

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.248/2002.

Friday this the 4th day of July 2003.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Jacob Oommen,
Director of Apprenticeship Training (Retd.)
H.B.52, Panampilly Nagar,
Cochin-682 036. Applicant

(By Advocate Shri George Varghese)

Vs.

1. Union of India represented by
Secretary, Ministry of Personnel,
Public Grievances and Pensions,
Department of Pension & Pensioners Welfare,
New Delhi.
2. Under Secretary to the Government of India.
Directorate General of Employment and Training,
Ministry of Labour,
Government of India, New Delhi.
3. Senior Accounts Officer,
Pay & Accounts Office,
Directorate General of Employment and Training,
Ministry of Labour,
Government of India,
New Delhi. Respondents

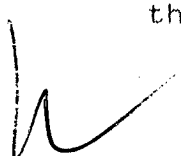
(By Advocate Shri C.Rajendran, SCGSC)

The application having been heard on 9th June, 2003,
the Tribunal on 4.7.2003 delivered the following:

O R D E R

HON'BLE MR.KV.SACHIDANANDAN, JUDICIAL MEMBER

The applicant, while working as Director of Apprenticeship Training, retired from service on 31.5.1992. He is drawing pension on the basis of the salary drawn by him on the last date of retirement. It was revised with effect from 1.1.1996 on the basis of the recommendations of the 5th Central Pay Commission which is found to be wrong. The averment in the O.A. is that, the O.M. dated 17.12.1998 issued in implementation of the



Government of India's decisions on the basis of recommendations of the 5th Central Pay Commission relating to the retirement benefits, has not been followed in the case of the applicant. He submitted a representation on 15.9.2001 (A1) to the Deputy Secretary DGE & T requesting for refixation of pension and family pension with effect from 1.1.1996 at the minimum of the pay scale at Rs.18,400/-. It was rejected by the 2nd respondent vide A-2 order dated 5.10.2001. The reason stated for rejection of the representation of the applicant is that, the corresponding scale of Rs.4500-5700, which the applicant held at the time of superannuation is 14,300 - 18,300 and hence the pension cannot be fixed in a scale higher than the said scale. Aggrieved by the said order, the applicant has filed this O.A. seeking the following reliefs:

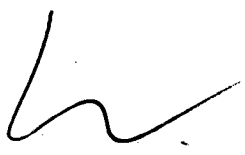
- i. To quash Annexure A2 order and to direct the respondents to refix the pension and family pension of the applicant as claimed in Annexure A1 representation.
- ii. To declare that the post of Deputy Director General DGE&T is equivalent to the post of Director of Apprenticeship Training last held by the applicant.
- iii. To direct the respondents to pay the arrears of pension to the petitioner from 1.1.1996 with interest @12% p.a. till payment.
- iv. To grant such other relief as may be prayed for and this Tribunal may deem fit and proper to grant and
- v. to grant the cost of this original application.

2: The respondents have filed a detailed reply statement contending that, the applicant has given a wrong interpretation to the O.M. dated 17.12.1998. The scale of pay held by the pensioner at the time of superannuation/retirement is a crucial matter to be looked into and nothing more can be granted by way of pension to the applicant. The O.M. quoted in the O.A. dated 17.12.1998 required to be read with O.M. dated 11.5.2001. The



applicant is trying to mislead the Court by not mentioning the contents in the clarificatory O.M. dated 11.5.2001 and claiming benefits on the basis of O.M. dated 17.12.1998. The applicant at the time of retirement was holding the post of Director of Apprenticeship Training in the scale of Rs.4500-5700, for which the corresponding revised scale of pay recommended by the 5th Pay Commission is Rs.14,300-18,300. The pension of the applicant has rightly ^{been} fixed with reference to the scale of pay of Rs.14,300-18,300.

