

CENTRAL ADMINISTRATIVE TRIBUNAL : ERNAKULAM BENCH

O.A. No. 361/96

Tuesday, this the 20th day of April, 1999.

CORAM

HON'BLE MR R.K. AHOOJA, ADMINISTRATIVE MEMBER
HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

P. Swaminathan,
(Senior Audit Officer, Office of
Accountant General, Audit, Kerala),
Presently on deputation as:
Director, Bureau of Public Enterprises (BPE),
Planning & Economic Affairs (BPE) Department,
Government of Kerala,
Government Secretariat Buildings,
Trivandrum - 695 001.

By Advocate Mr P.V. Mohanan.

...Applicant

Vs.

1. Accountant General (Audit) Kerala,
Trivandrum - 695 001.
2. Accountant General (Accounts & Entitlement) Kerala,
Trivandrum - 695 001.
3. Secretary to Government of Kerala,
Planning & Economic Affairs (BPE) Department,
Government Secretariat Buildings,
Trivandrum - 695 001.

...Respondents

By Advocate Mr P.R. Ramachandra Menon, ACGSC, for R 1 & 2.
By Advocate Mr C.A. Joy, Govt. Pleader for R -3

The application having been heard on 1.3.99, the
Tribunal delivered the following on 20.4.1999.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A7 and all other consequential orders issued in pursuance thereof including A9 order in so far as it takes away the benefits accruing from A3, A5 and A6 and also to quash A7(a) Pay Slip and all other Pay Slips including All and All(a) to the extent not granting benefits flowing from A3, A5 and A6 and to direct the respondents to grant him all the benefits flowing from A3, A5 and A6 including arrears of pay due from 14.6.94 onwards with consequential benefits.

2. While the applicant was holding the post of Assistant Audit Officer in the pay scale of Rs.2000-3200 under the first respondent, the third respondent State Government requested the permission of the first respondent for his placement as Research Officer in the Kerala State, Bureau of Public Enterprises (BPE for short) on deputation basis. The first respondent issued an order placing the services of the applicant at the disposal of the third respondent as per A1 with effect from 26.4.1988 on deputation basis. He opted to draw pay of the post held by him in the parent department plus deputation allowance @ 5% of the basic pay thereof. As per A2, he was admitted to duty. The third respondent wanted to fill up the post of Director, BPE. Since no qualified hand in State Government/PSU was available, it was decided that the said post be filled up on deputation basis by appointing the applicant, who had the requisite qualifications. As per A3, the first respondent gave approval for appointing him as Director, BPE, in the pay scale of Rs.2825-4095 plus Special Pay. As per A4, the third respondent appointed him as Director, BPE. His pay was fixed in the scale of Rs.2825-4095 plus Special Pay by invoking FR 22-C. From A-3 it is clear that the first respondent had approved the said fixation. On the basis of A3 and A4, the second respondent issued Pay Slip to the applicant fixing his pay at Rs. 3425/- as on 23.1.92 and Rs. 3550/- as on 1.1.93. On implementation of the pay revision, the third respondent revised the pay scale of Rs. 2825-4095 to Rs 4200-5300. As per A6 Pay Slip, the applicant's pay was fixed at Rs.4325/-. While so, the second respondent issued A7 order dated 14.6.94 stating that the Pay Slip dated 27.1.94 was issued wrongly and that the applicant is eligible for pay of Rs.3713/- from 1.3.92, Rs. 3825/- from 1.7.92 and Rs. 3938/- from 1.7.93. In pursuance of A7 order, A7(a) Pay Slip was issued on the above terms. Applicant submitted representations stating his

objection to A7 order. The first respondent informed the 3rd respondent that no further extension of deputation can be granted to the applicant beyond 30.6.95, and if replacement of the applicant is not possible, the third respondent may consider his permanent absorption. As per A12, the third respondent ordered absorption of the applicant in the State Service protecting his pay and allowances for his continued appointment as Director, BPE.

