

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 17 OF 1996
Cuttack this the 20th day of April/2001

P.B. Parial

...

Applicant(s)

-Versus-

Union of India & Others ...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Somayaji
SOMNATH SOMAYAJI
VICE-CHAIRMAN
20/4/01

20/4/01
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 17 OF 1996
Cuttack this the 20th day of April/2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

...

Sri Purnendu Bikash Parial,
S/o. Late Barada Prasad Parial,
At present working as Junior Engineer (Civil)
Koraput Central Sub-Division,
Central Public Works Department
At/PO/Dist - Koraput

...

Applicant

By the Advocates

M/s.A.K.Mohapatra
A.K.Dash

-Versus-

1. Union of India represented through the Secretary, Ministry of Urban Development At-Nirman Bhawan, New Delhi
2. Director General of Works, Central Public Works Department, Nirman Bhawan, New Delhi
3. Superintending Engineer, Calcutta Central Circle No.I, Central Public Works Department, Nizam Palace, Calcutta-20
4. Executive Engineer, Bhubaneswar Central Division-II Central Public Works Department, At/PO-Bhubaneswar Dist - Khurda

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Respondents

By the Advocates

Mr.A.K.Bose
Sr.Standing Counsel
(Central)

ORDER

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant entered in service as Junior Engineer under the Dandakaranya Development Authority (in short D.D.A.) on 27.6.1964. Pursuant to the direction of this Bench in Original Application No.75/90 preferred by him his pay scale was fixed at Rs.1640-2900/- with effect from 1.1.1986. Due to shrinkage in the Establishment of D.D.K. he along with some other Junior Engineers were declared

surplus. On being redeployed he joined as Junior Engineer (Civil) in the Central Public Works Department (in short C.P.W.D.) at Koraput on 5.11.1990 and was allowed pay protection.

His grievance is that he was not allowed the pay scale of Rs.2000-3500/-, pursuant to the Circular dated 22.3.1991 (Annexure-3) of the Ministry of Urban Development, addressed to the Director General (works) C.P.W.D., New Delhi, although the benefit of that circular was extended to S/Shri P.L.Bhaskar and L.Lakra, who like him worked as Junior Engineers in the D.D.A. and joined C.P.W.D. on being redeployed as Junior Engineers, though he had completed more than 15 years of service as Junior Engineer by 1.1.1991. This apart one Shri R.S.Rajput, while serving as Junior Engineer in D.D.A. this Bench in Original Application No.182 of 1993 praying therein to direct the authorities in D.D.A. to place him in the scale of Rs.2000-3500/- on completion of 15 years of service w.e.f. 1.1.1991. This was allowed by this Tribunal in judgment dated 19.12.1994 (Annexure-8). Yet when the pay of Shri P.L.Bhaskar was refixed at Rs.1400-2300/- he preferred Original Application No.866/93 before the C.A.T. Bombay Bench, which was allowed on 19.7.1995 (Annexure-9). Representations of the applicant citing all these instances to the higher authorities did not yield any result. Hence this Application.

On these averments the applicant prays for issue of direction to respondents to grant him pay scale of Rs.1640-2900/- w.e.f. 1.1.1986 in terms of Office Memorandum dated 22.3.1991 and also for direction to fix his pay scale at

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Rs.2000-3500/- w.e.f. 1.1.1991 in terms of the said Circular, with consequential financial benefits.

2. Respondents in their counter take the stand that the applicant having been declared surplus from D.D.A. joined as Junior Engineer in C.P.W.D. on redeployment on 5.11.1990, and as such he is not entitled to higher scale of pay of Rs.1640-2900/- w.e.f. 1.1.1986, because, at the time the applicant and others were redeployed in C.P.W.D., they were clearly told that on their redeployment they would not be entitled to get the benefit of their past service for the purpose of seniority and that the seniority in the C.P.W.D. would be reckoned from the date of their joining the Department. Further in Para-11(1) of the Office Memorandum No.1/18/88/Co/III dated 1.4.1989, issued by the Ministry of Personnel, Public Grievances and Pensions, it has been provided that seniority rendered prior to redeployment would not be taken into account in the Organisation/new post(s), in which a surplus employee joins. Accordingly the benefit of Circular dated 22.3.1991 in regard to higher scale of pay to the Junior Engineers in the C.P.W.D. on completion of 5/15 years of service is not applicable to the Junior Engineers, who joined on redeployment. This has also been clarified by the Directorate Office Memorandum dated 16.8.1991 vide Annexure-R/1. The applicant has been considered as a fresh entrant in the C.P.W.D. and his seniority in the Department has been considered only from the date of his joining in the Department (C.P.W.D.) He had not completed five years of service in C.P.W.D. as on 1.1.1986 and as such he was not entitled to grant of pay scale of Rs.1640-2900/-. Similarly since he has not completed 15 years of service in

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C.P.W.D. by 1.1.1991 he is not entitled to pay scale of Rs.2000-3500/- w.e.f. 1.1.1991, as mentioned in Circular dated 22.3.1991, in case of Junior Engineers completing five years of service in the C.P.W.D. by 1.1.1986 and 15 years of service by 1.1.1991.