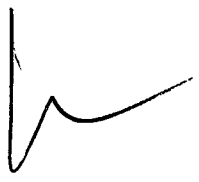
3. The applicant has filed a rejoinder submitting that the Office Order dated 12.5.2000 should also be looked into, wherein it is stated that the President is now pleased to decide that the two permanent posts of Director of Training at DGE&T Headquarters be placed in the scale of pay of Rs.18,400-22,400 w.e.f.1.1.1996 and accordingly be re-designated as Deputy Director General. Pursuant to the above mentioned upgradation the post of Director of Training is redesignated as Deputy Director General of Training and the post of Director Apprenticeship training (the post held by the applicant) has been redesignated as Deputy Director General of Apprenticeship Training. A copy of the said Office Order is Annexure A-3 dated 12.5.2000. Therefore, the applicant is entitled to the fixation of pension on the basis of the said Office Order. A perusal of the schedule to the notification of Recruitment Rules(Annexure A4- P(3) reveals that the number of posts are 2 and the feeder category for promotion to the post is (i) Additional Director of Training (ii) Director, Training Institutes, and (iii) Regional Director, Apprenticeship Training. The applicant held the post of Director, Apprenticeship Training, which is one of the two permanent posts



of Director of Training. Though the name of the post has been redesignated as Deputy Director General, the duties and responsibilities are the same as of the post held by the applicant. The applicant is therefore, entitled to the pension in the scale of pay of Deputy Director General of Training which is 18,400 - 500 - 22400 w.e.f.1.1.1996. Therefore, the rejection of the claim of the applicant vide A2 order is illegal and unsustainable.

4. The respondents have filed an additional reply statement reiterating their stand. The post of Director of Training was re-designated as Deputy Director General in the higher scale of pay by the Directorate General of Employment and Training w.e.f.1.1.1996. The applicant retired on 31.5.92 and therefore, he cannot claim the benefits of the redesignated post of Deputy Director General in the higher scale of pay of Rs.18,400-22,400 which was non existent at the time of his retirement. In the Office Order No.55/2000 dated 12.5.2000, it is stated that certain posts of Director of Training at Directorate General of Employment & Training Head Quarters might be placed in the replacement scale corresponding to the scale of pay of Rs.5900-6700/-. As these posts have been placed in the higher scale w.e.f. 1.1.1996, it would not apply to the case of persons who had retired prior to 1.1.1996.

5. Shri George Varghese, learned counsel appeared for the applicant and Shri C.Rajendran, learned SCGSC appeared for the respondents. Learned counsel for the applicant ~~was~~ took me through various pleadings, evidence and material placed on record and vehemently argued that the O.M.dated 17.12.1998 should be



adopted in true spirit and the reliefs should be granted to the applicant. Learned counsel for the respondents on the other hand, submitted that the applicant was not at all in the scale of pay of Rs.5900-6700 to be claimed the redesignated post which came into existence only on 1.1.1996 and he had already retired on 31.5.1992. Therefore, he is not entitled to any benefit of payment as claimed in this O.A.

6. I have given due consideration to the arguments advanced by the learned counsel and perused the records. According to the applicant, the claim which emanates from the O.M.dated 17.12.1998 which was issued in implementation of the Government of India's decision on the recommendation of the 5th Central Pay commission relating to the retirement benefits, which reads as follows.

"The President is now pleased to decide that with effect from 1.1.1996, pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1.1.1996 of the Post last held by the pensioner."

Therefore, the pay of the applicant has to be fixed in the revised scale of pay with effect from 1.1.96 on the basis of the post last held by him. Had this post not redesignated as Deputy Director General vide A-3 Office Order, he would not have any claim. It is clear that the post of Deputy Director General was created w.e.f.1.1.1996, much after the retirement of the applicant. Annexure A-3 is reproduced as follows:

"No.DGET.Z.20013/1/97-Adm.I/Adm.II
Government of India/Bharat Sarkar
Ministry of Labour/Shram Mantralaya
Directorate General of Employment & Training

New Delhi, dated the 12th May, 2000.



OFFICE ORDER No.55 of 2000.

The Fifth Central Pay Commission has recommended that certain posts of Director of Training of DGE&T Headquarters may be placed in the replacement scale corresponding to the scale of pay of Rs.5900-6700 and re-designated as Deputy Director General. The President is now pleased to decide that the two permanent posts of Directors of Training at DGE&T Headquarters be placed in the scale of pay of Rs.18,400-22,400 w.e.f.1.1.1996, and accordingly be re-designated as Deputy Director General.

