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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH,
JODHPUR

Date of Order: 23-8-95

D.A. No. 202/95.

M.S.Kapoor

... Applicant.

VERSUS

Union of India & Ors.

... Respondents

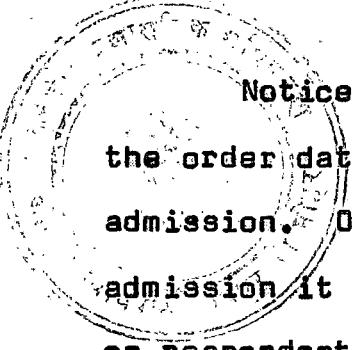
Mr. S.K.Malik, Counsel for the applicant.

Mr. Arun Bhansali, Counsel for the respondents.

CORAM:

Hon'ble Ms Usha Sen- Administrative Member.

BY THE COURT:


Notices were issued to the respondents vide the order dated 22.5.95 to file a reply regarding admission. On 6.7.95 when the case came up for admission it was seen that notices had been served on respondents No.2 & 4. As regards respondent No.3, the presumption of service was drawn as more than a month had elapsed since the issue of the notice.

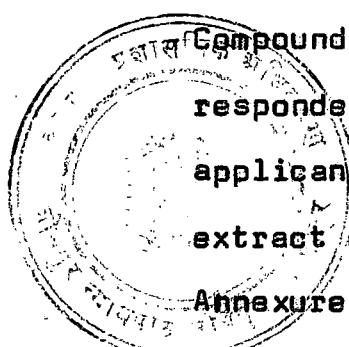
Shri Arun Bhansali filed his power on 6.7.95 on behalf of respondent No.4. Shri Arun Bhansali requested for four weeks' time for filing the reply. The time was allowed and the case was listed for admission on 17.8.95. On that date none was present on behalf of the respondents except Shri Arun Bhansali who is representing the respondent No.4. No reply had been filed by any of the respondents.

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2. It was decided to decide the case on merits.

Shri S.K.Malik argued the case on behalf of the applicant.

3. Briefly stated, the case of the applicant is that he is aggrieved by the fixation of his pay in the revised pay scale of Rs. 1200-1800 vide the impugned order dated 27.12.86 at Annexure A/1. He claims that as per the recommendations of the Fourth Pay Commission ("Commission" for short) his pay ought to have been fixed in the revised pay scale of Rs. 1350-2200. The applicant had joined ~~PS~~ service as a Compounder in the pay scale of Rs.330-480 on 20.10.77. The post of



Compounder was redesignated as Pharmacist by the respondents vide their Office Order of 28.1.85. The applicant has annexed what has been stated to be an extract of the recommendations of the Commission at Annexure A/2 in order to show that there is only one pay scale recommended by it for Pharmacists viz. that of Rs.1350-2200. Hence the action of the respondents to fix his pay in the scale of Rs. 1200-1800 is erroneous.

4. The applicant has stated that he made several representations regarding the incorrect fixation of his pay to the respondents a reference to which is stated to have been made in the representation dated 11.5.92 at Annexure A/3.

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5. A reading of the said representation dated 11.5.92 at Annexure A/3 shows that the applicant started making representations requesting fixation of his pay in the pay scale of Rs. 1350-2200 right from 18.1.85 onwards. He has stated that he made representations on 18.1.85, 12.12.86, 20.3.87, 25.10.87, 25.9.87, 13.7.89, 18.8.89, 21.9.89, 22.9.89, 27.10.89 and 7.2.92. Thereafter, he made the said representation of 11.5.92. He has stated in this last representation that his earlier representations had not been considered in the right perspective and it had been communicated by the respondents vide their letters dated 27.12.86, 13.3.87, 8.4.87, 20.1.88, 14.8.89, 30.8.89 and 9.11.89 that his request could not be acceded to.

6. It would be obvious from the averments in para 6 of the O.A. and in the said representation dated 11.5.92 that the O.A. is barred by limitation in terms of Section 21 of the Administrative Tribunals Act, 1985. This Section provides that the application should be filed within one year from the date of the order rejecting the representation, and in case no order is passed on the representation within one year from the expiry of six months after the submission of the representation. It would be seen that the first rejection of his representation was made by a letter dated 27.12.86 followed by various other letters. The last rejection of his representation dated 21.2.94

has been made by the respondents vide their letter dated 11.5.94 at Annexure A/6. This letter of 11.5.94 states that ~~on~~ a similar representation ~~that~~~~xx~~~~xx~~~~xx~~ of his dated 2.7.92 had already been replied to by the letter dated 25.8.92 in which it had been stated that his pay had been fixed in the prescribed pay scale as recommended by the Commission. He was further informed that the pay scale of Pharmacist/Compounder namely Rs.1200-1800 had been approved by the DAE and there was no scope for any revision.

7. A reading of the letter of the respondents dated 11.5.94 at Annexure A/6 shows that no fresh cause of action had arisen by this communication entitling the applicant to file an application in this Bench which would come within limitation in terms of Section 21 of the Act. The pay of the applicant was fixed in the revised pay scale of Rs.1200-1800 vide the order dated 27.12.86 at Annexure A/1. This pay could not have been fixed unless the pay scale had been approved by the competent executive authority. Hence a mere statement in Annexure A/6 that the pay scale of Rs. 1200-1800 has the approval of the DAE, in my view, gives no fresh cause of action to the applicant. The cause of action first arose when his first representation after the fixation of his pay in the scale of Rs.1200-1800 was rejected. Although, the applicant has averred in his representation dated 11.5.92 at Annexure A/3, that he started making

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representations from 18.1.85 onwards, this would, *prima facie*, appear to be rather incongruous because the records show that his pay was first fixed in the scale of Rs.1200-1800 only by the order dated 27.12.86 in at Annexure A/1. In any case he has stated/his representation that the first communication rejecting his representation was by the letter No.RAPS 294 dated 27.12.86 and the next rejection was by the letter No.RAPS 152 dated 13.3.87 followed by other letters rejecting the request. Presumably, the letter No.RAPS 294 dated 27.12.86 referred to in Annexure A/3 is the same as the letter at Annexure A/1. This letter at Annexure A/1 is the order by which the pay of the applicant was first fixed in the scale of Rs.1200-1800. It is obvious that a representation could have been made by the applicant only after the pay fixation order. In the circumstances the next rejection letter dated 13.3.87 of the respondents could be taken as the communication by which the cause of action first arose to the applicant. The O.A. should, therefore, have been filed within one year from this communication of 13.3.87. The O.A. has, however, been filed on 9.5.95 i.e. after more than eight years from the date on which the cause of action can be stated to have first arisen.

8. The applicant has filed a Misc. Application requesting for condonation of delay. The grounds urged are that he has been suffering from cancer since 1986

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(refer the first sentence of para 6 of the O.A.) ; the right to receive pay and allowances is a recurring cause of action, and similarly situated persons have been given a different treatment ~~in~~^{so} far as their pay has been fixed in the scale of Rs.1350-2200 thus violating Article 14 of the Constitution of India. On these grounds the applicant has requested for condonation of the delay in filing the O.A.

9. Since the Courts have taken the view that pay is a recurring cause of action, I consider that the application will be maintainable only for the period starting from one year before the date of filing of the O.A. viz. 9.5.95 and onwards. I do not consider the reasons advanced by the applicant for the delay in filing the O.A. as sufficient to justify condonation of the delay. Since the applicant has been fit enough to make several representations regarding the matter under issue despite his suffering from cancer, I cannot believe that this disease had so handicapped him had he could not have filed the O.A. within time.

10. Coming to the merits of the case, the applicant that has stated/the Commission has recommended only one revised pay scale for Pharmacists, namely, that of Rs.1350-2200. He has further stated that the pay of several of his juniors named in para 5 of the O.A., has been fixed in the scale of Rs.1350-2200. His juniors are stated to be performing the same nature of duties as the applicant; hence it is a discrimination violative of Article 14 of the Constitution on the

part of the respondents to whom who have fixed his pay in the scale of Rs.1200-1800.

