

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW BOMBAY BENCH~~

NEW BOMBAY BENCH

O.A. No. - 198
T.A. No. 15 of 1987.

DATE OF DECISION 20.11.1987.

Shri P.N.Kausadikar Petitioner

Advocate for the Petitioner(s)

Versus

Union of India & five others Respondent

Shri S.R.Atire (for Mr.P.M.Pradhan) Advocate for the Respondent(s) 1 to 4

CORAM :

The Hon'ble Mr. B.C.Gadgil, Vice-Chairman.

The Hon'ble Mr.

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. Whether it needs to be circulated to other Benches of the Tribunal?

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Transferred Application No.15/87.

Shri Prabhakar Nilkanthrao Kausadikar,
D.C.I.O., Osmanpura,
Aurangabad,
Dist.Aurangabad.

.. Applicant

V/s

1. Union of India,
 2. Director of Intelligence Bureau,
Ministry of Home Affairs,
Govt.of India,
Central Secretariat,
North Block, New Delhi-3.
 3. Deputy Director,
Subsidiary Intelligence Bureau,
Tata Press Bldg.,
414, 3rd floor,
Veer Sawarkar Marg, Prabhadevi,
Bombay - 400 025.
 4. Assistant Director,
Intelligence Bureau,
Tata Press Bldg.,
414, 3rd floor, Veer Sawarkar Marg,
Prabhadevi - Bombay-400 025.
 5. State of Maharashtra.
 6. Director General of Police,
(Formerly Inspector General of Police)
State of Maharashtra,
Bombay.
- .. Respondents.

Coram: Hon'ble Vice-Chairman Shri B.C.Gadgil.

Appearances:

The applicant in person and
Mr.S.R.Atre (for Mr.P.M.Pradhan)
for the Respondents Nos.1 to 4.

ORAL JUDGMENT:

(Per Shri B.C.Gadgil, Vice-Chairman) Dated: 20.11.1987.

The Writ Petition No.548 of 1983 of the file of the Aurangabad Bench of the Bombay High Court is transferred to this Tribunal for decision. Though a number of contentions have been raised in the application, only some of them have been argued before me and I have considered them. Thus

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[Signature]

controversy is a very short one and to understand it, the following facts will be sufficient.

2. The applicant joined Police Service in September, 1949 in the erstwhile Hyderabad State. After the re-organisation of the states from 1.11.1957 he was allotted to the State of Maharashtra in the grade of Police Sub-Inspector. In September, 1959 he went on deputation with the Central Government in the organisation known as Subsidiary Intelligence Bureau. He was taken up as Assistant Central Intelligence Officer Gr.II. In June, 1966 when he was still on deputation, he was promoted to Assistant Central Intelligence Officer Gr.I. In November, 1974 he was promoted on officiating basis to the post of Deputy Central Intelligence Officer.

3. On 1.4.1975, he was permanently absorbed in the Central Government Service in the substantive rank of Assistant Central Intelligence Officer Gr.I. Fixation of his pay on such absorption was governed by the formula which can be termed as 1972 formula. Amongst other things 50% of the deputation allowance was to be taken into account while fixing the pay on absorption. The pay of the applicant was fixed in January, according to this 1972 formula. This formula was subsequently changed in June, 1979. The revised formula is at R-17 on pages 47 and 48 of the Respondents reply. The main distinguishing feature of the revised formula is that instead of 50% of the deputation allowance the entire deputation allowance is required to be taken while fixing the basis pay and other perquisites. There are certain other minor things but they are not relevant. In 1983 fresh orders have been issued in supersession of 1979 formula. However, I am told that it makes no difference so far as the present litigation is concerned. The grievance of the appli-

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cant is that his pay should be refixed on the basis of 1979 formula and that this has not been done though he approached the department on a number of occasions.

4. The respondents resisted the application by filing their reply before this Tribunal, in substance, the contention of the respondents are that the 1979 formula is to be operated prospectively i.e. with respect to those employees who were to be absorbed after the 22nd June, 1979 and that the applicant cannot claim any benefit of the revised formula. It was also contended that Clause IV of the revised formula specifically states that the cases decided in terms of 1972 formula are not to be reopened unless at the time of such fixation of pay under 1972 formula there was an anomaly of the fixation of basic pay being less than that which an employee would have been able to get in his parent department. It was therefore submitted that under 1972 formula, the revised basic pay of the applicant was not to be lower than the basic pay under state rules.

