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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1102 of 1986

Mulk Raj Plaintiff-Applicant.
Versus
Union of India Defendant-Respondent.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

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In this suit received under Section 29 of the Administrative Tribunals Act XIII of 1985 from the court of Munsif City, Kanpur the plaintiff, Mulk Raj, has come up with a prayer for a declaration to be issued that withholding of his increments for the period from April, 1975 to November, 1979 as Supervisor 'B' was illegal and unconstitutional. The facts of the case are that the plaintiff, who was Supervisor 'B' (N.T.) was redesignated as Security Assistant 'B' with effect from 5.9.1974 in exigencies of service. Both these posts were in identical grades. The revised pay scale of Supervisor 'B' was fixed in the grade of Rs.330-560 in January, 1975 while that of Security Assistant 'B' was fixed in the grade of Rs.330-480. Since this tantamounted to reversion because these fixations had retrospective effect from 1.1.1973 the plaintiff's redesignation as Security Assistant 'B' was cancelled, On 28.10.1979, and he was deemed to have continued as Supervisor 'B' but he was not given annual increments from 5.9.1974 to 28.10.1979 because his pay was not fixed as Security Assistant 'B', the revised

A2
2

-: 2 :-

pay scales not having been received from the Ministry of Defence. During the pendency of the suit except for withholding his increments as Supervisor 'B' for the period from April, 1975 to November, 1979 other points raised in the plaint were settled by the defendant. The defendant refixed his pay notionally at the rate of Rs.428/- per month from the date of issue of cancellation order but did not pay any arrears due to increments for the period prior to issue of the cancellation order. This action was based on the Ordnance Factory Board's letter No.520/Part A/NI, dated 29.2.1984.

2. We have heard the learned counsel for the parties. It was contended on behalf of the plaintiff that he had accepted the change conditionally. While the learned counsel for the defendant submitted that the plaintiff had not replied to the offer made to him regarding his fixation without payment of arrears and that now he was not entitled to the same.

3. The plaintiff was, in exigencies of service, put to work as Security Assistant 'B' from the post of the Supervisor 'B'. At the material time both the posts were in the same grade. So his movement from Supervisor 'B' to Security Assistant 'B' was in the same grade. But the revised pay for Supervisor 'B' was fixed soon after his transfer and the category of Security Assistant 'B' was not included in the list of posts whose pay was revised with effect from 1.1.1973. Revision of the pay of Security Assistant 'B' was done on 28.10.1979, i.e. nearly 4½ years after the fixation of the pay of Supervisor 'B'. This delay cannot be used to deny annual increments to the plaintiff. He was ^{working during} ~~on duty~~ for the entire period, while it may be accepted that since the

A2
3

-: 3 :-

pay scales were not known he could not be fixed in the revised pay scale but his increments in the scale of Rs.150-240 in which this post continued till revision on 28.10.1979 should have been given to him. There was no bar for the same and legitimately too he should have earned increments in the scale in which he was paid upto 28.10.1979. As a matter of fact in the Factory Order No.606 of 7.4.1975 he was fixed in the scale of Rs.330-560 at Rs.360/- on 1.4.1974. He was, however, not given any increment on 1.4.1975. He was advised by a letter dated 16.5.1975 that increments will not be granted as it was not possible to fix his pay in the absence of receipt of revised scale of pay (20-Ga).

38/ 4. On 29.2.1984 the Ministry of Defence and Ministry of Finance's orders on the issue were conveyed to the administration of ^{the} Small Arms Factory, Kanpur. These reads :-

"This case has since been received back from Ministry of Defence/Ministry of Finance with the following remarks :-

".....If their recruitment rules/ service conditions are/were different such redesignation have been necessitated on exigencies of service and also keeping in view the cancellation order already issued by OF Board and presuming that individuals are drawing high scale of pay w.e.f. cancellation order we may agree to re-fix their pay in the post of Sup 'B' notionally from retrospective effect with actual financial benefit from the date of issue of cancellation orders i.e. no arrears would be paid prior to the date of issue of cancellation orders".

