

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 173 of 1990

Date of Decision 26. 3. 1992

K.N. Pillai

Applicant

Versus

Union of India & Others Respondents

For the applicant

M/s.C.V.Murty,
C.K.K.Murty
& S.Kr.Rath,
Advocates

For the respondents

Mr.Ashok Mohanty,
Standing Counsel
(Central)

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C O R A M

HON'BLE MR.K.P.ACHARYA, VICE-CHAIRMAN

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *yes*
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes

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JUDGMENT

MR .K .P .ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner Shri K.N.Pillai prays that orders passed in Annexures-4 and 8 be quashed and direction be issued to the opposite parties to fix the pay of the petitioner in the scale of Rs.425-700/- with effect from 1.1.1973 with all consequential service and financial benefits accruing from such a fixation.

2. Shortly stated, the petitioner was appointed as a Junior Computer with effect from 8.7.1970 on a pay scale of Rs.110 - 180/- and on 1.6.1972 the petitioner was made permanent. On 21.11.1979, the petitioner was promoted to the post of Senior Computer with a pay scale of Rs.330-560/- The Third Pay Commission Report was implemented with effect from 1.1.1973 which prescribed a pay scale of Rs.425-700/- for a Senior Computer and accordingly the petitioner made a representation for fixing his pay scale at Rs.425-700/- with effect from 1.1.1973. Vide Annexure-4 dated 24.2.1989, the Ministry of Water Resources informed the Chairman, Central Water Commission, New Delhi that the judgments passed by the Central Administrative Tribunal, Principal Bench and the Hyderabad Bench allowing a pay scale to the Senior Computers with effect from 1.1.1973 may be implemented in case of applicants covered by the respective judgments. In paragraph-2 of annexure-4 it was further stated that the petitioner before Principal Bench

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and Hyderabad Bench be given pay on notional basis with effect from 1.1.1973 and actual pay of the revised scale with effect from 1.12.1988. Vide annexure-8 dated 14.4.1989, it was ordered that the present petitioner Shri K.N.Pillai, Senior Computer's pay be refixed at Rs.425/- per month in the pre-revised scale of pay Rs.425-700/- with effect from 21.11.1979 on notional basis and the next notional annual increment would be effective from 1.11.1988 and the actual pay in the pay scale of Rs.425-700/- should be paid to the petitioner from 1.12.1988. Hence the petitioner has a grievance on this account and prays to quash Annexures-4 and 8.

3. In the counter the opposite parties maintain that not only the case is grossly barred by limitation but the case is devoid of merit because the pay scale of Rs. 425-700/- can be made applicable only with effect from 1.12.1988 because ^{of} the judgments passed by the Principal Bench and that of Hyderabad Bench. Therefore according to the opposite parties the demand of the petitioner for fixation of such pay scale with effect from 1.1.1973 is ~~incredible~~ and should not be allowed. Hence ^{for} there is no justification/quashing Annexures-4 and 8 - which should be sustained and the case being devoid of merit is liable to be dismissed.

4. I have heard Mr.C.V.Murty, learned counsel for the petitioner and Mr.Ashok Mohanty, learned Sr.Standing Counsel for the opposite parties.

5. The undisputed and admitted facts are that

the petitioner had been appointed as Jr.Computer with effect from 8.7.1970 on a pay scale of Rs.110-180/- and after being made permanent on 1.6.1972, the petitioner was promoted to the post of a Senior Computer with effect from 21.11.1979 on a pay scale of Rs.330-560/-. The next admitted position is that the Third Pay Commission Report was implemented with effect from 1.1.1973.

6. Mr.C.V.Murty, learned counsel for the petitioner contended that the Third Pay Commission having fixed the pay scale of a Senior Computer at Rs.425-700/-, the present petitioner should be made entitled to the same pay scale with effect from 1.1.1973 i.e. the date on which the Third Pay Commission came into effect. Mr.Murty relied upon the judgments of the Principal Bench pronounced in the case of No.335 of 1985 disposed of on 11.4.1986 forming subject matter of Annexure-1. Mr.Murty also relied upon another judgment of the Principal Bench confirming the very same view in O.A. No.1942 of 1986 disposed of on 6.9.1988 by the very same Hon'ble Judges which forms subject matter of Annexure-2. Next, reliance was placed on a judgment of the Hyderabad Bench which is numbered as O.A. No.212 of 1988 disposed of on 18.11.1988, which forms subject matter of Annexure-3. In all these three cases the very issues, which are to be determined in the present case, were subject matter of controversy and determination. In the case No.335 of 1985 the Hon'ble Judges observed as follows :

" xxx as declared by the Supreme Court in Savita and others vs. Union of India fixing different pay scales for the same post is violative of Article 14 & 16 of the Constitution. Following the above judgment of the Supreme Court, This Tribunal in P.K. Tanuja and others vs. Union of India & another (Case No. T-194/85/CW 616/75) by a judgment dated 9.4.86 held that denial of the higher pay scale to all the Senior Draughtsman is wholly illegal, unjustified and violative of fundamental rights guaranteed under Article 14 and 16 of the Constitution. The claim of the petitioners who are Senior Computers and whose pay scales were similarly revised partly to Rs. 425 to 700/- and partly to Rs. 330-560/- is identical to that of a Senior Draughtsman in the above said case and must be allowed. The order revising the pay scales attached to the post of Senior Computers to Rs. 330-560/- is accordingly quashed and the petitioners are declared entitled to the post of Senior Computers in the Revised Pay scales of Rs. 425-700/-. The petitioners would be entitled to the higher pay scale and all attendant benefits including all arrears with effect from the date the revised pay scale of Rs. 425-700/- became effective".