3. In the rejoinder the applicant reiterated his claim more or less in an argumentative form.

4. We have heard Shri A.K.Mohapatra, the learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel for the Respondents (Department). Also perused the records.

5. There is no dispute that the applicant joined as Junior Engineer in C.P.W.D. on 5.11.1990 on being redeployed as a surplus Engineer of the erstwhile D.D.A. There is nothing on record that he has been redeployed in the C.P.W.D. as Junior Engineer at his own request. In other words, he has been redeployed as a surplus employee in the C.P.W.D. in normal course, as per the C.S.S. (Redeployment of Surplus Staff) Rules, 1990, which is statutory in nature. On such redeployment, under Rule-5 of the aforesaid Rules of 1990 he will be entitled to protection of his pay, which he was drawing or entitled to draw in the erstwhile Organisation. The specific averment in the pleading that he was redeployed as Junior Engineer in C.P.W.D. with his usual pay protection has also not been denied in the counter. At this stage it cannot be lost sight of that he preferred Original Application 75 of 1990, before this Tribunal for drawing of pay scale of Rs.1640-2900/- as on 1.1.1986 by virtue of the recommendation of the 4th Central Pay Commission, as amended in 1988, by

which 15% of the total number of posts of Junior Engineer was put in the scale of Rs.1400-2300/- and the remaining 75% in the scale of Rs.1640-2900/-, on the ground that he was within the zone of 50% and that higher scale was allowed to some of his juniors. This was allowed by this Bench in judgment dated 30.9.1991 (Annexure-2). This Bench had taken note of the judgment in Original Application Nos.103/85, 105/85, 85/90 and 75/90, wherein this Tribunal held that a particular percentage of Junior Engineers are entitled to the scale of Rs.500-900/-, prior to the coming into force of revised rules and accorded fitment in the scale of Rs.1640-2900/-. In fact the judgment reveals that the applicant based his claim also on the ground that the Junior Engineers in C.P.W.D. having same duties and responsibilities like that of Junior Engineers of D.D.A. are enjoying the benefit of 75% in the pay scale of Rs.1640-2900/-. Ultimately this Bench directed for fixing up his pay in the scale of Rs.1640-2900/-, w.e.f. 1.1.1986. This judgment has since become final as there is nothing on record that this has been challenged in the higher judicial forum and consequently set aside. In other words, by the time he joined in C.P.W.D. in November/90, the applicant by virtue of the judgment in O.A.75/90 (Annexure-2) was deemed to be in the pay scale of Rs.1640-2900/- w.e.f. 1.1.1986. Accordingly his pay on his joining under the Respondents (Department) in November, 1990, has to be fixed in the pay scale to which he is entitled w.e.f. 1.1.1986. This disposes of his first prayer for fixing of the pay scale w.e.f. 1.1.1986.

6. The 2nd prayer is for direction to respondents to

grant pay scale of Rs.2000-3500/- w.e.f. 1.1.1991 in terms of Office Memorandum dated 22.3.1991 (Annexure-3). The relevant portion of Annexures-3 runs as under :

