

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 538/89 ^{x100}
~~RECORDED~~

DATE OF DECISION 30-10-1990

P.K.Rajappan Applicant (s)

Mrs. Daya K. Panicker Advocate for the Applicant (s)

Versus

Union of India represented by Chairman, C.W.C. and others Respondent (s)

Mr. V.V.Sidharthan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 5.9.89 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Out Board Engine Driver under the Executive Engineer, Coimbatore Gauging Division, Central Water Commission has prayed that the respondents be directed to step-up his pay to that of his junior Shri M.P.Varghese and that he should be declared to be entitled to get the pre-revised scale of Rs.140-175 w.e.f. 7.9.72 and the revised scale of Rs. 320-400 with effect from 1.1.73.

2. The material facts of the case are as follows.

The applicant was appointed as Out Board Engine Driver (OBED) in the South Circle of the Central Water Commission on 7.9.72 in the old scale of Rs. 110-131. His grievance is that in accordance with Annexure-I order dated 5.9.72 the pay scale of Rs. 110-131 of OBEDs of Krishna Gauging Division of the CWPC was revised to Rs. 140-175 with effect from 1.9.72. This scale was further revised on the recommendations of the Third Pay Commission to Rs. 320-400 with effect from 1.1.73. On the other hand the applicant's pay continued to be in the scale of Rs. 110-131 till 1.1.73 when it was revised to the scale of Rs. 260-350. On the principle of equal pay for equal work, the applicant also claims the pay scale of Rs. 140-175 from 7.9.72 to 31.12.72 and the revised scale of Rs. 320-400 from 1.1.73. On his representations his Executive Engineer informed him on 15.5.78 that the matter was pending clarification from the Superintending Engineer, Southern Circle and ultimately the applicant's pay was refixed in the revised scale of Rs. 320-400 with effect from 1.5.79 vide the order dated 22.4.80 at Annexure-II. Inspite of his repeated representations to get the higher pay scales from 1972 the same have been denied. His further grievance is that in the Seniority List of OBED Grade I as on 1.1.88

published as at Annexure-IV though he has been shown as senior to one Shri M.P.Varghese his pay continues to be less than that of Shri Varghese. His representation dated 20.3.88 at Annexure-V still remains undecided. He has argued that in accordance with Proviso to Rule 8 of CCS (Revised Pay) Rules, 1973 his pay should be stepped up to that of Shri Varghese who has been shown as junior to him.

3. The respondents have stated that the applicant had moved the Hon'ble High Court of Kerala for the same reliefs in a Writ Petition which was transferred to the Tribunal as T.A.K.375/87 and the Madras Bench of the Tribunal rejected the petition vide the judgment dated 25.11.87, a copy of which is annexed with the counter affidavit. The respondents have clarified that Out Board Engine Drivers are allowed three scales of pay viz., Rs. 110-131, Rs.110-155 and Rs. 140-175. These pay scales were revised with effect from 1.1.73 to Rs. 250-350, Rs. 260-350 and Rs. 320-400 respectively. They have denied that the pay scale of OBEDs were revised in the Central Circle from Rs. 110-131 to Rs. 140-175. The OBEDs in that Circle were appointed to the higher scale after creating the posts in the higher scale. Shri N.Philip and Shri Varghese were accordingly promoted to the scale of Rs. 140-175 in May, 1983 by the Superintending Engineer of the Central Circle who alone was competent to create

posts in the higher scale. Since the applicant was appointed by the Executive Engineer, Southern Division in the scale of Rs. 110-131 and was not promoted to the higher scale in which no post could be created by the Executive Engineer of the Southern Circle, he could not be promoted to the higher scale of Rs. 140-175 which was revised to Rs. 320-400 with effect from 1.1.73.

Having accepted the post of OBED in the scale of Rs. 110-131 he cannot claim the higher pay scale which is allowed on the basis of job requirements against particular posts. The applicant was, however, appointed to the higher revised scale of Rs. 320-400 with effect

from 1.5.79 by the Superintending Engineer, Southern Circle when he was shifted ^{to} _h the administrative control of the Hyderabad Observation Circle (South) where the ^{pay} higher _{scale} was in vogue. The respondents have clarified that each circle is a separate unit for seniority and the concerned Superintending Engineer/Executive Engineer

decides the scale of pay in which the post of OBED is to be created. While conceding that the nature of work

performed by the OBEDs are generally the same ^{they have} _{argued} that pay scale depends on the ^{which varies} _{capacity} of the engine they operate ^{also} _{varies} depending

upon their place of posting where higher or lower capacity engines are operated. They have ^{also} mentioned that local factors such as availability of skilled/trained man power, working

for fixing pay scale of OBED's and living conditions are also taken into account. Since the Executive Engineer, Southern Gauging Division had created the post of OBED in the scale of Rs. 110-131 taking into account ~~xx~~ all relevant factors and the applicant had voluntarily accepted the pay scale of the post, his claim for higher pay scale automatically against the post cannot be accepted. They have also argued that stepping up the pay of the junior to that of a senior is possible only when the incumbents were in identical scale of pay prior to their promotion. Since Shri M.P.Varghese had been drawing higher pay scale in another Circle even prior to 1.5.79 when the applicant was accommodated in the higher pay scale, the applicant would not be entitled to the stepping up of his pay to that of Shri Varghese. Finally the respondents have stated that the Seniority List on the basis of which the applicant is claiming stepping up of pay is only provisional.

