

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

Date of order : 28.04.2000

O.A.NO.227/98 & M.A.NO.149/98 (OA 227/98)

Shri Ganga Prasad Bissa S/o Shri Udai Kishanji Bissa, AGed about 46 years, R/o Baniya Bara, Jodhpur, Presently working on the post of Elect.H.S.II, in the office of G.E.(F), Jodhpur.

.....Applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Commander Works Engineer (CWE), (AirForce), Jodhpur.
3. Garrison Engineer (AirForce), Jodhpur.

.....Respondents.

C O R A M :

HONOURABLE MR.A.K.MISRA, JUDICIAL MEMBER

HONOURABLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

PRESENT :

Shri S.K.Malik

Counsel for the applicant.

Mr.S.K.Nanda

Counsel for the respondents.

O R D E RPER HONOURABLE MR.A.K.MISRA, JUDICIAL MEMBER :

The Applicant has filed this Original Application with the prayer that the respondents be directed to release the annual grade increments which were due to the applicant w.e.f. 1.10.87 onwards along with payment of arrears with interest at the rate of 24% p.a. and further direct the respondents to allow all consequential benefits to the applicant. The applicant has further prayed that the respondents be further directed to refix the pay of the applicant in the pay scale of Rs. 4000-6000 w.e.f. 1.1.96 taking into account the increments already earned and to make

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payment of arrears along with interest at the rate of 24% p.a. and the cost of the O.A.

2. Notice of the O.A. was given to the respondents who have filed their reply. In the reply, the respondents have stated that the claim of the applicant is highly belated and suffers from the vice of limitation. The applicant by not pressing his claim timely, has lost the right of getting the pay fixed accordingly and to claim arrears. It is also contended by the respondents that the promotion order of the applicant to the post of Electrician HS-II was cancelled vide letter dated 11.8.87 (Annex.R/1), therefore, the applicant is not even entitled to the present pay of the post of Electrician HS-II. The question of earning annual grade increments on such scale does not arise at all. The applicant was required to be fixed in the grade of Electrician (SK) and is only entitled to increment in that grade which is under consideration. The O.A., therefore, deserves to be dismissed.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. The applicant was initially appointed as Lineman and was subsequently promoted to the post of Electrician HS-II w.e.f. 16.10.84. His pay was accordingly fixed. Subsequently, on the basis of the report of the Fourth Pay Commission, the pay of the applicant was fixed in the revised pay scale of Rs. 1200-1800 [REDACTED] and the pay of the applicant was fixed at Rs. 1200/- per month on 1.1.86. The applicant earned his increment on 1.10.86 and his pay was fixed at 1230/-. These facts are not disputed by the respondents. The applicant has alleged that he was not granted annual increments w.e.f. 1.10.87 onwards and his pay continued to be disbursed at the rate of 1230/- + allowances as per rules. Subsequently, the pay of the applicant was fixed at Rs. 4000/- in the pay scale of Rs. 4000-6000 as per the Fifth Pay Commission Report and thereafter, he has also not been paid subsequent increments which he had earned. It is the contention of the applicant that his pay has not been

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correctly fixed even as per the Fifth Pay Commission Report. As against these allegations, the contention of the respondents are that the applicant was reverted to the post of Electrician (SK) in the year 1987 vide Annex.R/l. As a result of reversion order, the pay of the applicant was required to be fixed in the lower grade. Since the matter was under consideration of the higher authorities, subsequent increments were not released to the applicant. The applicant is not entitled to increments in the higher grade. The increments for the period in question could be granted only in the lower pay scale. Hence, the applicant cannot claim the benefit of arrears of increment in the higher scale.

5. We have considered the rival arguments which were developed by the respective counsel on the lines of their pleadings. It would be worthwhile to mention that the order Annex.R/l dated 11.8.87 was challenged in the past by many other applicants and the same was quashed on the ground that the reversion order was passed without any notice to the affected persons. As a consequence of this order, few of the affected persons were given notice of reversion and thereafter their representations were considered and the order of reversion was maintained but from the date of the order. The action of the respondents in this regard was again challenged by the affected persons by filing various O.As which were decided by us in the past. In those OAs, it was decided by us that since the applicants continued to work on the post of Highly Skilled Grade II for quite number of years ranging from 13-15 years, therefore, they cannot now be ordered to be reverted. However, the question of determination of seniority of the various persons i.e. Electricians and Linemen was left open to be decided as per rules. The applicants in favour of whom, the decisions were given in the past, were affected by the reversion order dated 11.8.87 (Annex.R/l). The case of the applicant regarding his reversion is also similar to the cases of those applicants, therefore, the applicant cannot be differently treated in this regard. It is an admitted position that the pay of the applicant has not been reduced to that of lower grade as per the reversion order. The applicant is working on the post of Highly Skilled II although on

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papers, he stands reverted to the lower post. Had he been actually reverted to the lower post, his pay would have also been reduced immediately accordingly. Since the applicant was allowed to draw pay in the higher scale, it would mean that he had worked on the higher post continuously from the date of his promotion. In this case, the applicant has prayed for release of annual increments. In other cases, the applicants had challenged their reversion on the basis of cancellation of promotion order. But that order was stayed and the applicants of those cases continued to work on the higher post under the orders of the Court. In this case, the applicant administratively, was allowed to work on the higher post with only one impediment i.e. non release of his increments. When similarly situated persons were directed to continue on the promotional post on the ground that they had worked for 12-15 years on the higher post, the applicant also cannot be refused the similar benefits of annual grade increments of the higher grade simply because his promotion orders were cancelled.

