

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO.274 OF 1994

Cuttack, this the 22nd day of March, 1996

CORAM:

THE HONOURABLE SHRI H.RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

....

Dr Ashok Kumar Tripathy
Divisional Head (Personnel & Admn)
G.T.R.E., D.R.D.O
Ministry of Defence
C.V.Raman Nagar
Bangalore 560 093
KARNATAKA

APPLICANT

By the Advocates

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M/s J.K.Misra &
N.C.Misra.

-versus-

1. Union of India
represented through the
Secretary of Defence,
Ministry of Defence,
South Block,
New Delhi.
2. Divisional A.P.J.
Scientific Adviser-cum-
Secretary, Defence,
D.R.D.O., R & D Hqrs.,
Ministry of Defence,
Sena Bhawan,
New Delhi- 110 011.
3. Commandant,
Proof & Experimental Establishment (R&D),
Experiment, Chandipur, Balasore.
4. C.D.A.(R&D), (AT-C section),
L Block, Church Road,
New Delhi-110 001

RESPONDENTS

By the Advocate

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Mr.Ashok Misra,
Sr.Central Govt.Standing
Counsel.

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O R D E R

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H. RAJENDRA PRASAD, MEMBER(A)

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The applicant, Dr. Ashok Kumar Tripathy, was a Senior Officer in the Bank of India (hereafter 'the Bank') at Patna when he responded to an advertisement issued by the Union Public Service Commission for the post of Senior Administrative Officer, Grade-I, in the Research & Development Organisation, M.O.D. In all 479 candidates applied for the three available posts. 24 candidates were shortlisted for interview which was conducted on 30.6.1988 and 1.7.1988. 12 candidates appeared for the said interview and the Commission recommended three candidates for appointment to the said posts. The applicant's name was the last of the three.

2. The applicant was relieved from the Bank on 31.7.1989, and assumed the appointment of Senior Administrative Officer, Grade-I, Proof & Experimental Establishment, Chandipur, Balasore, (hereafter 'the Establishment') on the same day. An L.P.C. was issued by the Zonal Office of Bank of India on 15.4.1991 indicating therein that the applicant was struck-off duty on 31.7.1989 and was paid upto "July 1989". No specific date was indicated as regards the pay drawn at the Bank. The fact that the officer assumed charge of his appointment on 31.7.1989 was duly reflected in the Daily Order Part-II No. CGO/19 dated 3.8.1989, issued by the Commandant of the Establishment.

3. Subsequently, the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India, vide their O.M. No. 13/24/92-Estt. (Pay.I) dated 22.1.1993 decided that the benefit of past service for the purposes of protection and fixation of pay in new appointments in the government would be extended to Government servants who apply for such (new) posts in the same or

other Departments through proper channel. In such cases, the resignation of an officer in the earlier Department, prior to joining his new post, for fixation of pay, etc., was to be treated merely as a technical formality. On 8.6.1993 this concession was extended further to officers and officials who joined the Central Government Departments from Nationalised Banks on or after 1.8.1989.

4. It is to be noted that the applicant was drawing Rs.4500/- per month plus Rs.20/- as personal pay at the time of his relief from the Bank. However, his pay was fixed at Rs.3000/- at the minimum of the scale of Rs.3000-4500, as recommended by the Union Public Service Commission at the time of his initial selection to the post. The effect of this recommendation was that the officer was put to an immediate loss of Rs.1,520/- on joining his new job in the Establishment. The fact that he would be getting the minimum pay in the scale as recommended by the U.P.S.C., was, however, made known to the applicant, vide Para 5 of Joint Director of Personnel, Ministry of Defence (R&D) letter No.13802/3/RD dated 19.7.1989 which was well before the applicant joined his new post in the Establishment.

5. A case for protection of the applicant's previous pay in terms of the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) O.M.No.12/1/88-Estt. (Pay-I) dated 8.6.1993 was initiated by the Establishment. The proposal was, however, turned down by the JCDA(R&D), Balasore, on the ground that the benefit of pay protection could not be granted to the officer as he had not joined his new appointment on or after 1.8.1989 but did so a day earlier on 31.7.1989. On 6.1.1992 the Commandant, Establishment

published a revised Daily Order Part-II (No.CGO/52 dated 6.1.1992) altering the date of appointment of the applicant from 31.7.1989 (forenoon), as notified earlier, to 1.8.1989. This was also notified in the Gazette of India (Ministry of Defence) on 23.5.1992.

6. The position in the present case, as stated by the respondents, is that the applicant joined the post on 31.7.1989, which was also originally notified, and as such was not entitled to pay protection in terms of Government of India decision already referred to. And unless a specific relaxation in this regard was granted to him by the Government, the applicant is not eligible for the pay protection sought on his behalf.

7. Considerable correspondence seems to have taken place between the Establishment and the D.G.(R&D)(Ministry of Defence), and between the finance wings of the Establishment as well as of the Ministry, and the Bank. At one stage, a proposal was also forwarded by the Ministry of Defence to the Ministry of Personnel, with a request that the said stipulation (viz., of joining on or after 1st August, 1989) be relaxed and set back suitably by one day in the case of the applicant. The same was not, however, agreed to.