5. We have heard the applicant in person and Mr. S.R.Atire (for Mr.P.M.Pradhan) for the respondents. The applicant relied upon the decision of the Calcutta High Court in the case of Civil Rule No.15245(W) 52(W) of 1980. In that case the applicants who originally belonged to the West Bengal and the Calcutta Police Forces were initially on deputation to the same organisation viz. Central Intelligence Bureau and were later on absorbed on 1.4.1979. The applicants claimed that their basic pay should be fixed in terms of 1979 formula. For making such claim they principally raised two contentions. It was submitted that their case fell under Clause IV of the 1979 formula inasmuch as

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the fixation of pay in terms of 1972 formula has created an anomaly in that the basic pay of such refixation was less than the basic pay which they would have been entitled in their parent department. The second contention of the applicant was that fixing the date 22.6.1979 for implementing the revised formula was arbitrary and that all the absorbees to the organisation to the Subsidiary Intelligence Bureau constituted one and single class and there cannot be an arbitrary classification on the basis of the above mentioned date. The Calcutta High Court decided the said matter on 19th May, 1983. I would like to reproduce the relevant portion of the judgment, it reads as follows:

"Mr. Bhagabati Prasad Banerjee on behalf of the petitioners relied on the decision of the Supreme Court in the case of D.N. Kakara and others versus Union of India A.I.R. 1953 S.C. 130. In this decision the Supreme Court was of the view that all pensioners form one single class and there could not be any discrimination between them inter se as it would be violative of Article 14 of the Constitution.

Mr. Partisob Mukherjee appearing for the respondents states that at one point of time some of his clients were of the view that the case of the petitioners was a meritorious one which could be recommended to the higher authorities and it was so recommended, but the Ministry of Finance has turned down that request.

In my view the ratio of the Supreme Court decision as mentioned above is fully applicable to the facts of the present case. It is clear that these persons who were absorbed from the West Bengal

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and Calcutta Police into the Subsidiary Intelligence Bureau of the Ministry of Home Affairs, Government of India, do form a single class and no discrimination can be allowed to be made among them inter se with regard to pay fixation."

With this reasoning, Calcutta High Court has directed the Subsidiary Intelligence Bureau to fix the pay of the applicants on the basis of the 1979 formula.

6. The applicant contended that in view of this decision it would not be open for the department now to contend that the 1979 formula is not applicable to those persons who have been absorbed before 22nd June, 1979. There appears to be much substance in this contention.

7. Mr. Atre however, submitted that if the 1979 formula is made applicable also to those who have been absorbed before 22nd June, 1979 there is likely to arise an anomaly with respect to a fixation of some of the employees. He contended that there are certain employees whose pay has already been fixed under 1972 formula would suffer if it is revised under 1979 formula. According to him this cannot be the intention of the Government and that therefore the 1979 formula has to be made applicable prospectively. He then contended that the applicant's case does not fall under Clause IV of 1979 formula inasmuch as the basic pay of the applicant as fixed under 1972 formula was not less than the basic pay to which he would have been entitled in the Maharashtra State Service. Mr. Atre then urged that all the employees who have been absorbed in the Subsidiary Intelligence Bureau organisation would not constitute one class particularly regarding the fixation of pay on absorption. According to him the date of absorption and the fixation of pay on that day would be a rational differentiation for

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the purpose of prescribing that the 1979 formula should apply from 22nd June, 1979. According to him the absorption is nothing but joining the service in the new organisation on that date. He argued that a person absorbed in 1972 and another absorbed in 1979 would join the new organisation on different dates and their pay will have to be fixed on the basis of the rules prevailing in 1972 and 1979 respectively. With this reasoning he submitted that if the decision of the Calcutta High Court is taken to its logical conclusion, it may mean that every revision of pay would necessarily be retrospective. An instance or illustration of a person who joined service say in 1972, and his pay is fixed as per the then existing scales. He further says that let us assume that his basic pay is revised and increased in 1979. He then posed a query as to whether an employee who has entered service in 1980 and whose basic emoluments has been fixed on the basis of 1980 rules can claim the fixation of basic pay and increment on the basis of 1985 revised rules and that too from the original date of entering services i.e. 1980. There is some substance in this contention of Mr. Atre. However, in the face of the Judgment of the Calcutta High Court which is binding on the respondents, I do not think that it will be open for the respondents to contend before me that the applicant is not entitled to re-fixation of his pay in terms of 1979 formula. The result therefore is that the application succeeds. The respondents are directed to fix the pay of the applicant on the basis of the 1979 formula * 1975. w.e.f. 1.4.1979. Parties to bear their own costs.

* Corrected as per Review
Petition No. 3/88 Order
dated 23.9.1988.


(B.C. GADGIL)
VICE-CHAIRMAN