2. It is requested that the case may kindly

A2
14

-: 4 :-

be reexamined on the basis of the above remark and your views may be forwarded to this office for further necessary action in the matter.

3. The individuals concerned may also be kept informed of the position suitably."

This order has agreed for refixation of pay in the post of Supervisor 'B' notionally and with retrospective effect and the actual financial benefits were allowed from the date of ^{the} cancellation-orders^{by}. A reading of this order clearly shows that the whole matter had not been appreciated in its proper perspective. It is evident from this letter that what has been assumed is that the plaintiff was drawing his salary in the scale of the post of Security Assistant 'B'. But the defendant's own letter of 16.5.1975 had denied grant of increments to the plaintiff as the pay scale of the post was not known. It has not been said in their reply by the defendant that even after the receipt of the revised pay scales the stopped increments had been released and given to the plaintiff and he was paid the arrears from 1.4.75 to the date of his return as Supervisor 'B' on 28.10.79 by Factory Order No.2346 of 28.10.1979 (22-Ga) during which period he worked as Security Assistant 'B', the pay of which post was fixed in the grade of Rs.330-480 with effect from 1.1.1973.

5. The plaintiff thus appears to have been stationary on Rs.360/- per month, the pay on which he was fixed as on 1.4.1974 in the revised pay scales as Supervisor 'B' on 7.4.1975 after his transfer on 6.9.1974. An increment except the increment above an efficiency bar has to be ordinarily drawn as a matter of course. It can only be withheld under a proper punishment order for unsatisfactory conduct or any other reason for which an

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A/5

-: 5 :-

opportunity has necessarily to be given to the person to explain his position. All duty in a post in time scale counts for increments. The plaintiff's case is not one of punishment. He cannot be penalised by denying him the increments because the defendant took time to fix the pay of the post. If an order results in loss of benefit already earned that would be punishment (P. Balakotaiah v. Union of India & others, A.I.R. 1958 S.C. 232). So the order of 16.5.1975 and subsequent order of 29.2.1984 are both bad in law and arbitrary. They cannot be sustained.

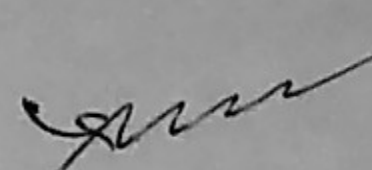
6. At worst the plaintiff should have been given his increments by fixing him at the proper stage in the scale of Rs.330-480 for the period he remained as Security Assistant 'B' after his fixation on Rs.360/- with effect from 1.4.1974, i.e. he should have been fixed at the corresponding stage of Rs.360/- as on 1.4.1974 in the scale of Rs.330-480 for at least purposes of earning increments. Even this was not done. The defendant had realised that he could not be posted to a lower post but they chose to give him neither the increments in the lower post nor in the higher post even after the revised pay scales had been received and the directions of 29.2.1984 from Ministry of Defence also denied these.

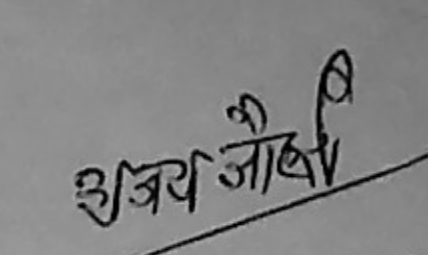
7. Under the circumstances we feel that the plaintiff has a case. He is entitled to the denied increments of the period from 1.4.1975 to the date he was given his proforma fixation. These will be in the grade of Rs.330-560. We order accordingly. The arrears on account of these increments should be paid to him within a period of three months from the date of receipt of these orders. The application (Suit No.1674

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-: 6 :-

of 1983 is allowed in these terms. Parties will bear their own costs.


Vice-Chairman.


Member (A).

Dated: January 21, 1988.

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