

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.517 of 2009

Thursday, this, the 14th day of July, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

M.K.Nallakoya,
Veterinary Attendant,
Lakshadweep Office,
Willington Island Kochi.

....Applicants

(By Advocate Mr P.V.Mohanan)

v.

1. Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. Director,
Directorate of Animal Husbandry,
Kavaratti.Respondents

(By Advocate Mr S Radhakrishnan)

This application having been finally heard on 11.7.2011, the Tribunal on (4.07.2011) delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

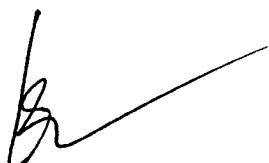
The applicant is working as Veterinary Attendant under the Lakshadweep Administration. He was initially appointed as a Milkman w.e.f. 29-04-1980 in the scale of pay of Rs 193 – 232/- . After the recommendation of the 4th Pay Commission he was granted the replacement scale of Rs 750 – 940/- and his pay was fixed at Rs 822/- w.e.f. 01-01-1986. The applicant's pay reached the maximum as on 01-04-1994 and thus, for over one year he was



placed in the maximum of the pay in the aforesaid pay Scale. Again, as per the 5th Pay Commission recommendation, he was given the replacement scale of Es 2610 – 3540/- and his pay was fixed at Rs 2970/- w.e.f. 01-01-1996. His next increment was due on 01-04-1996 as per the pre-revised scale and his next date of increment was advanced to 01-01-1996 and thereafter, at the first day of January in the subsequent years. In other words, it was due to this advancement of increment date that the pay came to be fixed at Rs 2970/-.

2. According to the applicant, his pay as on 01-01-1996 was brought down from Rs 2970/- to Rs 2,910/- and to this effect, corrections were also carried out in the Service Book. This has resulted in a substantive depletion of the emoluments that the applicant was receiving and accordingly, the applicant has made a representation on 11-11-2008 vide Annexure A-3, requesting the authority to verify the pay fixation made in the Service Register w.e.f. 01-01-2006 onwards and clear his doubt. This claim was rejected vide impugned order dated 30-12-2008. It has been stated therein that the pay fixation was correctly made and no anomaly exists and that the ACP granted to him was in accordance with the order in OA No. 91/07.

3. The applicant preferred the aforesaid OA in respect of his ACP and the same was rejected as he was in the pay scale of Rs 2610 – 3540 and the next pay scale for which the applicant was entitled as ACP financial upgradation is Rs 2650 – 4000 which was accordingly granted to him w.e.f. 09-08-1999 and again his next the scale is Rs 2750 – 4400/- to which the applicant is entitled as 2nd ACP.

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4. In the instant OA the applicant has questioned the wrong fixation of pay at Rs 2910/- instead of Rs 2970/- as on 01-01-1996 (which was in fact originally fixed but later on reduced by the respondents) and prayed for the following relief(s):-

(a) To direct the respondents to refix the pay of the applicant at Rs 2970/- in the scale of pay of Rs 2610 – 3540 w.e.f. 01-01-1996 with all attendant increments w.e.f. 1st January of succeeding years;

(b) to direct the respondents to refix the pay of the applicant w.e.f. 01-01-2006 under the VI Central Pay Commission at higher stage by taking note of basic pay at Rs 2970/- as on 01-01-1996 and disburse the arrears of pay.

5. Respondents have contested the OA. First they have raised the issue of limitation and relied upon the decision of the Apex Court in the case of **Union of India vs Tarsem Singh (2008) 8 SCC 648**. According to them the initial pay fixation at Rs 2970/- was due to oversight in calculation but the same was later rectified and the pay fixed at Rs 2910/- w.e.f. 01-01-1996 and endorsed at page 18 of the Service Book as per the audit observation of the internal audit conducted at Kochi.

6. The applicant has filed his rejoinder and additional reply had been furnished by the respondents. In the additional reply, the respondents have brought in the fact of various other OAs filed by the applicant and the results thereof. They have justified their correction of the alleged mistake in fixing the pay at Rs 2970/- as on 01-01-1996. Additional rejoinder had also been filed.