4. In the rejoinder the applicant has argued that since his present claim is that of stepping up of his pay to that of his junior Shri Varghese, the decision of the Madras Bench of the Tribunal rejecting his claim for the higher scale per se cannot estop him from claiming stepping up of pay. He has relied upon the order dated 22.4.88 at Annexure-VI of the Central Water Commission to rebut the averment made by the respondents that each

Circle is a separate Unit. He has also referred to Annexure-VI which is a letter from the Under Secretary of the Central Water Commission to say that for OBEDs there are two scales of pay and not three scales. He has also argued that since surplus employees of one Circle can be absorbed in another Circle the contention of the respondents that there are different scales of pay should not be accepted. He has further mentioned the case of another Engine Driver of the same Circle to whom a higher pay scale was allowed. He has challenged the contention of the respondents that the Seniority List has not yet been finalised.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant had claimed the higher pay scale of Rs. 140-175 in his Petition which was disposed of on transfer to the Tribunal on 25.11.87. We have gone through the judgment of the Tribunal and find that the second relief claimed by the applicant ^{before us} that he is entitled to get the benefit of pre-revised scale of Rs. 140-175 with effect from 7.9.72 and the revised scale of Rs. 320-400 w.e.f. 1.1.73 was duly considered by the Madras Bench of the Tribunal and the Petition was rejected. Accordingly so far as this relief is concerned the same is barred by the principle of res judicata. As regards the question of

stepping up of the pay of the applicant to that of his junior Shri Varghese ~~is concerned~~, the respondents have stated that the Seniority List at Annexure-IV is a provisional Seniority List. Accordingly even otherwise unless the Seniority List is finalised the claim of the applicant for stepping up of pay cannot be entertained. The respondents have clearly indicated that it is not as if ~~that~~ all Engine Drivers were in a single pay scale which differs from Circle to Circle. On the other hand it has been clearly stated that there were three pay scales available in each Circle and posts were created by the Superintending Engineer or Executive Engineer in any of the three pay scales depending upon the job requirement and other relevant considerations. Thus more than one pay scale could exist within the same Circle and between one Circle and another. The applicant's contention that by Annexure-I and II the pay scales of Engine Drivers were revised in different Circles is not correct. The wording of Annexure-I is as follows:

"The following O.B.Engine Drivers in Krishna Gauging Division, CW & PC Hyderabad appointed in the scale of Rs. 110-131 are further appointed in the scale of Rs. 140-5-175 w.e.f. 1.9.72 FN with same terms and conditions of appointments with concurrent of Commn. under their U.O.letter No.21-5-66-CII dated 11.8.72."

Likewise the wording of Annexure-II is as follows:

"The following O.B.Engine Drivers (on w/c/Estt) working in the Coimbatore Gauging Division, CWC, Coimbatore under this Circle working in the scale of pay Rs. 260-6-350 are appointed temporarily in the scale of Rs. 320-6-326-8-390-10-400 w.e.f. 1.5.79".

The above will clearly indicate that the pay scales of the Engine Drivers were not revised across the board but that certain Engine Drivers who were in the lower scale were appointed to the higher scales corresponding to the post to which they were appointed ^{so} promoted.

6. In the above circumstances the principle of equal pay for equal work merely because the designation ^{of OBED} is common cannot be invoked. The Hon'ble Supreme Court in Harbans Lal and others Vs. The State of Himachal Pradesh and others, J.T 1989(3) 296 held that the equal pay for equal work principle does not apply if the managements are different or the posts are in different geographical locations even though they may be under the same owner and designation of the post and the volume of work are the same. The Hon'ble Supreme Court further, held in State of A.P. and others Vs. G.S.Rao and others, (1989) 10 A.T.C. 61 that the doctrine of equality of pay does not apply where a senior is getting less pay in the same scale so long as the scale of pay is the same and pay of the junior is fixed under the rules. In such circumstances there is no violation of the principle of equality under Article 14 of the Constitution of India. Since the applicant and Shri Varghese had been brought over to a common scale of pay, ^{the} in the common scale, ^{difference} in the actual pay for historical reasons

would not be violative of Articles 14 and 16 of the Constitution. Likewise since Shri Varghese had been drawing higher pay scale from a date earlier than the applicant's the latter cannot claim stepping up of the pay on the basis of his seniority.

7. In the facts and circumstances, we see no merit in the application and dismiss the same without any order as to costs.



30.10.90

(A.V. Haridasan)
Judicial Member



30.10.90

(S.P. Mukerji)
Vice Chairman

30.10.1990

Ksn.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A No.131/90 in O. A. No. 538/89
T. A. No.

