

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration T.A.No.1095 of 1986 (O.Suit No.1048
of 1985)

B.K.Nandi ... Applicant

Vs.

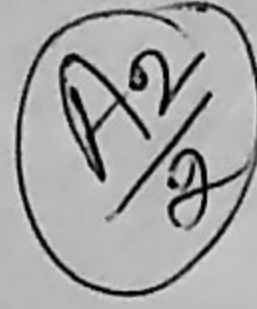
Union of India and another ... Respondents.

Hon.G.S.Sharma, JM
Hon.K.J.Raman, AM

(By Hon.G.S.Sharma, JM)

This transferred Application is an original suit and has been received on transfer from the Court of Munsif City Kanpur u/s.29 of the Administrative Tribunals Act XIII of 1985.

2. The Applicant had initially joined the Heavy Vehicles Factory Avadi under the Ministry of Defence as Machinist 'C' and was promoted as Machinist 'B' in 1973. He was transferred to Ordnance Factory Kanpur vide movement order dated 10.9.1980 and had resumed his duty at Kanpur on 15.9.1980. He was in the pay scale of Rs.260-350 at Avadi and at the time of his transfer was drawing Rs.290 per month as his salary from 1.12.1979. No annual increment was granted to the Applicant on 1.12.1980 and he was granted an increment w.e.f. 1.12.1981 and his pay raised to Rs.296 per month. His pay was, however, reduced to Rs.255 per month w.e.f. May 1983 without affording him an opportunity of hearing. The representations made by the Applicant to the General Manager Ordnance Factory Kanpur and the Director General Ordnance Factories Calcutta did not bear any fruit. The Applicant was, however, informed by the Respondent no.1 that as per order of the Director General, his case for promotion to the post of Miller 'B' in the scale of Rs.260-400 could be considered subject to the condition that he gave an undertaking that he would not seek any financial benefit retrospec-



tively. The Applicant did not agree to this and when his request for granting proper rank and pay were not heeded by the Respondents, he filed the present suit on 12.7.1985 for a declaration that the reduction in his pay from 296 per month to Rs.255 per month w.e.f. May 1983 and lowering down his seniority from 15.9.80 to 30.6.83 is illegal and unconstitutional and he is, therefore, entitled to his pay at the rate of Rs.296 per month from 1.12.1980 with other consequential benefits.

3. The suit has been contested on behalf of the Respondents and in the written statement filed on their behalf by the Asstt. Works Manager Ordnance Factory Kanpur, it has been stated that the transfer of the Applicant from Avadi to Kanpur was made on his own request in the lower trade/grade and he had tendered a declaration to this effect before his transfer which was duly approved by the Ordnance Factory Board. The Applicant was accordingly given the post of Miller 'C' in the scale of Rs. 210-290 at Kanpur. By mistake he was given an increment and his pay was fixed at Rs.296 per month. As a matter of fact, the pay of the Applicant could not be raised above the maximum of the time scale and when this mistake came to the notice of the Factory Management his pay was reduced to Rs.255 per month in May 1983. The representations and the appeal made by the Applicant were forwarded to the Directory General of Ordnance Factories and the Board had intimated the Applicant through the General Manager to consider his case for promotion to the next higher grade on obtaining undertaking from him that he will not claim financial benefit retrospectively. The pay of the Applicant has been fixed

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according to his undertaking and the facts stated otherwise by him are not correct.

4. In the replication filed by him, the Applicant has denied his having tendered any undertaking to accept any lower trade/grade on his transfer and the treatment meted out to him is arbitrary and illegal and in any case, he was entitled to an opportunity of hearing before his reduction in pay and rank.

5. One of the most relevant questions arising for determination in this case is whether the Applicant had given any declaration or undertaking for securing his transfer from Avadi to Kanpur as alleged by the Respondents. It is not in dispute in this case that this transfer of the Applicant was made on his own request and he was not given any joining time and transfer allowances. On the date of hearing the Respondents produced the photostat copy^{ies} of the undertaking shown to have been given by the Applicant, which runs as follows:-

" I (the undersigned) was working in H.V. Factory, Avadi as a Machinist 'B' (Miller) in the scale of Rs.260-350. My services have been accepted as a Machinist 'B' in this Factory on transfer from that Factory. I have joined my duty today (15.9.80) in O.F.C.

It is observed that the scale of pay of Machinist 'B' in Ordnance Factory, Kanpur is Rs.210-290 and not Rs.260-350 and I have been accepted by this Factory as Machinist 'B' only.

I, however, give an undertaking that I am willing to accept the post of Machinist 'B' in the scale of pay of Rs.210-290 in O.F.C.

Simultaneously, I request that the pay I was getting at H.V. Factory, Avadi may kindly be protected (e.g. Rs.290 p.m.)

