

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 178 of 1991
T. A. No.

DATE OF DECISION 30-1-1992

Mr KN Ramachandran Pillai Applicant (s)

Mr Asok M Cherian Advocate for the Applicant (s)

Versus

Garrison Engineer(M) Respondent (s)
Naval Base, Kochi & 4 others

Mr NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. NV KRISHNAN, ADMINISTRATIVE MEMBER

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicant who was working as Civilian School Master in the Madras Engineering Group and Centre, Bangalore was rendered surplus and was absorbed in the lower post of Lower Division Clerk w.e.f. 26.8.1976. As a Civilian School Master, he was drawing pay in the scale of Rs.330-560. At the time when he was rendered surplus and adjusted as L.D.C., he was drawing a pay of Rs.370/-. But on appointment as L.D.C., the applicants pay was fixed at the minimum of the scale of Rs.260-400. Thereafter the Government of India issued an order on 27.1.1984 conveying sanction of the Government for protection of the pay of the 68 Civilian School Masters ^{who were} adjusted in the lower pay scale for re-fixation of

their pay in their previous pay scale w.e.f. 4.12.1968 or with effect from the date of their absorption in the lower grade which ever is later. A copy of this order is at Annexure-A1. As the pay of the applicant was not refixed in accordance with this order, the applicant made representation to various authorities for protection of pay. Since he did not get favourable response, he approached this Tribunal filing OA-501/90 praying for a direction to have his pay refixed. This application was disposed of with a direction that the representation submitted by the applicant should be disposed of in the light of the Government Instructions on the subject. In obedience to the above direction contained in the order in the OA, the matter was decided by the authorities and by the impugned order at Annexure-A8, the applicant was informed that his case for pay protection could not be acceded to as the Ministry of Finance, the 4th respondent has observed, as quoted in Annexure-A8, that the question of pay protection in the Defence Department being a novel concept, conceived only in the year 1981, it was not feasible to give pay protection to employees who were rendered surplus and adjusted towards the lower post prior to that date, we notice that this decision has been given without even adverting to the Annexure-A1 order of the Government conveying sanction for protection of pay in respect of the 68 Civilian School Masters who were rendered surplus and adjusted in lower posts. It is in these circumstances that challenging the impugned order at Annexure-A8 the applicant has filed this application under Section 19 of the Administrative Tribunals Act.

2. The respondents have resisted the claim of the applicant on the ground that the decision to protect the pay in the Defence Department have been taken only in the year 1981, the applicant who was rendered surplus in the higher post and adjusted in the lower post prior to that date had no right to claim that protection. **The case of the applicant that in** /the case of Shri Kameshwar Rao, identically placed like him, pay protection under Annexure-A1 was given to him has been met in the reply statement by stating that Mr Kameshwar Rao's case was decided by the Ministry of Defence in isolation of the Government order dated 15.6.1981 as a special case and cannot be quoted as a precedent. Apart from stating that Shri Kameshwar Rao's case was a case considered in isolation of the Government orders as a special case, no reason as to why that was considered as a special case and in what way his case was different from the case of the applicant is not stated. Referring to the Annexure-A1 order, the respondents have contended that it cannot be given retrospective effect.

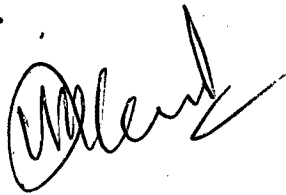
3. We have heard the learned counsel on either side and have also carefully gone through the documents produced.

4. On a perusal of Annexure-A1 and A8, we are distressed to see that the Ministry of Finance to whom the case was referred did not even care to verify whether sanction of the Government was granted for pay protection in respect of 68 Civilian School Masters who were rendered surplus w.e.f. 4.12.1968 or from the date of their absorption in lower grade whichever is late. If this portion of the order at Annexure-A1 had been adverted to

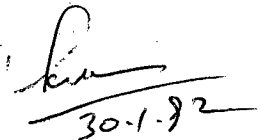
by the concerned authorities, it would not have been possible
for them to take a view that the concept of giving pay protection in the
Defence Department was a ^{novel} policy which could be given effect
to only after 1981. We are of the view ^{that} for that reason alone,
the impugned order at Annexure-A8 has to be struck down. The
case of the respondents that Shri Kameshwar Rao's case cannot
be cited for the purpose of claiming parity is untenable. It
is evident from Annexure-A9 order dated 20.11.1984 by which the
benefit of pay protection was given to Shri Kameshwar Rao that
Shri Rao ^{is} a Civilian School Master just as the applicant was rendered
surplus and absorbed as L.D.C. on 26.8.1976. Apart from the
fact that Shri Rao was rendered surplus as a Civilian School
Master and absorbed in the lower post on 26.8.1976, no special
reason or circumstances ^{seen} is mentioned in this order to grant him
the pay protection. While Shri Kameshwar Rao was absorbed as
an L.D.C. on 26.8.1976, the applicant was absorbed on 25.8.1976.
The case of the applicant and that of Shri Rao are identical in
nature. The sanction at Annexure-A9 of pay protection to Shri
Rao was issued with the concurrence of the Finance Ministry.
It is interesting to note that the Defence Ministry has refused
to grant concurrence to give the same benefit to the identically
situated applicant. This to our mind, is a violation of the
equality ~~xxxxxxxxxx~~ enshrined in Articles 14 and 16 of the
Constitution. For this reason also, we are of the view that
the impugned ~~at~~ Annexure-A8 has to be quashed.

5. In the result, the application is allowed ^{and} the
impugned order at Annexure-A8 is quashed. It is declared that

applicant is entitled for getting his pay refixed protecting the scale of pay he was drawing as Civilian School Master in Madras Engineering Group and Centre with effect from the date of his absorption ^{as L.D.C.} namely, 25.8.1976. We direct the respondents to refix the pay of the applicant accordingly w.e.f. 25.8.1976 with all consequential benefits and to pay him the arrears within a period of three months from the date of communication of this order.



(AV HARIDASAN)
JUDICIAL MEMBER


30-1-92

(NV KRISHNAN)
ADMVE. MEMBER

30-1-1992

trs