

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(THIS THE 2nd DAY OF April 2011)

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr.D.C. Lakha, Member (A)

Original Application No.597 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Hari Lal, aged about 61 years
Son of Late Shyam Das,
Resident of H.No.355-A, Ompurwa,
Chakeri Road, Kanpur-7

.....Applicant

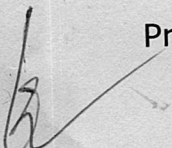
Present for Applicant: Shri R.K.Shukla, Advocate.

Versus

1. Union of India through the Secretary
Ministry of Defence Production,
Government of India,
New Delhi-11
2. The Director General, Quality Assurance
Deptt. of Defence Production/DGQA
Ministry of Defence,
DHQ P.O., New Delhi-11.
3. The Controller,
Controllerate of Quality Assurance (GS),
Post Box No. 127,
Kanpur.

.....Respondents

Present for Respondents: Shri M.B. Singh, Advocate



ORDER

(Delivered by Hon'ble Dr.K.B.S.Rajan, Member J)

As the counsel for the respondents was not available at the time of hearing, giving liberty to file written arguments and invoking the provisions of Rule 16 of the CAT(Procedure) Rules, 1987, this OA is decided.

2. Brief facts of this case are as under:-

The applicant was initially appointed as Salesman in the scale of pay of Rs.70-85 on 12.2.1970 in the Canteen formed in pursuance of provisions made in Section 46 of the Indian Factories Act 1948 and run by the Controller, Controllorate of Quality Assurance (GS) Kanpur.

3. As per Ministry of Defence OM dated 16.12.1982 the employees of Canteens established under the Factories Act have been declared as regular government servants.

4. The pay scale of Salesman underwent and upward revision and brought to Rs.196-232 as per the order dated 16.4.1983. Subsequently the respondents had changed the designation of Salesman into "Bearer" vide Annexure A-I order dated 26.9.1991. The applicant moved a representation dated 25.11.1992 for restoration of the very same designation Salesman. Vide Annexure A-6 order dated 18.11.1997 Junior Clerks in sales section were granted higher pay scale of Rs. 3050-4590 in accordance with para 55.22 of the Vth Central Pay Commission Recommendation. But in so far as Bearers are concerned it was Rs.2610-3540. The applicant's pay had been fixed only in Rs.2610-3540 and as such he had requested for restoration of his

original pay scale which has been replaced by Rs.3050-4590. Though confirmation was given that the applicant's original appointment was salesman, the respondents have not altered the designation from bearer to Salesman nor have they granted the pay scale of Rs.3050-4590.

5. The applicant has prayed for the following relief:

- (i) To issue a writ, order or direction in the nature of certiorari quashing the order No. 129 dated 26.9.1991 passed by the respondent No.3 so far as it relates to designation of the applicant.
- (ii) To issue a writ order or direction in the nature of Mandamus commanding the respondent No.3 to fix the applicant's pay on the post of Salesman under the provisions of F.R.22 under the existing rules and also be directed to pay arrears of pay & allowances caused so w.e.f. 1.1.1996.
- (iii) To issue a writ order or direction in the nature of mandamus commanding the respondent no.3 to compute the pensionary benefits taking into account the pay arrived lastly after giving the pay scales of Salesman and also pay the arrears of pension and other pensionary benefits.

6. Respondents have contested the O.A. According to them, the pay scale vide Ministry of Defence I.D. No.18(2)/81-D (JCM) Vol-II dated 8.06.1986 the post of Salesman, kitchen assistant and vendor were merged to the post of Bearer and accordingly the applicant's designation has been shown as Bearer at the time of publication of D.O. Part II. The pay scales of Bearer, Salesman, vendor and the Kitchen Assistant are identical and hence making payment as per pay scale of Salesman as claimed by the applicant is not correct. The initial pay scale of Rs.196-232 were revised to Rs.750-940 by the IVth Central Pay Commission and after the Vth Central Pay Commission, the

three categories of posts with identical pay scale of Rs.2610-4000 have been introduced. So far as Junior Clerks in the Sales section are concerned as per the IVth Central Pay Commission Recommendations, their pay scale was Rs.825-1200. It is this pay scale that has been replaced by Rs.3050-4590. Hence this pay scale is not available to the applicant.

7. The Scale of salesman had been replaced by scale of Rs 3050 - 4590. The respondents filed their supplementary counter stating as under:

The contention of the applicant that pay scale of Salesman was higher is incorrect. The present pay scale of Salesman is Rs.2610-4000 and not Rs.3050-4590. SRO 269 dated 24.10.2000 annexed as Annexure SCA-III refers. The same has since been revised to Rs.2610-4000 vide SRO No.26 dated 15.3.2005 (Annexure SCA-IV).

8. Counsel for the applicant has neatly presented the case stating the applicant who was appointed as a salesman on 21-02-1968 was posted to CQE, Kanpur as is evident vide his name reflected in the list at page 13 and 16. The pay scale of bearer is lower than that of Salesman. That the applicant has been shown as salesman is confirmed vide Annexure A-IX letter dated 30-04-2003 read with Annexure A-X. According to the counsel for the applicant, the pay scale of Salesman had been revised to Rs 3,050 - 4590 under the IV Pay commission Recommendations. As such it is this scale that has to be taken into account for arriving at a necessary conclusion about the pension element to which the applicant is entitled.


5.

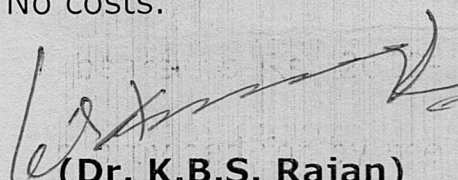
9. Arguments were heard. The initial pay of salesman was Rs. 196-232. This had undergone the following replacement scales-

(a) Rs. 196-232 revised to Rs 750-940 vide para 8.15 of the IV Pay Commission Recommendations.

(b) Rs 750-940 revised to Rs 2610-3150 as per the Revised Pay rules, 197 and also prescribed in the Recruitment Rules.

10. After merger, the pay scale of bearer is Rs. 2610-3150 only and it is this that has been provided for by the respondents. The pay scale of Rs. 3050-4590 which the applicant claims as pay of salesman is not for such salesman but clerks working in the sales department. We do not, therefore, find any lacuna in the impugned order. The O.A. is accordingly dismissed. No costs.


(D.C. Lakha)
Member-A


(Dr. K.B.S. Rajan)
Member-J

Uv/-