Sd/-B.K.Nandi"



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^{separate} No date is mentioned in this undertaking but the date 15.9.1980 was noted by a witness of Ordnance Factory Kanpur. It shows that the undertaking/declaration was given by the Applicant at Kanpur at the time of his reporting for duty on his transfer. This document contains a clear admission of the Applicant that scale of pay of Machinist *B* in Ordnance Factory Kanpur is 210-290 and not Rs. 260-350 (as available in Avadi) and he had been accepted by the Kanpur Factory as Machinist 'B' only. He thereafter gave a clear undertaking that he is willing to accept the post of Machinist 'B' in the pay scale of Rs. 210-290 in Ordnance Factory Kanpur and requested that his ^{present} ~~personal~~ pay i.e. Rs. 290 per month be protected. In our opinion, this undertaking clinches the whole matter and the Applicant wrongly tried to conceal this fact from the Court not only in his plaint but also in his replication. The undertaking aforesaid supports the contention of the Respondents that the Applicant had, in fact, given a declaration to accept the lower grade of Rs. 210-290 at Kanpur and the stand taken by the Applicant to the contrary is not correct.

6. With his replication the Applicant has filed a copy of his movement order dated 10.9.1980 issued by the General Manager Heavy Vehicles Factory Avadi which states that the Applicant is not entitled to joining time, joining time pay, TA/DA etc., as his transfer has been ordered at his own request on compassionate grounds. His seniority in the new Fac-



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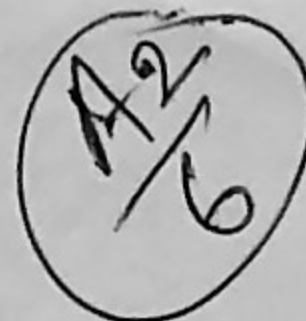
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tory will be reckoned w.e.f the date he reports for duty. The order further states that the Applicant was in receipt of Rs.290 per month as pay w.e.f. 1.12.1979 in the pay scale of Rs.260-390 and corresponding allowances. The Applicant has also filed the copy of order dated 27.9.1971 passed by the General Manager of Avadi Factory regarding one other employee E.Muni Bhashyam, who too was transferred on his request as Machinist 'B' and was accommodated in the pay scale of Rs.260-350. The Applicant has pleaded in the replication that he is entitled to the same treatment in the matter of his pay and the orders passed to the contrary by the Respondents are discriminatory and illegal. As a matter of fact, such things should have been pleaded in the plaint itself. However, it does not appear from the order dated 27.9.75 that even T.Muni Bhashyam had submitted a declaration/undertaking similar to that of the Applicant for securing his transfer and as such, the case of T.Muni Bhashyam cannot be applicable to the case of the Applicant.

7. In support of his contention the Applicant has cited 3 decisions. In Ram Anugrah Shukla Vs. Director of Education (1986 ALJ-1138), it was held by a Division Bench of the Allahabad High Court that as no opportunity was given to the Petitioner while passing the order reducing his salary, the order was against the principles of natural justice and it was accordingly quashed. In A.S.Tewari Vs. Delhi Administration (1985 LIC (NOC) 18), a Single Bench of the Delhi High Court had held that an employee consenting to receive a lower pay scale was not debarred from claiming statutory pay scale. In another Single Bench case of Karnataka High Court in N.B. Kaverappa Vs. District and Sessions Judge (1987 LIC



-1567), it was held that on the basis of voluntary transfer secured by an employee by giving undertaking to forego regular service for seniority, he could not be denied the benefit of selection time scale and deprivation of such benefit would violate Articles 14 and 16 of the Constitution.

8. On the other hand, on behalf of the Respondents reliance has been placed on O.M. dated 31.5.1980 issued by the Ministry of finance New Delhi laying down the principles of fixation of pay on posting and transfer on compassionate grounds. Clause (c) of this Memo provides that in case where posting or a transfer involves reduction in the grade/trade the pay of the individuals will be fixed by giving the benefit of complete years of service rendered in the previous post. According to the Respondents the pay of the Applicant was fixed at Rs.255 per month from May 1983 in the pay scale of Rs.210-290 after giving the benefit of completed years of service in Avadi Factory and as this was done in accordance with the undertaking given by the Applicant, there was no question of affording any opportunity to the Applicant and the case laws cited by him as above, are not applicable in his case.

9. We have very carefully considered the various aspects of the case and are of the view that in view of the clear undertaking of the Applicant about his accepting the post of Machinist B in the Ordnance Factory Kanpur in the scale of pay of Rs.210-290, he is estopped from claiming the higher pay. His pay was fixed in accordance with the Govt. O.M. dated 31.5.1980 which had duly come into force at the time the Applicant was transferred. The undertaking of the Applicant was not subject to his pay at Rs.290 per month being protected but he had simply

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requested to protect his pay received by him at Avadi and as such nothing wrong appears to have been done in his case by the Respondents. As his pay has been fixed in accordance with his own undertaking and the relevant Govt. OM he was not entitled to any opportunity of hearing merely because by mistake he ^{in the beginning} was paid more than the amount admissible to him as his salary. There is, therefore, no merit in this case, and, it deserves to be dismissed.

10. The Transferred Application/Suit is dismissed without any order as to costs.

[Signature]

MEMBER (A)

Dated: *August 8*, 1989
kkb

[Signature]

MEMBER (J)