7. Pleadings have been exchanged.

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8. Counsel for the applicant argued that the pay scale of Rs 2550 - 3200 has been the normal replacement scale for the earlier pay scale of Rs 750 - 940 and the revised pay scale of Rs 2610 - 3540 is the normal replacement scale of Rs 775 -1025. The counsel referred to the table of concordance in respect of the above replacement scales and stated that Rs 2960/- is the pay that would be available for the pay of Rs 940/- in the pre-revised scale in case the pay scale of the applicant is revised to Rs 2550 - 3200, whereas in case the higher pay scale of Rs 2610 - 3540 is applied the amount comes to Rs 2910/-. He has also referred to the fact that in case the earlier pay drawn was Rs 941/- the pay would be at Rs 2970/-. Thus, the counsel argued that when the pay scale of Rs 2610 - 3540 is granted for the post of Milkman, it would then mean that the pay scale of Rs 750 - 940 should have been by way of legal fiction revised to Rs 775 - 1025 and the applicant's pay should have been fixed.

9. Counsel for the respondents submitted that the total emoluments admissible to the applicant as per the standard formula works out to Rs 2907 and the same has been fixed at the next stage i.e. Rs 2910/-. Thus, the earlier fixation was certainly erroneous and the same is sought to be rectified, which is well within the powers of the respondents.

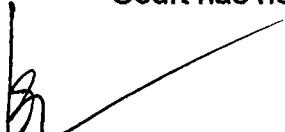
10. Arguments were heard and documents perused. First as to the limitation part as contended by the respondents. The apex Court in the case of Tarsem Singh referred to by the respondents in their counsel. In fact, the said judgment goes in support of the applicant in so far his entitlement to have the correct pay fixation is concerned. The Apex Court in that case, referring to M.R. Gupta's case, held as under:-



5. In *M.R. Gupta v. Union of India* (1995) 5 SCC 628 the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1-8-1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held:

"5. ... The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time-barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion, etc., would also be subject to the defence of laches, etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time-barred..."

11. In so far as arrears are concerned, reference could be made to the decision of the Apex Court in the case of *State of Madhya Pradesh vs Yogendra Shrivastava* (2010) 12 SCC 538 would apply, wherein, the Apex Court has held as under:-



Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. (See M.R. Gupta v. Union of India and Union of India v. Tarsem Singh.)

12. Now on the merits of the case. Facts are not in dispute. The applicant was drawing Rs 940/- from 01-04-1994. Thus he was stagnating. The Pay Commission Recommendations contained the normal replacement scale of Rs 2550 – 3220 for the pay scale of Rs 750 – 940/. As per Rule 3 and 4 of the CCS(Revised Pay Rules) 1997, the scale of pay of every post/grade specified in column 2 of the First Schedule shall be as specified against it in column 4 thereof. The first schedule has provided for the replacement scale as stated above i.e. Rs 2550 – 3200. The pay scale of Rs 2610 – 3540 is the replacement scale for Rs 775 – 1025. The said first schedule also contained, “Revised scales for posts carrying present scales in Group 'A', 'B', 'C' & 'D' except posts for which different revised scales are notified separately”

13. The Government, vide Ministry of Finance (Department of Expenditure) Resolution No. 50(1)/IC/97 dated 30-09-1997 made certain improvement in the

pay scales recommended by the Pay Commission. The said decision reads as under:-

"(1) Improvement in Scales: Government have taken special care to increase the emoluments of low paid employees. Accordingly, scales 1 to 5 have been improved considerably as mention in para 2(b) of Chapter 3....

This has been done by improving upon the rate of increment in all the 5 lowest scales of pay. Rate of increment is not only better than the existing rate of increment but also better than the rates suggested by the Fifth Pay Commission.

In Scales 1 and 2, the minimum starting pay has been raised to Rs 2,550/- and Rs 2,610 respectively. This would mean that an additional benefit of Rs 110 per month in respect of scale 1 and Rs 60 per month in respect of scale 2 will be available to the employees in these scales of pay.