8. The date of officer's assumption of appointment as Senior Administrative Officer, Grade-I, which had been sought to be altered once from 31.7.1989 (F/N) to 1st August, 1989, was ^{subsequently} restored. This revised alteration was also reflected in Daily Order Part-II No.CGO/40 dated 22.12.1992, issued by the Officiating Commandant of the Establishment on 22.12.1992. To sum up, the officer's claim for protection of pay earlier drawn by him in the Bank could be made applicable only if he had

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joined his new appointment on or after 1st August, 1989, whereas the officer is seen to have joined his post on 31st July, 1989. This is corroborated by the fact that the officer had been paid by the Bank upto 30th July, 1989, as categorically stated by the Zonal Manager, Bank of India, North Bihar Zone, Patna, on 17.9.1994 (R-XIX). According to this communication, Dr. Tripathy was struck-off the strength of the Bank's establishment on 31.7.1989. He was stated to have worked with the Bank upto the close of business on 30.7.1989. It was also further added that Shri Tripathy was paid by the Bank only upto 30.7.1989. All this would go to show that the officer had indeed joined the Establishment on 31.7.1989, and not on 1st August, 1989, as was ~~apparently incorrectly,~~ subsequently modified by the Establishment authorities. In that view of the matter, the change in the original date of his assumption of the post from 31st July, 1989 to 1st August, 1989, and its notification in the Gazette of India were contrary to recorded facts.

9. By strictly applying the decision of the Government of India referred to in para 5, the claim of Dr. Ashok Kumar Tripathy is not sustainable in face of incontrovertable facts on record. Having said so, it is necessary to take note of certain related facts also. While it is true that the officer had indeed been made aware of the recommendation of the U.P.S.C. as regards the (minimum) pay that would be granted to him in the scale of Rs. 3000-4500 on his joining the Establishment, it is seen that, firstly, it could not have been foreseen by anyone that the cut-off date of 1.8.1989, as decided by the Government of India, only in June, 1993, would operate so adversely against the officer, and that too by such narrow margin of just one day. If the officer had joined a day

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later he would have automatically become eligible for the pay-protection envisaged in a subsequent decision of the Government of India. Thus, at the time of his joining the new appointment in the Establishment, it was known neither ~~to~~ the applicant, nor by the respondents, that 1.8.1989 would be fixed as the cut-off date for this purpose, since that date was decided only three years later. This point needs to be viewed and considered with a certain amount of sympathetic understanding.

10. This understanding is warranted all the more in view of the fact that the officer had originally proposed to join the Establishment, on relief from the Bank, only by the end of August, 1989, but had had to hasten his departure from the Bank, and to advance the date of his proposed assumption of duties with the Establishment, in the face of letter No.13802/3/RD/PERS.5 dated 9th July, 1989 from the Joint Director (Pers.) R & D., Ministry of Defence (R-XVII). In the said letter, the applicant was clearly told that the post of Sr. Administrative Officer was required to be filled up urgently and that he was, therefore, to take up the appointment immediately. He was also warned that in case of his failure to report for duties within 15 days of the receipt of the said communication, it would have to be assumed that he was unwilling to take up the offer, and the offer of appointment made to him earlier would accordingly have to be cancelled without further intimation. The said communication was a categorical caution and was meant to be treated as notice. It is entirely possible, in retrospect, to gauge the effect of this communication. Faced with a distinct

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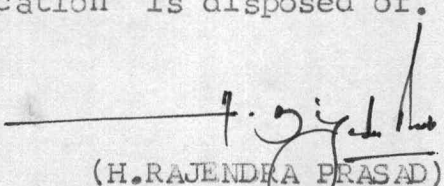
possibility of the offer being withdrawn altogether, the applicant appears to have got his relief from the Bank expedited after receiving the said communication, which was a notice, nothing less. According to ^{the} officer, he proceeded forthwith to Chandipur and decided to join his new post, presumably largely on account of the said communication. By an unfortunate coincidence, the applicant thought it advisable to join his new post on 31st July, not remotely anticipating that that date might some-day fall short by just one day of the cut-off date which would be fixed many years later. In other words, there was no particular reason for him to join the new appointment on any particular date, including 31st July, 1989, except that he was acting under the stress and immediate apprehension generated in his mind by the 'notice' he had received from the Ministry.

11. While the U.P.S.C. may have had good and valid reason for recommending the minimum of the pay scale of Rs.3000-4500 to the applicant, the fact was that the officer's pay got reduced, abruptly and immediately, by more than Rs.1500/-. This fact cannot possibly be lost sight of. Compounding this loss, was the wholly fortuitous fact of his joining the Establishment a day too soon, as was to be proved by a subsequent decision. All this would clearly indicate that if ever there was deserving case for granting relaxation of the cut-off date, this is the most deserving one. Otherwise, a great and avoidable injustice would be done to an officer who was holding a responsible senior position before he joined the Establishment, and who was otherwise adjudged competent and qualified enough to be selected from a large number of aspirants. The D.G., R & D should, therefore,

re-sponsor the officer's case with all relevant facts and necessary recommendations to the concerned Ministry with a view to securing the necessary relaxation in favour of the officer. If such relaxation is not forthcoming, the applicant, who is otherwise very well-qualified, would suffer irreparable monetary loss on a considerable scale. The reinitiation of the case for pay-protection shall have to be done within 60 (sixty) days of the receipt of a copy of these orders.

12. There is an allegation that the officer made some unauthorised alterations in the letter No.ZO:PERS:GPY dated 15.4.1991, and further that certain files of the Establishment were unauthorisedly retained by the officer in his custody, and that he failed to return these files on his transfer from Chandipur. I do not wish to deal with any of these matters since they are not directly connected with the main issue in the case. These are at best matters to be dealt with by the Department on the basis of established facts in the manner they choose.

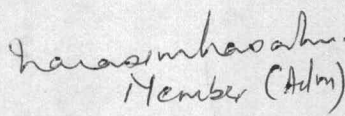
13. Thus the application is disposed of. No costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

15 FEB 96

Nayak, P.S.

As authorised by Hon'ble Vice-Chairman
on 19.3.1996, order is pronounced in open court
on this day of 22nd March, 1996.


Member (Adm) 22/3/96
(N. SAHU)
MEMBER (ADMINISTRATIVE)