

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO/167 of 1993

~~ORAL HEARING~~

DATE OF DECISION 08.06.1994.

Mr. M.C. Rathi

Petitioner

Mr. M.K. Oza

Advocate for the Petitioner (s)

Versus

Union of India & others

Respondent

Mr. Akil Kureishi

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel

: Vice Chairman

The Hon'ble Mr. K. Ramamoorthy

: Member (A)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Murlidhar Chandiram Rathi,
 c/o, Jaidev M.Rathi,
 Near Thakkar Bapa Chhatralaya,
 Sonaria Road, Palanpur.

Applicant

Advocate Mr. M.K.Oza

versus

1. The State of Gujarat,
 notice to be served through
 The Secretary,
 Revenue Department,
 Sachivalaya,
Gandhinagar.
2. Union of India, notice to be
 served through the
 Secretary, Ministry of
 Home Affairs,
 Central Secretariat,
New Delhi.
3. The Administrator of Dadara-Nagar
 Haveli, notice to be served through
 the Secretary to the Administrator,
Administration

Respondents

Advocate Mr. Akil Kureshi

JUDGMENT

O.A.167 of 1993

Date: 08.06.1994.

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

The applicant has sought relief by way of a direction to allow him deputation allowances at 20 % of the basic pay, on his deputed post even though this addition would have meant the government servant

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drawing more than the maximum of the scale promoted for the post for which he had gone on deputation.

2. The facts of the case are as under :

The applicant was a servant of the Government of Gujarat drawing a salary in the scale of Rs.650-1200 (pre-revised) and he was deputed for a post in Dadra Nagar Haveli Silvassa, which carried the scale of Rs.550-900 (pre-revised). He was deputed to this post under orders dated 20th November, 1979, and it is true that in the terms of deputation it was specifically provided that in the deputation post he will be ~~able~~ to draw pay of the post in his present department plus deputation allowances of 20% provided that the pay plus deputation allowances does not exceed the maximum of the pay of the post held on deputation. It is the contention of the applicant that though there was this condition, in practice this was not adhered to and government continued to allow the deputation allowances at the rate of 20%. He had cited 15 other cases of similarly placed government servants who had been given such allowances, even though they were drawing salary above the maximum of the deputation post scale. However, the Government of India had not approved, proposal to grant deputation allowances to him alone.

3. It is the contention of the respondents that the concession allowed in the case of the Government servants, cited by the respondents, was ^{an} one-time concession.

In support thereof, the respondent specifically had made a special mention thereof in the order of 14th October, 1977, wherein it had been specifically stated "the administration are advised that in future no appointment on deputation requiring relaxation or the standard terms of deputation should be made". The counsel for the respondents further stated that the fact that a relaxation was once made should not be said to set a precedent to continue the relaxation even thereafter.

4. Since the basic facts regarding the existence of a condition in the deputation order regarding non-availability of deputation allowances on the maximum of the scale of pay and the other fact of concession even then having been made to certain government servants have not been disputed, the only question that remains for consideration is the question as to whether in the case of the present applicant any unreasonable discrimination has been caused.

5. In the Written Reply, dated 17.1.1994 filed on behalf of the respondents on 9.3.1994 the only contention made by the respondents is, that the applicant was not similarly situated. In para-6 of the Written Reply a reference is made to a memorandum of 1/4/84-Est. dated 26.12.1984, which is not relevant to this issue since admittedly the case of the applicant belonged to an earlier period. The applicant was on deputation from 10.9.1979 to 30.9.1982 and the terms and conditions of the applicant

are governed by the Government of India, O.M.No.F-10 (24) E-iii/60 dated 4.5.1961, which contained the provision relating to the limitation so that it should not exceed the maximum of the scale of the post held on deputation under the clause(vi).

6. As has been pointed out by the applicant, in the case of 15 officers the benefits of full deputation allowances have been granted. While it is true that in granting this allowances to the 5th,6th, and 7th officer vide its letter of 14th October,1977, it was specifically submitted that the administration should not in future send such cases for relaxation, it is also true that Government of India vide its letter dated 17.1.1979 and its letter dated 20.4.1980 and its letter of 9.4.1981 has granted similar allowances to the another 8 officers relaxing this condition. These facts are not disputed and no special reason has been adduced to show how all or any of these officer's cases is not similarly placed to that of the applicant. In point of fact the local administration has been pursuing the case of the applicant vigorously and the letter dated 24.12.1981, written by the Secretary to the Ministry Dadra Nagar Haveli,Silvassa administration to the Ministry of Home Affairs on 24.12.1981 (Annexure A-3) is eloquent and makes a specific point that the case of the present applicant has been referred to the Government of India though a different Ministry almost during the same period. The reference regarding the applicant was made on 8.12.1980

while the case of Shri Chadarwala, was referred on 21.1.80. The case of Shri Krishna Swamy was sanctioned even later i.e. on 9.4.1981. Both Shri Chadarwala and Shri Rathi belong to the same parent department and the fact of applicant being a similarly placed person is more than established.

7. It is true that the administration has the authority to sanction one time relaxation but there should be a consistent policy in this regard. While this Tribunal does not want to involve itself in an act of benediction, it cannot be blind to the objection of discrimination which is a continuous discrimination inasmuch as the pension benefit is affected thereby. To that extent, therefore, administration is directed to notionally allow the addition of deputation allowances at the rate of 20% to be added to the pay subject to the other condition imposed in the other case that pay plus dearness allowances does not exceed the maximum of the scale that applicant would have been drawn in his parent cadre. This should be allowed notionally so that the pension benefits can be refixed. This notional pay plus consequential pension refixed may be done within a period of six weeks.

8. The request of the applicant to direct the respondents to pay the difference of the pay as requested in para-7-B is however, not granted.

With the above directions, the application stands disposed of with no order as to costs.



(K.Ramamoorthy)
Member (A)



(N.B.Patel)
Vice Chairman

AHMEDABAD BENCH

Application No. 64/167/93 of 19

Transfer Application No. _____ Old w. Pett. No _____

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated: 10.6.94

Countersigned :

A. H. Raval
13-7-94

Section officer/Court officer.

cecelia
Signature of the
Dealing Assistant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD BENCH

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NAME OF THE PARTIES MR M. C. Rathi

VERSUS

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