Para 2(b) of Chapter 3 referred to above reads as under:-

"2. The Government constituted an Empowered Committee to consider and process the Report of the Pay commission. Thereafter, Group of Ministers looked into the recommendations of the Fifth Pay Commission. The Union Government on 18th July, 1997 accepted most of the recommendations of the Fifth Pay Commission with material changes and as a package announced on 21st July, 1997 and thereafter on 11th September, 1997 a hefty pay hike for its employees. The highlights are as under:-

(a) x x x x x

(b) **Modification in Lower five Scales S-1 to S-5 and S-13 -** The following six pay scales of pay (S-1, S-2, S-3, S-4, S-5 and S-13 grades), recommended by the Commission will be improved and the revised pay scales for these grades will be as below:

<i>Recommended by the Commission</i>	<i>As modified by the Government</i>
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S-1: x x x x x

S-2: Rs 2,550 -45-3540

Rs 2610-60-3150-65-3540

S-3: x x x x x"

Thus, the above pay scale of Rs 2610 – 3540 is as a matter of improvement in pay scale recommended by the Pay Commission. When the above pay scale



of Rs 2610 – 3540 is adopted, for the earlier pay of Rs 940/- on the application of revision formula the total amounts to Rs 2907 and the next stage comes to Rs 2910/-. This is certainly not an improvement to the pay of Rs 2960/- arrived at in the revised pay scale of Rs 2550 – 3200/-. This would bring an anomalous situation. But, the Rules have been so framed that there is no such anomaly that could creep in as is explained below.

14. Vide Rule 7 the formula for fixation of initial pay in the revised pay scale has been provided. The said rule also provides for stepping up of pay at par with juniors in case senior happens to draw less pay than his junior. Where an individual in the pre-revised scale had been drawing the maximum pay for more than one year, his date of next increment in the revised scale gets advanced to 01-01-1996 itself, vide the third proviso to Rule 8 thereof which reads as under:-

Provided also that in the case of persons who had been drawing maximum of the existing scale for more than a year as on the 1st day of January, 1996, next increment in the revised scale shall be allowed on the 1st day of January, 1996.

The above comes into play in the case of the applicant in that as on 01.01.1996 his pay is to be fixed at Rs 2910/- as rightly contended by the respondents, but by virtue of the above provision, his next increment also falls due on the same day i.e. 01-01-1996 and thus, his pay shall be incremented by one increment to bring the same at Rs 970/-. The initial pay fixation has been rightly made by the respondents and their subsequent decision to bring down the pay at Rs 2910/- with the next date of increment as 01-01-1997 is illegal.



15. In view of the above, the OA succeeds. Impugned order dated 30.12.2008 is quashed and set aside. It is declared that the applicant's pay was rightly fixed at Rs 2970/- (advancing the next date of increment to 01.01.1996) and the correction effected on the basis of internal audit is totally wrong.

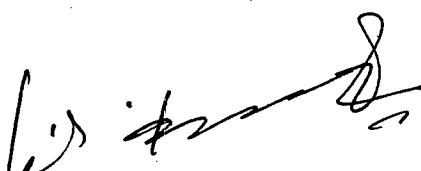
16. Consequently, the respondents are directed as under:-

- (a) To fix the pay of the applicant at Rs 2970/- in the scale of pay of Rs 2610 – 3540 w.e.f. 01-01-1996 and afford the annual increment subsequently on the first January of the subsequent years.
- (b) Consequently, the pay as on 09-08-1999 be worked out and benefit of ACP in the scale of pay of Rs 2650 – 4000 be re-worked and the pay fixed.
- (c) Applicant's 2nd ACP be also worked out on completion of 24 years of service from the initial date of appointment from 29-04-1980 and the pay as on 31-12-2005 arrived at.
- (d) On the basis of the pay as on 31-12-2005 so arrived at the pay under the CCS (Revised Pay) Rules, 2007 be fixed.
- (e) In so far as arrears of pay and allowance are concerned, as held in the case of **State of M.P. Vs Yogendra Shrivastava (supra)** the applicant shall be entitled to arrears of pay only for a period of three years from the date of filing of the O.A. i.e. from 01-07-2006.

17. Respondents shall comply with this order within a period of four months from the date of communication of this order.

18. Under the above circumstances, there shall be no orders as to cost.


K NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S. RAJAN
JUDICIAL MEMBER