6. In this regard, we would like to quote a portion of our order dated 11.1.2000 passed in O.A.No. 203/97 - Shyam Lal vs. U.O.I. and Others, which is as follows :-

"Therefore, it is difficult to appreciate the argument of learned advocate for the respondents that the applicant has no right to remain on the present promotional post because of the various guidelines issued by the higher authorities from time to time on the subject. In our opinion, permitting the respondents to revert the applicant from the present promotional post to a lower post after such a long working on the higher post, would be unjust and unreasonable, therefore, the impugned reversion order is difficult to sustain. In view of the above observation, we also do not see any reason to send back the case to respondents again for re-examining the whole matter."

7. While deciding the aforesaid case, we had directed the respondents in the following terms :-

"11. The O.A. is, therefore, partly accepted. The ~~so~~ impugned reversion order dated 3.6.1997 (Annex.A/1) is hereby quashed and the respondents are directed to continue the applicant on the post of Electrician Highly Skilled Grade-II. The respondents are further directed to determine the vacancies in the cadre of Electrician Highly Skilled-II for granting and regularising the promotion to the applicant after assigning the correct seniority as per law for which the respondents are given six months time. The parties are left to bear their own costs."

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8. The case of the applicant is in no way different than the case of other applicants, decided earlier, and, therefore, applicant has to be extended the similar treatment and benefits.

9. It is a settled principle of service jurisprudence that unless by specific order (in disciplinary action), the increments are stopped, the candidate continues to earn his annual grade increments. In this case, the increments to the applicant have not been released on the ground that his promotion order was cancelled. But, this cannot be said to be a legally cogent reason for not granting the annual grade increments to the applicant. Needless to say that the said cancellation order regarding promotion, was not actually given effect to by its implementation and reducing the pay of the applicant accordingly, therefore, by legal implication, it is inferred that the applicant has continued to earn annual grade increment in the higher pay scale of H.S.II regularly and is entitled to pay fixation and arrears of pay as a consequence of such fixation.

10. We have also considered the aspect of Limitation in this case. No doubt, the applicant had not agitated the grievance regarding non release of annual grade increments right from 1987 till this O.A. was filed but the case of the applicant is similar to that of other similarly affected persons who have secured verdict of the Tribunal in their favour, therefore, refusing the benefit to the applicant only on the ground of limitation, would be unjust. For correct fixation of pay, the cause of action is continuous cause of action. On the ground of limitation, only the payment of arrears could be restricted. But, in this case, looking to the cases of similarly affected persons, we would not like to deprive the applicant of arrears of pay also. Therefore, the arguments of the learned counsel for the respondents relating to limitation is liable to be rejected and the Misc.Application No. 149/98 is accepted accordingly.

11. In view of the foregoing discussions, we are of the view that the applicant is entitled to get annual grade increments regularly in the

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revised pay scale of Rs. 1200 for the post of Highly Skilled II, He is also entitled to get his pay refixed in the pay scale of Rs. 4000-6000 and subsequent regular increments as per the Fifth Pay Commission and as per the Pay Fixation rules, taking into consideration his earlier pay after fixation of annual grade increments. The applicant is also entitled to arrears of pay on account of such fixation but in the circumstances, he is not entitled to any interest. The Original Application deserves to be accepted.

12. The Original Application is, therefore, partly accepted. The respondents are directed to re-fix the pay of the applicant in the pay scale of Rs. 1200-1800 after releasing the annual grade increments which the applicant has earned regularly w.e.f. 1.10.87 onwards. The respondents are further directed to refix the pay of the applicant in the pay scale of Rs. 4000-6000 ^{and} w.e.f. 1.1.96 taking into consideration the increments subsequently earned by him and pay the arrears on account of such refixation of pay to the applicant, within a period of four months from the date of communication of this order. In the circumstances of the case, the prayer of the applicant for payment of interest, is refused.

13. The parties are left to bear their own costs.

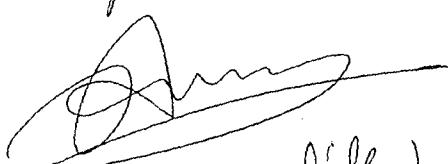

(GOPAL SINGH)

Adm. Member

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28/4/2000
(A.K.MISRA)
Judl. Member

jrm

Rec


(S. K. Malile)
24/9/2000


(S. K. Khandekar)
24/9/2000

Part II and III destroyed
in my presence on 19/10/2000
under the supervision of
Section Officer () as per
order dated 23/10/2000

Section Officer (Record)