

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO.440/2012

Friday this the 19th day of June, 2015

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mr. R.Ramanujam, Administrative Member

Rajendran K aged 55 years
LDC, Headquarters,
Southern Naval Command (Ciuvilianj Establishement
Section, Naval Base,
Kochi.4.

...Applicant

(By Advocate Mr. S.Radhakrishnan)

Versus

1. Union of India represented by the
Secretary to the Govt. of India
Ministry of Defence, New Delhi-110001.
2. The Principal Controller of Defence Accounts (Navy)
Pay Section, Mumbai-5.
3. The Flag Officer Commanding in Chief
Headquarters, Southern Naval Command
Naval Base, Kochi.4.
4. Chief Staff Officer (P&A)
Headquarters, Southern Naval Command,
Naval Base, Kochi.4.
5. Assistant Controller of Defence Accounts
Area Accounts Office, Navy
CDA Complex, Perumanoor
Thevara, Kochi.15.

...Respondents

(By Advocate Mr. N. Anil Kumar, SPCGC)

This application having been finally heard on 16.6.2015, the Tribunal on
19.6.2015 delivered the following

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

This O.A has been filed by the applicant for a declaration that the pay fixation effected by the 5th respondent cancelling the benefit granted to the applicant under the ACP Scheme and fixing his pay with grade pay of LDC at Rs. 1900/- w.e.f. 0.7.2011 is illegal and unsustainable.

2. The applicant was appointed as LDC in the Military Farms, New Delhi on 6.5.1982 . He joined the service on 2.6.1982. On 1.8.1996 the applicant was promoted as UDC in the scale of pay of Rs. 4000-6000. The ACP Scheme was introduced w.e.f. 9.8.1999. On 17.10.2001 the applicant submitted an application for posting in any static unit located in Kerala on compassionate grounds. On 2.7.2004 the applicant was informed that his request for transfer will be considered as per seniority and turn. Applicant completed 24 years of service and became entitled to get the second financial up-gradation under the ACP Scheme and accordingly the applicant was granted financial up-gradation to the pay scale of the Office Superintendent at S9 scale – Rs. 5000-8000 on 31.10.2006. On 9.3.2011 the transfer order was issued to the applicant to the Southern Naval Command on compassionate ground. On 7.7.2011 the applicant was relieved from Military Farms Deolali and he joined the Southern Naval Command as LDC on 10.7.2011. The impugned order was passed on 12.3.2012 reducing the grade pay of applicant without taking into account the financial benefits granted to him under the ACP Scheme.

3. The applicant contends that while he was working as UDC in

Military Farms he was granted 2nd financial up-gradation under the ACP Scheme in the scale of pay of Rs. 5000-8000. On implementation of the 6th Pay Commission Report the pay of the applicant was fixed in PB2 with G.P. 4200/-. On 7.7.2011 the pay of the applicant was Rs. 1830/- in PB 2 with G.P. Rs. 4200/-. On 11.8.2011 the pay of the applicant was Rs. 12310/- in PB with GP of Rs. 4200/-. Though the transfer was unaltered it was granted on compassionate grounds. The salary of the applicant was fixed at the Southern Naval Command taking into account the financial up gradation granted to him in the previous establishment on completion of 24 years of service but the 5th respondent corrected the pay fixation by cancelling the benefits granted under the ACPScheme and fixing his pay with Grade Pay of LDC at Rs. 1900/- w.e.f. 10.7.2011. The applicant contends that in the case of unilateral transfer the respondents cannot truncate the grade pay of the applicant granted under the ACP Scheme. That was the view taken by this Tribunal and also by the Jabalpur Bench of the C.A.T.

4. The respondents resisted the application contending as follows:
 - 4.1 The applicant who was working as UDC in Army Establishment was posted on compassionate ground after accepting a lower post and joined Southern Naval Command as LDC in compliance of Annexure A7 order. His pay was fixed by the 4th respondent in terms of the provisions contained in Annexure.A.13 order where it clearly stipulates that in cases of appointment of government servants to posts carrying lower grade pay under FR 15(a), on their own request, the pay in the pay band of the government servant will be fixed at a stage equal to the pay in the pay

band drawn by him prior to his appointment against the lower post. The pay of the applicant was fixed in this manner as per government orders. The grade pay which was being drawn by the applicant prior to transfer under the ACP Scheme was restricted making it equivalent to that of LDC as the transfer involves reduction in the grade to LDC. The applicant is not entitled to carry the same grade pay as was drawn by him prior to his joining the Southern Naval Command in terms of clause 2 of Annexure A.13 order which stipulates that in cases of appointment of government servants to posts carrying lower grade pay under FR 15(a) on their own request the pay in the pay band of the government servant will be fixed at stage equal to the pay in the pay band drawn by him prior to his appointment against the lower post and that he will be granted grade pay of the lower post. The pay of the applicant was thus fixed and there is no illegality in the same. The upgraded pay of the applicant was considered while fixing the pay w.e.f. 10.7.2011 on his reporting for duty in a lower post of LDC. The pay so fixed has been protected in the lower grade also but with the grade pay of LDC as he has been reverted to LDC on compassionate transfer. Thus the benefit earned by the applicant under the ACP Scheme was lost. The respondents thus contend that the application is liable to be dismissed.