3. In the reply statement filed by the first respondent the contentions raised are thus. The applicant after implementation of the revision of pay scale by the third respondent exercised his option to come under the revision scheme with effect from 1.3.92 which was sanctioned by the second respondent who fixed his pay in the revised scale of Rs.4200-5300 with effect from 1.3.92 at Rs.4325/-. A6 Pay Slip was issued to him in the said circumstance despite the fact that the revision rules were applicable only to State Government employees and as such his pay in the cadre was to be fixed under FR 23 with reference to his pay in the parent cadre. Fixation of pay of the applicant at Rs.4325/- in the revised scale with effect from 1.3.92 by the 2nd respondent was not with the concurrence of the first respondent. The serious mistake in fixation of pay did not originally come to the notice of the first respondent. It was noticed only in June 1994 when it was pointed out to the second respondent that the pay of the applicant fixed in the deputation post was in excess. Realising the mistake, the second respondent refixed the applicant's pay under FR 35 and was intimated to him as per A7. The representation submitted by the applicant was considered and it was found that refixation of pay effected as per A7 was quite in order till 4.1.94 as R1(f) was to have application only with effect

from 5.1.94 as the same has only prospective operation. As such, the applicant was entitled to fixation of pay at the minimum of the scale of Rs.4200-5300 with effect from 5.1.94, the date of effect of the said Annexure and accordingly, the second respondent issued subsequent Pay Slips regulating his pay in this regard. The applicant being a Central Government employee is not entitled to get his pay fixed as per revision of pay scales by the State Government.

4. The second respondent contends that since the post of Director, BPE, was not included in Annexure-II of the Pay revision order issued by the third respondent, the applicant's pay was fixed in the revised scale of Rs. 4200-5300 with effect from 1.3.92 in accordance with the rule for fixation and was accordingly fixed at Rs.4325/- with effect from 1.3.92 fixing the next increment date as 1.1.93. On a review of the applicant's case in consultation with the first respondent, and after a detailed examination of the case, his pay was fixed below the minimum scale of Rs. 4200-5300 by applying the provision of FR 35 and was regulated accordingly. Special Pay of Rs.300/- was also authorised and Pay Slip was issued accordingly. On receipt of the representation from the applicant, his case was reexamined and the matter was referred to the first respondent since the first respondent being the appointing authority, the benefit of revision of pay by the State Government cannot be extended to the applicant and his pay in the deputation post is to be regulated with reference to the pay admissible to him in the parent department.

5. The third respondent in the reply statement has stated that as per A4, the applicant was appointed as Director, BPE, with effect from 23.1.92. The appointment of the applicant was made after obtaining the prior approval of the first respondent.

6. The applicant is heavily relying on A3 for granting all the reliefs sought by him. A3 is the order dated 2.12.92 issued from the Office of the first respondent stating that the approval of the first respondent is conveyed for appointment of the applicant as Director, BPE, in the pay scale of Rs. 2825-4095 plus Special Pay of Rs. 300/- from 1.1.92 to 25.4.93 on the existing terms and conditions. According to the applicant, since the first respondent has approved his appointment as Director, BPE in the pay scale of Rs. 2825-4095, A7 order and consequential refixation of his pay is bad in law. It is also the case of the applicant that A7 impugned order and subsequent orders including A9 have been issued by the second respondent who is not the lending authority, that the first respondent was only consulted and the second respondent has not the authority to issue the orders.

7. With regard to the contentions of the applicant that the refixation of his pay by the second respondent was not with the concurrence of the first respondent, the first respondent has stated that the serious mistake in the matter of fixation did not originally come to the notice of the first respondent and when grave error was noted by the first respondent only in the year 1994, it was pointed to the second respondent informing that the pay of the applicant fixed in the deputation post was in excess of the limit, and accordingly, the second respondent has refixed his pay as per A7. The second respondent has also stated that the lending authority, the first respondent, after detailed examination conveyed the first respondent's decision and refixation was done accordingly. There is no reason to disbelieve the versions of the first and second respondent.

