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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A. No. : 67/1997

Date of Order : 22.12.98

Kedar Singh Yadav S/o Shri R.D. Yadav, aged about 36 years
resident of Qtr. No. 6/TYPE IV, Indian Bureau of Mines,
Residential Colony, Opp. Indian Oil Depot. Sector No. 11,
Hiran Magri, Udaipur-313001.

..Applicant.

Versus

1. The Union of India through Secretary to Government of India, Ministry of Mines, Shastri Bhawan, New Delhi.
2. Controller General, Indian Bureau of Mines, Indira Bhawan, Civil Lines, Nagpur.
3. Secretary to Government of India, Department of personnel and Training, North Block, New Delhi.

..Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

PER HON'BLE MR. GOPAL SINGH :

Applicant, Kadar Singh, has filed this application under section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 20.8.96 at Annexure A/1, order dated 06.2.97 at Annexure A/2-A and order dated 28.2.92 at Annexure A/2 so far as it relates to the date of its effect.

2. Applicant's case is that he served in Rajasthan State Mineral Development Corporation (a State Government Public Sector Undertaking) from 13.5.83 to 24.2.90. Thereafter, he was selected for the post of Assistant Controller of Mines in Indian Bureau of Mines in the pay scale of 2200-4000, through UPSC, and appointed as Assistant Controller of Mines at Udaipur with effect from 26.2.90. It is the applicant's contention that in matters of

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pay protection, he has been discriminated vis-a-vis other direct appointees in the organisation. On representation by the applicant, the respondents afforded pay protection to the applicant with effect from 01.2.92 whereas the applicant has prayed for pay protection with effect from the date of of his initial appointment i.e. 26.2.90.

3. Notices were issued to the respondents and they have filed their reply wherein the respondents have stated that the basic pay plus DA in respect of the applicant has been protected in terms of Government of India, Department of Personnel and Training, OM dated 28.2.92 with effect from 01.2.92. It has also been averred that the Government of India circular dated 7.8.89 was applicable only to the persons coming from Central Government Undertakings and not State Government Undertakings.

4. We have heard the learned counsel for the parties and perused the record of the case carefully.

5. In this case, it would be appropriate to go through the Government Circular dated 7.8.89 dealing with the guidelines for pay protection of candidates recruited from PSUs etc., relevant portion of which is extracted below :-



"2. The question as to how pay protection can be given in the case of candidates recruited from Public Sector Undertakings, etc., has been engaging the attention of the Government for sometime. The matter has been carefully considered and the President is pleased to decide that in respect of candidates working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies, who are appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly their initial pay may be fixed at a stage in the scale of pay attached to the post so that the pay and DA, as admissible in the Government will protect the pay +D.A. already being drawn by them in their parent organisations. In the event of such a stage not being available in the post to which they have been recruited, their pay may be fixed at a stage just below in the scale of the post to which they have been recruited, so as to ensure a minimum loss to the candidates. The pay fixed under this formulation will not exceed the maximum of the scale of the post to which they have been recruited. The pay fixation is to be made by the employing Ministries/Departments after verification of all the relevant documents to be produced by the candidates who were employed in such Organisations.

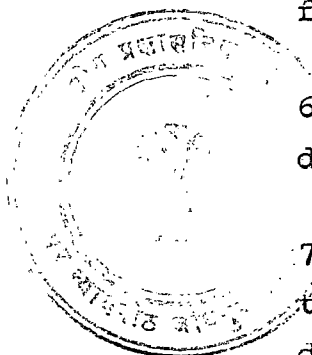
These orders take effect from the first of the month in which this Office Memorandum is issued."

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It would be seen from the above that the protection of basic pay plus D.A. in respect of candidates recruited from public sector undertakings was to take effect from 01.8.89. Similar provisions were made in respect of candidates recruited from Nationalised Banks /SBI/RBI ~~XXXXXX~~ vide Government of India letter dated 8.6.93. In this letter also, the effective date has been mentioned as 01.8.89. However, while dealing with the cases of candidates recruited from State Government PSUs, the similar protection was afforded but with effect from 01.2.92. It would be seen that the Government of India Circular dated 7.8.89, deals with the candidates recruited from Public Sector Undertakings. This Circular does not make any distinction between the Central Government Undertaking and the State Government Undertaking. Further, in view of the fact that similar protection was provided to candidates recruited from Nationalised Banks with effect from 01.8.79 vide Government Order dated 8.6.93, we find that there is a clear discrimination so far as the pay protection in respect of candidates recruited from State Government Undertakings is concerned. We do not find any thing on record justifying this discrimination. We are therefore, of the view that candidates recruited from State Public Sector Undertakings should also be granted pay protection as per Government Order dated 7.8.89 effective from 01.8.89.

6. In the circumstances, we feel that the application deserves to be allowed.

7. The OA is accordingly allowed with the direction that protection of pay as envisaged in Government Order dated 7.8.89 should also be made applicable to candidates recruited from State Public Sector Undertakings and the same should be made effective from 01.8.79 in respect of candidates recruited from State Public Sector Undertakings also. Accordingly, the applicant would be entitled to pay protection in terms of Government Order dated 7.8.89 with effect from date of his appointment i.e. 26.2.90. This direction should be complied with within a period of three months from the date of receipt of a copy of this order. No order as to costs.



Gopal Singh
(GOPAL S INGH)
MEMBER (A)

A.K. Misra
(A.K. MISRA)
MEMBER (J)