- "(i) There will be two scales of pay for Junior Engineers/Sectional Officers(Horticulture) in the CPWD, viz., Rs.1400-2300/- and Rs.1640-2900/- and the incumbents thereof will be designated as Junior Engineer/Sectional Officer(Horticulture) in the grade of Rs.1400-2300/- and, Junior Engineer/Sectional Officer(Horticulture) in the grade of Rs.1640-2900/-. The entry grade will be Rs.1400-2300/-. The Junior Engineers/Sectional Officers (Horticulture), on completion of 5 years service in the entry grade will be placed in the scale of Rs.1640-2900/-, subject to rejection of unfit. This higher grade will not be treated as a promotional one, but will be non-functional and the benefit of F.R 28(I)(a)(i) will not be admissible, while fixing the pay in the higher grade, as there will be no change in duties and responsibilities.
- (ii) Junior Engineers/Sectional Officers(Horticulture), who could not be promoted to the post of Assistant Engineers/Assistant Directors(Horticulture) in the scale of Rs.2000-3500/-, due to non availability of vacancies in the grade of Assistant Engineers/ Assistant Directors (Horticulture), will be allowed the scale of Assistant Engineer/Assistant Director (Horticulture) i.e. Rs.2000-3500/-, on a personal basis, after completion of 15 years of total service as Junior Engineer/Sectional Officer (Horticulture). This personal promotion will be given on fitness basis, as and when regular vacancies in the cadre of Assistant Engineer/Assistant Director(Horticulture) arise, the Junior Engineers/Sectional Officer enjoying personal promotion will be adjusted against these vacancies, subject to observance of normal procedure.
- (iii) In the matter of pay fixation, the Junior Engineers/ Sectional Officers (Horticulture) allowed the personal scale of Rs.2000-3500/- will get the benefit of F.R. 22(I)(a)(i).
- (iv) On being granted personal promotion the Junior Engineer/Sectional Officer (Horticulture) will continue to perform the same duties/functions of Junior Engineer/Sectional Officer(Horticulture)".

As per this Circular/Office Memorandum, a Junior Engineer/Sectional Officer(Horticulture) of the C.P.W.D. will be eligible to the pay scale of Rs.2000-3500/- on personal

basis after completion of 15 years of total service as Junior Engineer/Sectional Officer (Horticulture). Admittedly by 1.1.1991 the applicant had not 15 years of service as Junior Engineer in C.P.W.D. But his service as Junior Engineer in the erstwhile D.D.A., if counted from 27.6.1964, would far exceed 15 years by 1.1.1991. Hence question for consideration is whether his period of service in the D.D.A. can be taken into account in calculating 15 years of service for the purpose of fixing his pay scale at Rs.2000-3500/- w.e.f.

1.1.1991.

7. The applicant placed reliance on Annexure-8, which is a decision of this Bench in Original Application No.182/93, disposed of on 19.12.1994. But issued in that case was whether D.D.A. Engineering Staff could be treated analogous with the regular C.P.W.D. Engineering Staff in the matter of scales of pay. The decision of this Bench in favour of the applicant who was junior Engineer (Mechanical) in D.D.A. was ultimately set aside by the Apex Court in SLP (Civil) No.20619/95 by order dated 22.1.1996. Hence this judgment will be of no help to the applicant.

8. However, Annexure-9, the judgment of the C.A.T., Bombay Bench in O.A.866/93, fully supports the case of the applicant. In the case decided by the Bombay Bench the applicant was originally a Section Officer (Civil) in D.D.A. and on being found surplus he was redeployed in C.P.W.D. as Junior Engineer in the year 1988. Basing on the Office Memorandum dated 22.3.1991 he claimed the scale of Rs.2000-3500/- w.e.f. 16.2.1993, i.e., on completion of 15 years from 16.2.1978, when he joined as Section Officer (Civil) in D.D.A. He having completed five years of service in the

entry grade in the pay scale of Rs.1400-2300, the Director General (Works) C.P.W.D., on the recommendation of the D.P.C. granted scale of pay Rs.1640-2900/- w.e.f. 1.1.1986. But his representation for 2nd higher pay scale of Rs.2000-3500/-, w.e.f. 16.2.1993 was rejected by taking note of Para-11 of the revised scheme dated 1.4.1989 for the disposal of persons rendered surplus due to reduction of Establishment in the Central Government Departments/Offices. The Bombay Bench of C.A.T. ultimately held that the applicant in that case was entitled to higher scale of pay Rs.2000-3500/- w.e.f. 16.2.1993, on the basis of Office Memorandum dated 22.3.1991.

Recently this Bench in O.A. 121/99, disposed of on 17.5.2000 in case of the applicant, who was serving as Junior Engineer in the erstwhile D.D.A. and joined as Junior Engineer in the Telecom Electrical Circle, Bhubaneswar on 28.8.1985, directed the Department to consider the case of the applicant for higher scale of Rs.2000-3500/- w.e.f. 23.5.1993, when he had completed 15 years of service w.e.f. the date of initial joining in D.D.A. on 23.5.1978, on the basis of similar circular akin to Office Memorandum dated 23.3.1991, giving the benefit of pay scale Rs.2000-3500/-, on completion of 15 years of service.

The contention advanced on the side of the Respondents was that applicant had not completed five years of service in the C.P.W.D. he would not be entitled to the benefit of higher scale of Rs.2000-3500/- under Office Memorandum dated 22.3.1991. It is true that this Office Memorandum, as quoted above, may mean 15 years of service as Junior Engineer in the C.P.W.D. Department. It is also true that the Apex Court in Union of India vs. K.Savitri reported in 1998 SCC(L&S) 1134, while

dealing with the eligibility on promotion to the post of Head Clerk in A.I.R. and whether the relevant Recruitment Rules, 1964, provide five years of service in the Grade of Clerks Gr.II of the All India Radio, held that redeployed staff from D.D.A. joining in All India Radio as Clerk Gr.II would not be eligible for consideration for promotion to the cadre of Head Clerks if they had not completed five years of service as Clerk Gr.II in All India Radio after being redeployed. In other words, the Apex Court held that their previous service in the erstwhile D.D.A. could not be taken into consideration for considering the eligibility in the Grade of Clerk Gr.II in All India Radio for promotion to the post of Head Clerks. The Apex Court held so by referring to Rule-9 of the aforesaid Rules of 1990 and Para-11.1 of the Scheme. Rule-9 says that fixation of seniority and pay of surplus employee and counting of his previous service for various other purposes and carrying over of lien/qualification in the new post to which he is appointed on redeployment under these rules should be reckoned in accordance with the instructions issued from time to time by the Government of India in that behalf. These instructions apparently have been referred in the Scheme (Supra). Para-11.1 of the Scheme lays down that no change is contemplated in the present policy that the past service rendered prior to redeployment should not be counted towards seniority in the new Organisation/new post, to which a surplus employee joins after he is redeployed and the same rule will also have to be applied in the case of those readjusted after redeployment, because the aforesaid rules of 1964 of All India Radio lays down the criteria for promotion as seniority-cum-fitness (as observed in Para-10 of

the judgment by the Apex Court) and since the service in the previous Organisation cannot be counted for the purpose of seniority under Para-11.1, the Apex Court held that until redeployed employee, actually completed five years of service as Clerk Gr.II, he would not be eligible for consideration for promotion to the cadre of Headclerk. This should not, however, be understood to mean that for the purpose of fixation of pay scale the previous service in the erstwhile Organisation cannot be counted. This would be clear from a reading of Para-11.2, 11.3 and 11.4 of the Scheme, which are as under:

"11.2: As present, the surplus employees will be treated to have been appointed by transfer in public interest in the matter of admissibility of Joining Time, Joining Time Pay and Transfer T.A. for moving to the new post located in a Central Government Department.

11.3: A surplus employee who is permanent will enjoy protection of lien when redeployed/ readjusted in a new organisation.

11.4: In other service matters, they will be treated as appointed by transfer".

In fact by going through these provisions the Bombay Bench in judgment at Annexure-9, as discussed above, decided the case in favour of the applicant, so also this Bench in judgment in O.A. 121/99.

11. We are, therefore, of the opinion that for fixation of pay conferred as a financial measure under Office Memorandum dated 23.3.1991, past service in the erstwhile D.D.A. shall have to be taken into account though the same for the purpose of seniority cannot be taken into account.

12. During hearing, we entertained doubt with regard to point of limitation as this application was filed on 2.1.1996, claiming benefit conferred under Office Memorandum dated 23.3.1991. It is ^{however} nowhere noticed that the applicant submitted

representation on 31.5.1993. It is, however, seen that this O.M. dated 23.3.1991 was given effect by the Department for the first time on 11.5.1993 under Annexure-5. The applicant having been denied of such benefit represented to Respondent No.3, viz., Superintending Engineer, C.P.W.D., Calcutta on 31.5.1993 (Annexure-6) and the same was forwarded on 18.6.1993 under Annexure-7. Thereafter several representations followed. These representations were ultimately rejected and the order of rejection was communicated to the applicant in letter dated 20.9.1995 by Respondent No.4 under Annexure-11. In the counter this has not been denied. Hence the application was filed within the period of limitation as prescribed under Section 21 of the A.T.Act, 1985.

13. For the reasons discussed above, we are of the view that the applicant is entitled to pay scale of Rs.1640-2900/- w.e.f. 1.1.1986 and higher pay scale of Rs.2000-3500/- w.e.f. 1.1.1991. We, therefore, direct the Respondents to fix the pay scales of the applicant accordingly and pay him arrear amounts after adjusting the payments already made, within a period of 120(One hundred & Twenty)days from the date of receipt of copies of this order. Annexure-11, letter dated 20.9.1995, rejecting his representation is accordingly quashed.

14. In the result, Original Application is allowed, but without any order as to costs.

Somnath Sahoo
(SOMNATH SAHOO)
VICE-CHAIRMAN

B.K.Sahoo//

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(G.NARASIMHAM)
MEMBER (JUDICIAL)