8. As far as A3 is concerned, the first respondent has categorically stated that the proposal approved by the first respondent as per A3 was only the approval of the posting and was never approval of any fixation of pay and A3 is not an approval for change of operation under para 8.2 of Deputation Rules. Even otherwise, eligibility under A4 in terms of para 8.2 can only be after the date of the order, namely, 4.12.92. Though the applicant was entitled only to the pay in the parent department, change of option was erroneously acted upon referring the Government order by the second respondent. Para 8.2 of A10 says that:

"The Administrative Ministry / borrowing organisation may grant extension beyond this limit upto one year, after obtaining orders of their Secretary (in the Central Government and Chief Secretary in the State Government). Equivalent level officer in other cases where such extension is considered necessary in public interest."

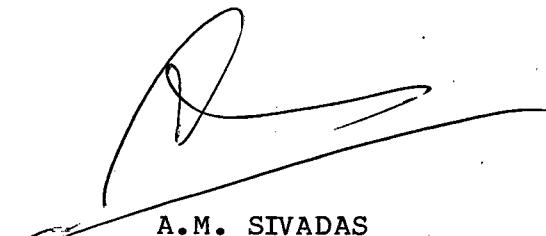
So, the eligibility under A4 comes in terms of para 8.2 of A10 only after 4.12.92. At the time of revision of pay scales by the third respondent State Government, for its employees, the applicant was not an employee of the third respondent State Government, but only an employee of the Central Government. Revision of pay scales by the State Government to its employees is not applicable to the applicant since he was a Central Government employee working on deputation under the State Government having exercised his option to draw the salary in his parent department with deputation allowance. It was also ordered by the lending authority that when deputation was continued for the 5th year, he would not be entitled to any deputation allowance. Fixation of pay of the applicant as per A7 is in order till 4.1.94, as R1(f) which came into effect only from 5.1.94.

9. Just because in A3 the pay scale is stated, it cannot be taken for granted that approval was granted by the lending authority approving the pay scale. As per A1, prior concurrence of the first respondent is to be obtained, if the applicant is to be entrusted with additional charge of any other post or promoted to any ex-cadre post or appointed or transferred to a post/station other than that cited in the office order. So, A3 can only be taken as approval of the lending authority for appointment of the applicant as Director. That being the position, there is no ground to interfere with A7 order and consequential Pay Slips issued. Earlier fixation of pay of the applicant was only under an erroneous assumption. That being so, we do not find any ground to grant any reliefs sought for by the applicant.

10. The Original Application is accordingly dismissed.

No costs.

Dated the 20th day of April , 1999.



A.M. SIVADAS
JUDICIAL MEMBER



R.K. AHOOJA
ADMINISTRATIVE MEMBER

List of Annexures referred to in this Order.

Annexure-A3 : True copy of the Order No.Estt.A VI/Audit/B-42/voi. II/414 dated 2.12.1992 issued by the 1st respondent.

Annexure-A4 : True copy of the Order, G.O.(ms) No.28/92/Plg. dated 4.12.92 issued by the 3rd respondent.

Annexure-A5 : True copy of the Pay Slip issued by the 2nd respondent to the applicant dated 23.4.1993.

Annexure-A6 : True copy of the Pay Slip issued by the 2nd respondent to the applicant dated 27.1.1994.

Annexure A7 : True copy of the Pay Revision order No. GE-2/E/534 issued by the 2nd respondent dated 14.6.1994.

Annexure A7(a) : True copy of the Pay Slip issued by the 2nd respondent dated 14.6.1994.

Annexure A9 : True copy of the Office Memorandum No. GE-2/E/1449 dated 16.11.1995 issued by 2nd respondent.

Annexure A11 : True copy of the Pay Slip issued by the 2nd respondent dated 17.1.1996.

Annexure A11(a) : True copy of the Pay Slip dated 7.2.1996 issued by the 2nd respondent.

Annexure A10 : True copy of the O.M. No.2/29/91-Estt.(Pay II) dated 5.1.1994 issued by the Government of India.

Annexure A12 : True copy of the G.O. (Ms) No.34/95/Plg. dated 30.12.95 issued by the 3rd respondent.

Annexure R1(f) : True copy of the Office Memorandum dated 5.1.94 issued by the Government, Ministry of Personnel, P.G & Pensions.