199

DATE OF DECISION 30.8.91

P.K.Rajappan _____ Applicant (s)

Mr.M.R.Rajendran Nair _____ Advocate for the Applicant (s)

Versus

Union of India, rep. by Chairman,
~~Central Water Commission, Seva Bhawan, New Delhi, Respondent(s),~~
NEW DELHI and 2 others

Mr.T.P.M.Ibrahim Khan _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
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JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this review application the review applicant has sought review of our judgment dated 30.10.1990 in O.A 538/89 . According to the applicant, that O.A was filed for the following two reliefs:-

- a) to direct the respondents to step up the pay of the applicant to that of his junior M.P.Varghese who is drawing higher pay than the applicant in accordance with provisions contained in CCS(RP) Rules, 1972.
- b) to declare that the applicant is entitled to get the benefits of the pre-revised scale of Rs.140-175 with effect from 7.9.72 and revised scale of Rs.320-400 with effect from 1.1.73.

The second relief was rejected by us on the ground that the applicant had sought ^{the} same relief in his writ petition moved before the High Court which was disposed of on transfer by the Madras Bench of the Tribunal in TAK 375/1987 and hence the second relief is barred by the principle of res judicata. In our judgment we observed as follows:-

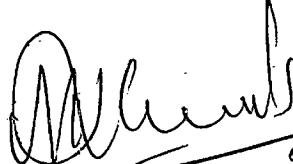
" 5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant had claimed the higher pay scale of Rs.140-175 in his petition which was disposed of on transfer to the Tribunal on 25.11.87. We have gone through the judgment of the Tribunal and find that the second relief claimed by the applicant before us that he is entitled to get the benefit of pre-revised scale of Rs.140-175 with effect from 7.9.72 and the revised scale of Rs.320-400 w.e.f. 1.1.73 was duly considered by the Madras Bench of the Tribunal and the petition was rejected. Accordingly so far as this relief is concerned, the same is barred by the principles of res judicata."

Since the relief claimed before the Madras Bench of the Tribunal and before us were identical so far as the second relief is concerned, we do not see any reason why the principle of res judicata should be waived in the applicant's case. So far as the first relief is concerned, in our detailed judgment we had stated that the applicant had voluntarily accepted his posting as OBED in the lower scale of Rs.110-131 in 1972. When he and Sri Varghese were brought over to a common scale, ^{his} ~~his~~ pay in the common scale has to be necessarily lower than that of Shri Varghese ^{had been} as Shri Varghese ~~was~~ drawing pay in the higher scale earlier. The applicant should have challenged his posting in the lower scale in 1972 and could

not claim stepping up of his pay on the ground of his being senior to Shri Varghese. Even otherwise the principle of stepping up of pay arises when both the senior and junior ^{had been} ~~were~~ working in the same scale of pay. Since this is not the position in the case of the applicant and Shri Varghese he cannot invoke the benefit of stepping up of pay based on his seniority.

2. In any case the applicant has gone into the merits of the case again and raised basic points of facts and law which have been already covered by our judgment. Remedy for him lies in appeal rather than in review, the limited compass of which does not extend beyond errors apparent on the face of record or new facts which even with diligent efforts could not be available to the review applicant earlier.

3. In the circumstances we see no force in the review application and dismiss the same.


3/8/91
(A.V.Haridasan)
Judicial Member


(S.P.Mukerji)
Vice Chairman

n.j.j

R.A. No. 68/91

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by Sri P.K. Rajappan
(Applicant/Respondents in
RA/IA-No. 181/90) seeking a review of the order dated 30-8-91,
passed by this Tribunal in the above noted case.

2. Unless ordered otherwise by the Bench concerned, a review petition shall be disposed of by circulation where the Bench may either reject petition or direct notice to be issued to the opposite party.

3. A Review petition is, therefore, submitted for orders of the Bench consisting of Hon'ble Mr. S.P. Mukerji V.C. and

Mr. A.V. Haider, Member, J.Z.

which pronounced the Order sought to be reviewed.

^{Where} This application was returned to the party since the Rule says
'A petition for review of any judgement order has been disposed of
XXXXXX no further petition for further review shall lie'.

However the applicant re submitted the application with the following remarks.

"Resubmitted with an humble prayer that this application ~~be~~
may kindly be submitted to their Lordships' consideration in the
light of the grounds adduced in the application and especially in
view of G.O.I's own admission to the effect that the process of
filing SLPs is very difficult and many a time, the Supreme Court
does not grant SLPs against the Judgements of CAT" vide
Dept. of Per. & Trg. O.M. No.A.11019/13/91-AT dt.17.5.91. Moreover,
Rule 22(1) of Administrative Tribunals Act 1985 empowers this
Hon'ble Tribunal to regulate its own procedure guided by the
principles of natural justice. In this case natural justice
demands the sympathetic consideration of this application."

✓ P.S. to Hon'ble V.C.

Order
pronounced
on 14/11/91
R.
15/11/91
mr moe

Second
Since a review of the order passed
on the first review application is
barred by Order 47 rule 9, this R.A. is
rejected in circulation if Hon'ble JM (II)
agrees.

Hon'ble JM (II) Yes I agree ^{8/11/91} ✓

your
Hon'ble
Hon'ble
Pronounce

15/11/91