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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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~~XXXXXXXXXX~~ BOMBAY BENCH

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T.A. No.

148/86

198

DATE OF DECISION 30.4.92

Shri Kirthivasa Jayaraman Petitioner

Shri D.V. Gangal Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri A.I. Bhatkar for Shri M.I. Sethna. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ms. USHA SAVARA, MEMBER(A)

The Hon'ble Mr. S.F. RAZVI, MEMBER(J)

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? —
4. Whether it needs to be circulated to other Benches of the Tribunal? NO

MGIPRRND-12 CAT/86-3-12-86-15,000

S.F. RAZVI
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(S.F. RAZVI)
MEMBER(J)

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Transfer Application No. 148/86

Shri Kirthivasa Jayaraman ... Applicant.
V/s.
Union of India ... Respondents.

CORAM: Hon'ble Ms. Usha Savara, Member (A)
Hon'ble Shri S.F. Razvi, Member (J)

Appearance

Mr. D.V. Gangal, advocate
for the applicant.

Mr. A.I. Bhatkar for Mr.
M.I. Sethna, advocate
for the respondents.

JUDGEMENT

Dated: 30.4.92

¶ Shri S.F. Razvi, Member (J) ¶

1. The applicant herein was working in a permanent post as Reporter in the Tariff Commission (referred to as Commission for short) in the pay scale of Rs. 650 - 960 when the Government of India took a decision to abolish the Commission with effect from 1.8.1976 as per Annexure 'A'. The applicant was informed that consequent on the winding up of the office of the Commission his deployment/retirement/resignation and other service matters will be governed in accordance with the rules framed by the Government of India for the surplus staff. The applicant was included in the surplus pool and thereafter the applicant was posted to the post of Inspector in the office of the Collector of Central Excise and Customs, Calcutta and accordingly the applicant joined the said post on 14th February 1977. Subsequently on his request, the applicant was transferred back to Bombay from Calcutta consequent upon his undertaking given as per Annexure 'H' dated 19.9.77. The post of Inspector to which the

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applicant was posted at Calcutta, on the winding up of the Commission, carried the pay scale of Rs. 425 - 800 and the applicant's salary thus came to be fixed in the lower scale of Rs. 425 -800 while the scale in which he was drawing his salary as Reporter in the Commission was 650 - 960. The applicant was drawing pay of Rs. 810/- with effect from 1.1.1977 and when he joined the post of Inspector at Calcutta and giving protection of pay, his pay came to be fixed at Rs. 800/- being the maximum in the scale of Rs. 425 - 800 and treating Rs.10/- as personal pay thus totally fixing the pay at Rs. 810/- P.M. with no chance of earning any further increment thereafter after he joined the post at Calcutta on 14.2.1977.

2. The applicant, even since his posting and reported for duty as Inspector at Calcutta, has been agitating and making representation to the respondents for giving him the Reporter's scale of pay of Rs. 650 - 960 in which he had been placed and was drawing his pay as said reporter prior to his posting as Inspector due to the winding up of the Commission, for seniority and other consequential reliefs. He also claimed to be placed in the pay scale of Rs. 700 - 1300 granted to the Reporters in Parliament on the basis of equal pay for equal work. The representation, so made by the applicant having not been considered and finally rejected, the applicant gave a legal notice on 21.6.1983 as per Annexure 'BB' and since it did not bring about the desired result, the applicant approached the High Court of Bombay by filing W.P. No. 1985 of 1983 in September 1983. In the meanwhile the applicant had retired from service in the normal course on 31.3.1983. Consequent upon the establishment of this Tribunal, the W.P. came to be transferred to this Tribunal and has been renumbered as Application No. 148/86.

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3. The applicant, as the reliefs claimed at page 20 and 21 of the application disclose, has sought the following reliefs:

a) to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondents (i) to give the Petitioner the scale of pay of Rs. 700 -1300 while he was a Reporter in the Traff Commission from 1st January 1973 to 31st January 1977, (ii) to allow him to continue to retain that scale of pay while working as Inspector in the Collectorate of Central Excise from 1st February 1977, (iii) to allow him to carry his permanent post of Reporter in the Collectorate of Central Excise, and (iv) to give him all consequential benefits in wages, seniority, promotion, pension and gratuity;

(b) in any event, to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondents (i) to give the Petitioner the Reporter's scale of pay of Rs. 650 - 960 while working in the post of Inspector in the Collectorate of Central Excise, (ii) to retain his Permanent post of Reporter till he is confirmed as Inspector in the Collectorate of Central Excise, and (iii) to get all consequential benefits in wages, seniority, promotion, pension and gratuity;

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- (c) to direct the Respondents to pay the Petitioner the costs of this Petition;
- (d) to grant the Petitioner any other further relief or reliefs as the nature and circumstances of the case may require.

4. The respondents, opposing the application have filed a reply wherein they have sought to justify the impugned action and have denied that the applicant is entitled to any of the reliefs sought.

5. The applicant has also filed a rejoinder, reiterating the grounds already averred in the application and refuting the stand taken by the respondents in their reply.

6. We have heard the learned counsel for the parties and carefully examined the respective contentions urged in the light of the materials on record.

7. The learned counsel appearing for the applicant submitted that he is confining this application to the extent of seeking the relief sought, by way of para 22(b) and that too to the extent of giving the applicant the Reporter's pay scale of Rs. 650 - 960 while he was working in the post of Inspector in the Collectorate of Central Excise till his retirement with consequential benefits. He submitted that he is not pressing his claim for award of pay scale of Rs. 700 - 1300 on the basis of equal pay for equal work and the other reliefs regarding seniority etc. and thus confines his relief to the grant of pay scale of Rs. 650 - 960. He also submitted that the only relief to which he confines this application now is the relief sought in para 22(b)(1) with consequential benefits and does not press for any

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of the other reliefs sought.

8. Confining thus to the claim of the relief sought by way of para 22(b) (1) , the learned counsel for the applicant submitted that since the applicant was drawing pay in the scale of Rs.650 - 960 as permanent Reporter in the erstwhile Commission, he should have been allowed to carry that scale of pay on his redeployment to the Collectorate of Central Excise and Customs at Calcutta as Inspector w.e.f. 14.2.1977 and the fixation of his pay in the lower scale of Rs. 425 -800 is illegal and as such he is entitled to the relief sought by way of para 22(b)(1) with consequential benefits. To support his contention he referred to the relevant instructions and also to the fact that other officials who also similarly came to be redeployed in other departments from the erstwhile Commission were allowed to carry forward the pay scale in which they were drawing their salary prior to such deployment and the winding up of the Commission. We shall advert to these aspects at the proper stage in the course of this order. Suffice will it be for us to say here that the main thrust of the contention urged for the applicant is that his claim for grant of pay scale of Rs. 650- 960 in the subsequent post as Inspector, in the facts and circumstances of this case, is wholly justified and negation of it would amount to injustice.

9. