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CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,

J_O_D_H_P_U_R.

Date of Order : 28.05.97

OA No. 129/1996

Mahendra Kumar Sharma, S/O late Shri Dayal Prasad
Sharma, Ex-Superintendent, E/M Gr.II, G.E. (MES),
Udaipur.

... APPLICANT

v/s

1. Union of India, Through :
The Secretary to the Govt. of India, Ministry
of Defence, New Delhi.
2. Garrison Engineer,
Eklingarh Cantonment,
Udaipur.
3. Chief Engineer, Southern Command, Engineer
Branch, Pune.
4. Engineer-In-Chief (MES) Army Head-quarters
Kashmir House, DHO,
P.O. New Delhi.

... RESPONDENTS .

CORAM :

HON'BLE MR. A.K. MISRA, JUDICIAL MEMBER

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Mr. N.M. Lodha, Counsel for the Applicant.

Mr. B.S. Rathore, Counsel for the Respondents.

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PER MR. A.K. MISRA, JUDICIAL MEMBER

The applicant has filed this OA with the prayer
that respondents may be directed to make payment of arrears
of pay to the applicant with all consequential benefits
including fixation in revised pay scale 2000-3500 in pursuance

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of the order passed by respondent No.3 dated 29.1.1995, with interest @ 2% p.a.

2. Briefly the facts of the case are that applicant was employed in Beas Construction Board, Chandigarh as Section Officer. On completion of the project, the employees of the Board including the applicant were declared surplus. A list of such employees was sent to the concerned department of Government of India and thereafter the applicant was absorbed in the respondent department w.e.f. 8.6.1985. It is alleged by him that his pay was initially fixed in the pay scale of Rs.425-700 which was later on revised to 425-800 and when the New Pay Scales came in force, the applicant was fixed in the pay scale of 1400-2600 w.e.f. 1.1.1986. It is further alleged by the applicant that he was drawing pay @ Rs.850/- p.m. in the pay scale Rs.750-1200 in the Beas Project, therefore, his pay ought to have been fixed in new pay scale 2000-3500. The applicant made representations and ultimately respondents fixed his pay at Rs.880/- in the pay scale of 700-1200 vide Annexure A/4, but inspite of several representations the arrears accrued to the applicant, were not paid to him, hence this OA.

3. The respondents have filed their reply in which it is admitted that applicant was absorbed w.e.f. 8.6.1995 in the respondent department and his pay was fixed in the scale of Rs.425-800 w.e.f. 8.6.1985. It is also admitted by the respondents that the applicant was granted increment in the previous scale w.e.f. 1.1.1985, but this position has not been accepted by the Audit and, therefore, arrears have not been paid to the applicant. The department has denied that the applicant is entitled to be fixed in the pay scale



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Rs.2000-3500. It is alleged that after absorption, the applicant did not exercise his option, therefore, his pay was fixed in the pay scale of Rs.425-800 and when the new pay scale came in force, his pay was fixed in the scale 1400-2600. Since the applicant did not raise any objection in regard to this fixation, therefore, he is not entitled to challenge the pay fixation order now. It is also admitted by the respondents that ^{matter of payment of} arrears of pay subsequent to grant of increment ~~are~~ ^{is} under process and no sooner Audit clears it, payment of arrears to the applicant would be made.

4. The applicant has filed a rejoinder in which he has asserted that his pay was required to be fixed in the pay scale of Rs.2000-3500 and arrears from 1.1.1985 as per the P.II Order (Annexure A/4) are due to the applicant.

5. I have heard the learned Counsel for the parties and gone through the record.

6. From Annexure A/2, which is a salary certificate, it is cleared that applicant was drawing pay @ Rs.850/- per month on 31.5.1985, the date on which he was transferred from the Central (Surplus Staff) Cell Department of Personnel and Administrative Reforms, New Delhi. The annual increment of the applicant was due on 1.1.1985 as is borne out from Annexure A/4. There is no order which may go to show that the applicant is not entitled to this increment. Therefore, at the time of absorption, the applicant's pay would be taken to be 880/- in the pay scale of Rs.700-1200 as per the order at Annexure A/4. Thus, in all natural consequences, the department ^{made} should have the payment of arrears of pay as per the fixation order Annexure A/4 to the applicant. The question whether the respondent department is liable to pay @ Rs.880/- per month to the applicant w.e.f. 1.1.1985 can be sorted out by the department concerned after seeking clarification from the authorities, but the respondents cannot escape the



liability of making the payment to the applicant w.e.f. 8.6.1985 i.e., the date applicant was absorbed in the respondent department @ Rs.880/- per month. It is well established position of law that unless increment is withheld by a specific order the same becomes due on the due date. In the instant case, the applicant had earned his annual increment on 1.1.1985, therefore, he could be deemed to be drawing pay @ 880/- p.m on 31.5.1985, the date he was transferred. Thus, the respondent department in terms of Annexure A/4, is liable to pay to the applicant @ Rs.880/- p.m. in the pay scale of Rs.700-1200. The matter of demand of arrears prior to 8.6.1985 i.e., from 1.1.1985 to 8.6.1985 can be settled by the department as per the prevailing rules in consultation with the competent authorities. The applicant can also claim the arrears for this period from the department from where he was transferred for being absorbed by the respondents.

7. The department has alleged that in absence of exercise of option, the pay of the applicant was fixed in the pay scale of Rs.425-800 and thereafter in the new pay scale of 1400-2600. This position is disputed by the applicant. The matter of grant of pay scale 2000-3500 to the applicant and consequent fixation at a particular State in that scale, i.e., 2000-3500 is said to be pending before the Division Bench, therefore, this matter is not required to be sorted out in this O.A. and applicant can press his claim regarding grant of a particular scale and consequent fixation before the appropriate Bench.

8. In view of the discussion made above, the applicant is entitled to arrears of pay as per the Part II Order Annexure A/4 by which his pay has been fixed at Rs.880/- in the pay scale

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of Rs. 700-1200 and consequent fixation in the next scale as described in Annexure A/3 with admissible Dearness Allowance etc. The matter relating to applicant's claim about fixing him in pay scale Rs.2000-3500 is left open to be decided by the Division Bench. The O.A. deserves to be accepted partly.

9. The O.A. is partly accepted and the respondents are directed to make payment of arrears of pay etc., to the applicant with effect from 8.6.1985 onwards as per the pay fixation shown in the P.II Orders Annex.A/4 and Annex. A/3 respectively after adjusting the amount already drawn by the applicant, within a period of three months from today alongwith simple interest @ 12% p.a. on the amount of arrears.

10. The O.A. stands disposed of at the stage of admission. No costs.

AM
(A.K.Misra)
Judicial Member

Mehta

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2. ~~Shank~~ 13/3/03
3. lib received copy
John S. [Signature]

Part II and III destroyed
in my presence on 22/3/03
under the supervision of
section officer () per
order dated 4/3/03

Section officer (Record)