5. The point for consideration is whether the order passed by the respondents reducing the applicant's grade pay to Rs. 1900/- from Rs.4200/- is sustainable?

6. We have heard the learned counsel appearing for both parties and also perused the documents/annexures produced by them.

7. There is no dispute regarding the facts narrated earlier. The only question is whether the respondents were justified in reducing the grade pay of the applicant from Rs. 4200/- to Rs. 1900/-. It is vehemently contended by the respondents that since the applicant had sought voluntary unilateral transfer to the Southern Naval Command agreeing to be posted at the bottommost position in the post of LDC he cannot aspire for the grade pay of the UDC. There is no dispute regarding the fact that he had completed 24 years of service and so he was rightly granted the 2nd ACP before he was transferred to the Southern Naval Command. The question is whether even after transfer he is entitled to get his grade pay protected?

8. The protection of pay last drawn by the applicant has to be guaranteed or protected as per the existing rules. There is no dispute regarding that fact and so the respondents also contend that the basic pay of the applicant was protected. But according to them the basic pay alone is to be protected and not the grade pay. According to the respondents the grade pay applicable to the applicant is only Rs. 1900/- since he was posted as LDC after he was transferred on his own request. But the learned counsel for the applicant would submit that under Rule 3(8) of the Revised Pay Rules, 2008 pay means, pay in the pay band plus grade pay and so the grade pay last drawn by the applicant is also to be protected. In other words, according to the applicant pay includes grade pay and so any order causing reduction in the grade pay would be violative of the existing rules. The learned counsel for respondents would submit that the applicant



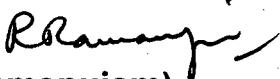
cannot have double benefit; one, by getting transfer of his choice to the nearest place/home town and also to enjoy the financial benefits. But the learned counsel for applicant would submit that the applicant would be losing the entire seniority and would be at the bottom in seniority and that is the loss he suffers on getting a unilateral transfer. But at the same time his pay has to be protected as per the rules. It is also contended that granting regional or inter regional transfer cannot be to the disadvantage of officer like the applicant denying the grade pay which he was drawing and which he has earned because of the 24 years of service he had rendered to the department. The learned counsel for the applicant has drawn our attention to the orders passed by this Tribunal in identical matters; Annexure.A15 order dated 21.10.2011 in OA 205/2010 of this Tribunal, order dated 9.2.2009 in OA 859/2007 of CAT Jabalpur Bench and also order passed by this Tribunal in OA 461/2011 dated 25.11.2011. In all these cases it was held that the the pay includes the grade pay and that the officer on unilateral transfer is entitled to get his pay protected. In other words, the contention raised by the applicant, that the order reducing the grade pay from Rs.4200/- to Rs. 1900/- is unsustainable, gains momentum. In Annexure A.17 order (OA 461/2011) dated 25.11.2011 it was held by this Tribunal

"The purpose of imposing certain conditions on inter-regional transfer is to protect the interests of the employees in the transferred office, rather than saving some money for the government by squeezing out as much as possible from a hapless employee. Forgetting this aspect, the insistence on saving some amount over and above what has been agreed to by the applicant is not befitting a government wedded to justice and fair play. The respondents are not

entitled to unintended advantage, in the facts and circumstances of the case; from the revision of pay as per recommendations of the VI CPC."

9. There is no case for the respondents that the orders passed by the Tribunal were varied or modified. In other words they have no case ^{that} it was challenged before the Hon'ble High Court. Those orders attained finality. Hence, we have no hesitation to hold that the order passed by the respondents reducing the grade pay of the applicant from Rs. 4200/- to Rs. 1900/- is liable to be quashed. We do so. The applicant is entitled to the grade pay fixed at Rs. 4200/- . The respondents will pay the amount due to the applicant within two months from the date of receipt of a copy of this order.

10. O.A is allowed as above. No order as to costs.


(R.Ramanujam)
Administrative Member

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(N.K.Balakrishnan)
Judicial Member