The very same view was taken by the Principal Bench and the Hyderabad Bench - judgment forming subject matter of Annexure-2 and 3 respectively, which need not be repeated.

7. Placing ^{the} precedents, Mr. Murty contended that the principles laid down by Their Lordships in the above mentioned judgments apply full force to the facts and circumstances of the present case and therefore the petitioner Shri Pillai should be entitled to pay scale of Rs. 425-700/- with effect from 1.1.1973.

8. Mr. Ashok Mohanty, learned Standing Counsel vehemently opposed this prayer on the ground that the petitioner Shri Pillai was initially a Junior Computer and his pay

was fixed at Rs.330-560/- and hence there cannot be any alteration in his pay scale retrospectively. This argument of Mr.Mohanty is not acceptable on two grounds which are as follows :

9. The principal Bench has categorically stated that the duties and responsibilities are being same there cannot be any difference between the same set up Senior Computers who carry out the same nature of duties and the Hon'ble Judges said so relying on the judgment of Supreme Court. Here in the present case the opposite parties have not shown anything to distinguish the status, responsibility and nature of work done between the petitioner and other Senior Computers. In the absence of any such evidence I cannot but drive myself to the conclusion that there should not be any difference in the pay scale of one Sr.Computer and the others including the petitioner.

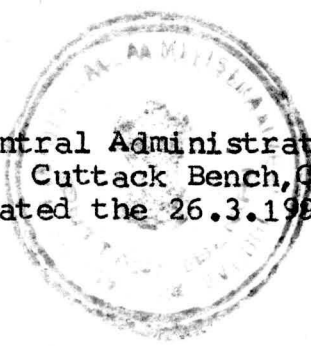
10. Apart from the above, vide annexure-8 the competent authority has already made the petitioner Shri Pillai entitled to Rs.425/- per month in the pay scale of Rs.425-700/-, but it is on notional basis and it was further directed that the actual payment would be with effect from 1.12.1988. No convincing reasons have been assigned as to why and how this particular date '1.12.1988' was fixed. Mr.Mohanty contended that it was on the basis of the judgments


over which Mr.Murty has placed reliance. From the judgment of the Principal Bench it is found that the petitioners before the Bench were made entitled to arrears with effect from 1.1.1973 and that is because on 1.1.1973 the petitioners had been appointed as Senior Computers. Therefore I find no merit in the aforesaid contention of Mr.Mohanty especially in view of the fact that the competent authority stands committed under annexure-8 that the petitioner is entitled to the pay scale of Rs.425-700/-. Now the only limited question ^{which} ~~needs determination~~ ^{is} as to whether the petitioner will be entitled to such pay scale with effect from 1.12.1988 or the date from which he had actually rendered service as a Senior Computer. Admittedly ^{as a Sr.Computer} the petitioner has actually rendered service/with effect from 21st November, 1979 and therefore I am of opinion that the petitioner is entitled to pay scale of Rs.425-700/-(pre-revised) with effect from 21.11.1979. As regards the question of limitation I am not in agreement with the submissions of Mr.Mohanty because the representation of the petitioner was finally turned down on 14.4.1989 as contained in annexure-8. Cause of action in favour of the petitioner accrued with effect from 14.4.1989. This case has been filed on 10.4.1990 which is within one year from the date on which the cause of action accrued and hence limitation ~~has~~ not

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seen against the petitioner on the date of filing of the application. Mr. Mohanty contended that period of limitation should be computed from 1.1.1973 or at the latest from 21.11.1979, because the claim of the petitioner is from 1.1.1973. If Section 21 of the Administrative Tribunals Act is taken into consideration Court cannot shut its eyes to the provision contained under Section-20 of the Administrative Tribunals Act. Ordinarily a cause will not be admitted unless other remedies have been exhausted. Therefore the petitioner was trying to ventilate his grievances and exhausting other remedies which ultimately did not yield any fruitful result as contained in annexure-8. Therefore the period of limitation has to be computed from 14.4.1989 and hence (keeping in view the date of filing of the application) the case is within the period of limitation and I do not find any merit in the aforesaid contention of Mr. Mohanty.

11. In view of the aforesaid discussion I hold that the petitioner Shri K.N. Pillai is entitled to a pay scale of Rs. 425-700/- with effect from 21.11.1979 with all other attendant benefits accruing therefrom and the arrears should be calculated and payment should be made to Shri Pillai within 90 days from the date of receipt of a copy of this judgment. Thus the application stands allowed. No costs.


Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 26.3.1992/ B.K. Sahoo


VICE-CHAIRMAN

26.3.92