Pursuant to the above mentioned up-gradation, the following two senior-most Directors of Training are placed in the scale of pay of Rs.18,400-22,400 w.e.f.1.1.1996 and re-designated as under:-

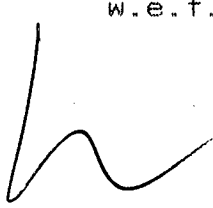
Name of the Officer	Designation
1. Shri G.S.Sethi	Deputy Director General of Training
2. Shri S.I.Siddiqui	Deputy Director General of Apprenticeship Training

This issues with the approval of Ministry of Finance, Department of Expenditure (Implementation Cell) vide their U.O.No.6/38/99-IC dated 5.5.2000.

Sd/-
(Raj Pal)


Deputy Secretary to the Government of India."

In Annexure A-3 dated 12.5.2000, certain posts of Director of Training at DGE&T Headquarters are placed in the replacement scale corresponding to the scale of pay of Rs.5900-6700 and re-designated as Deputy Director General. The corresponding pay scale to the scale of pay of Rs.5,900-6,700 is Rs.18,400-2,400 w.e.f.1.1.1996. Therefore, it is clear that these posts had been placed in a higher scale w.e.f.1.1.1996. Admittedly, on perusal of the records, it could be seen that the pay scale of the applicant prior to 1.1.1996 was Rs.4,500-5,700 for which the corresponding revised scale as on 1.1.96 was Rs.14,300-18,300, whereas the two persons viz., Shri G.S.Sethi and Shri S.I.Siddiqui who were granted the re-designated post by A-3 order dated 12.5.2000, were in the pay scale of Rs.5900-6700 and they were granted the corresponding pay scale of Rs.18,400-22,400 w.e.f.1.1.1996. A-3 order would also indicate that these two



persons (G.S.Sethi and Shri S.I.Siddiqui) were the "two senior-most Director of Training" who were placed in the pay scale of Rs.18,400-22,400. The applicant in this case is not able to prove that he was eligible to be placed in the pay scale of Rs.5900-6700 prior to the implementation of the 5th Pay Commission's Recommendation. On the other hand, it is seen that the applicant's pay scale was Rs. 4500-5700. Therefore, it is very clear that the benefit of A-3 was applicable only to those officers mentioned in that order who was holding higher pay scale than that of the applicant and their corresponding scale as per the 5th Pay Commission was Rs. 18400-22400 on redesignation of the post as Deputy Director General. Therefore, the applicant cannot claim parity with that of the two officers referred to in the Office Order dated 12.5.2000 (A-3). The fixation of pay on the higher scale of pay, is to be done considering various aspects. Had the applicant been in the pay scale of Rs.5900-6700, definitely he could have a case, whereas his pay scale at the time of his retirement was Rs.4500-5700 which is only corresponding to the scale of Rs.14300-18300 (as per Vth Pay Commission). Finding out the correct position, I have also perused Annexure A-4 Recruitment Rules and the Schedule appended thereto which, in my opinion, is of no help to the applicant, since it is not exhaustive as far as the pay scale is concerned.

7. Apart from the above, it is a fact that the applicant had retired on 31.5.1992 and the re-designated post was introduced for the first time with effect from 1.1.1996 vide A-3 order dated 12.5.2000. I am, therefore, of the opinion that since the post of Deputy Director General was created only with effect from 1.1.96, i.e. much after the retirement of the applicant, he could not claim any benefit as a matter of fact. Two seniormost



persons were granted the pay in the revised pay scale corresponding to their pay scale as on 1.1.1996. The applicant is not therefore, entitled to claim the benefit under that order in parity with that of the said officers. The contention of the applicant in the rejoinder that the duties and the responsibilities of the post of Deputy Director General is the same as that of the post held by the applicant, does not require any consideration since it is absolutely within the domain of the administration. This Court is not competent to sit on judgement in the matter of fitment of officers in a particular group or pay scale attached thereto, as laid down in the decision of the Hon'ble Supreme Court in Dy. Director general of Geological Survey of India and another Vs. R.Yadaiah and others [2002 SCC (L&S) 1001]. Considering the different pay scales that the applicant and the upgraded officers held prior to implementation of the 5th Pay Commission i.e. on 1.1.96 and no apparent error or mistake has been pointed out in fixation of the same, the applicant is not justified in claiming the benefit of upgraded pay scale Rs.18400-22400. I therefore, find no merit and substance in the O.A. and the same is liable to be dismissed.

8. In the conspectus of facts and circumstances, the O.A. is dismissed with no order as to costs.

Dated the 4th July, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER