cases where the declaration of status is not possible, which is not the case here, the relief as claimed by the applicant cannot be granted.

7. The learned counsel for the respondents also submitted that the notification appointing the applicant in the cadre of Additional Secretary with the pay of that post is in accordance with the panel of IAS Officers approved by the Appointments Committee of the Cabinet (ACC) where the applicant had been placed at the level of Additional Secretary only and not in the panel of Secretaries. He, therefore, submits that as explained in the impugned letter dated 15th June, 1993, in accordance with the provisions of IAS (Cadre) Rules, 19564, as amended by notification dated 20th May, 1988, the applicant's pay during his deputation in the Centre has been correctly fixed, which may, however, be less than the basic pay that he would have drawn in the cadre post in the State which cannot be protected. It would otherwise affect the pay of officers who are senior to him.

8. Learned counsel for the respondents also submits that if the applicant was not satisfied with the terms and conditions of the post of Secretary, AAIFR, he could have sought ~~to~~ repatriation to his parent Cadre which he did not do, and has agitated this matter of pay fixation in the higher scale only after he superannuated from the post on 31.3.1993. As regards the pay of Mr. Razool, learned counsel for the respondents has clarified that the officer had been posted as an Officer on Special Duty in the Ministry of Welfare against a

vacant post of Additional Secretary and given a salary of Rs. 8000/- as personal to him. Being an Officer on Special Duty, the status of the post is not material and he could be fixed at any post, but in this case the officer did not actually join. Therefore, the learned counsel submits that the applicant's claim for fixation of salary at Rs. 8000/- while he was working as Secretary, AAIFR has been correctly rejected in accordance with the rules and law.

9. We have carefully considered the arguments, the pleadings and the record in this case. The applicant has not questioned the fact that although he was Chief Secretary in the State of J & K, he was only in the panel of Additional Secretary as approved by the ACC. By the Ministry of Finance, notification dated 22nd April, 1991, the applicant was informed that he was being appointed as Secretary, AAIFR in the pay scale of Rs. 7300-7600/- w.e.f. 3.4.1991, the date on which he assumed charge. This is a statutory post created under Section 8 of the Sick Industrial Companies (Special Provision) Act, 1985. Rule 3 of the AAIFR (Conditions of Service of the Secretary and other officers and Employees) Rules, 1989 made under the 1985 Act, provides that the Secretary of the Appellate Authority shall receive pay as admissible to an Additional Secretary to the Govt. of India or where an officer of the Government is appointed on deputation to the Appellate Authority as Secretary, he shall receive the pay admissible to such officer while on deputation. Since the applicant was deputed to the statutory post of Secretary, AAIFR, which was equivalent to the post of Additional Secretary to the Govt. of India, which was

18

also the post approved by the ACC, it cannot be said that he has been deputed to a lower post carrying a lower pay, contrary to the provisions of Rule 6 (2) of the IAS (Cadre) Amendment Rules, 1988.

10. We are also unable to agree with the arguments advanced by Ms Raman Oberoi, learned counsel that the pay ought to be fixed in terms of the proviso to Rule 9(6) of the IAS (Pay) Rules only and not the IAS Cadre Rules. Both these rules have to be read harmoniously. The declaration of equivalence in status and responsibility of the post specified in Schedule (III) of Rule 9(1) of the pay rules does not apply in this case, because as already mentioned above, the notification dated 22.4.1991 appointing the applicant to the post of Secretary, AAIFR, which is a statutory post, itself gives the pay and status of the post to be that of Additional Secretary in the pay scale of Rs. 7300-7600/- Therefore, no further declaration of equivalence in status and responsibility of the post is required to be made under Rule 9(1) of the IAS Pay Rules when the post itself is created under a Central statute, namely, the Sick Industrial Companies (Special Provisions) Act, 1985. In this view of the matter, the question of recording sufficient reasons for making appointment of any member of the service to any post without making a declaration of equivalence in status and responsibility under sub-rule 4 of Rule 9 is also not applicable in the instant case. When the applicant, an IAS Officer, therefore, accepted the post of Secretary, AAIFR he was very much aware of the status and pay ~~of~~ ^{that} the post carried i.e. that it was ~~that~~ of Additional Secretary to the Government of India.

Accordingly, the claim of the applicant for fixation of his pay under the proviso to Rule 9(6) of the IAS (Pay) Rules is rejected. In the facts of this case, the applicant's pay has been correctly fixed in terms of the cadre Rules, as Additional Secretary.

11. In the case of Shri Razool, the learned counsel for the respondents has correctly pointed out that the officer was appointed as an Officer on Special Duty and his pay fixed at Rs.8000/- as personal to him, although the officer did not actually join the post. In the present case on the other hand the applicant being well aware of the status and pay of the post of the Secretary,AAIFR, joined the post on 3.4.1991 and continued on that post till his superannuation on 31.3.93. Although he might have made several representations for re-fixation of his pay, at no time did the applicant submit to the respondents that he would like to go back to his post in the State Government of J & K, if his pay of Rs.8000/- is not protected. Therefore, having continued in the post and being fully aware that he had been approved in the cadre only at the level of Additional Secretary, in the pay scale of Rs.7300-7600/-, and received the maximum pay as admissible to him in that scale, his claim for fixation of his pay at a higher level cannot be accepted now. In this connection, the judgement of Supreme Court in Royappa's case (supra) is relevant wherein the Supreme Court had also declined to grant any relief to the petitioner because he had accepted the appointment of Deputy Chairman, Planning Commission, without

demur when it was offered to him as he thought the post was of the same rank and carried the same emoluments as the post of Chief Secretary.

12. In the facts and circumstances of the case, the respondents have not acted contrary to the provisions of the relevant rules i.e. the IAS (Cadre) Rules in fixing the pay of the applicant, or in such a manner as to justify any interference in the impugned order. We do not also find that the respondents have in any way deliberately or in malafide manner delayed the matter in replying to the applicant's representations, and in any case, he being a senior officer, could have taken his own advice and decision in time to go back to the State Government, if he chose to do so. Therefore, we do not find the other case law relevant, or any merit in the application.

13. In the result, the application fails and is dismissed both on the grounds of limitation and merits. No order as to costs.

Lakshmi
(Smt. Lakshmi Swaminathan)

Member (J)

Adige
(S.R. Adige)

Member (A)