11. Regarding the recommendations of the Commission, the counsel for the applicant was shown the report of the Fourth Central Pay Commission by this Bench during the course of hearing. It was pointed out to him that the Commission had specifically recommended the pay scale of Rs.1200-1800 for those whose existing scale of pay was Rs. 330-480. This was in para 8.31 on page 101 of the report. Hence the averment of the applicant that the Commission had recommended only one pay scale, namely, that of Rs. 1350-2200 for Pharmacists was not corroborated by the said recommendation in para 8.31 *ibid*. The counsel for the applicant, however, referred to the recommendation of the Commission in para XV on page 208 of the report which deals with "Para-Medical staff". In sub-para 11.82 ~~thereunder~~ the Commission has recommended the pay scale of Rs. 1350-2200 for those Pharmacists who had been recruited in the pay scale of Rs.330-560. Regarding this recommendation it was pointed out to the counsel for the applicant that this was in respect of those Pharmacists who had been directly recruited in the pay scale of Rs. 330-560. The applicant, however, as per his own averment, was appointed in the pay scale of Rs. 330-480 and there is nothing on record to show that before the implementation of the recommendations of the Commission his pay scale had been revised to Rs.330-560. In fact

the impugned order dated 27.12.86 at Annexure A/1 clearly states that the revised pay scale of Pharmacists who are in the existing scale of Rs. 330-480 is Rs.1200-1800 and in terms of this revised pay scale the pay of the applicant has been fixed at Rs. 1320/- with effect from 1.1.86. This clearly shows that the pay scale of the applicant as on 27.12.86 was Rs. 330-480 which was revised to Rs. 1200-1800. It would be evident that the recommendation of the Commission regarding the revision of the pay scale of Rs. 330-560 to Rs. 1350-2200 was not applicable to the applicant.

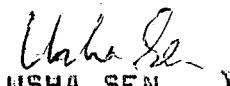
12. The counsel for the applicant, however, stated that his juniors who were also in the pay scale of Rs. 330-480 had been allowed the revised pay scale of Rs. 1350-2200. Shri Arun Bhansali, counsel for the respondent No.4, however, pointed out that one of the alleged juniors named in para 5 of the O.A., namely, Shri L.D.Sharma whose pay has been stated by the applicant to who have been fixed in the scale of Rs. 1350-2200 has actually been fixed in the scale of Rs.1200-1800 by the impugned order of 27.12.86 at Annexure A/1. A reading of this order clearly shows that the pay of the said L.D.Sharma has been fixed in the revised pay scale of Rs. 1200-1800 and not Rs.1350-2200. When this was pointed out to the counsel for the applicant who had initially agreed by a statement at bar that Shri L.D.Sharma mentioned in para 5 of the O.A. was the same as the one mentioned

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in the order of 27.12.86 ibid, he changed his statement to say that this L.D.Sharma may be a different man. However, he was fair enough to state at bar that in case the pre-revised scale of the persons named in para 5 of the O.A. was Rs. 330-560 he would be out of the Court and would have nothing to agitate for because one of his main grievances is that these persons named in para 5 of the O.A. are actually his juniors.

While
13. ~~no~~ reply has been filed by any of the respondents, however, Shri Arun Bhansali stated that there would be no objection if a direction is given to the respondents to examine as to whether the persons named in para 5 are actually junior to the applicant or not and in case they are found to be his juniors then the matter regarding fixation of pay of the applicant in the revised pay scale of Rs.1350-2200 at par with his juniors should be re-considered. In the light of the discussion of the case, I consider that such a direction would meet the ends of justice. I hereby direct the respondents accordingly. The respondents should inform the applicant by a speaking order of the result of the examination as aforesaid within three months from the date of communication of this order. With this direction the O.A. is disposed of at the admission stage.


(USMA SEN)
Member (Adm.)

V.S.
Mehta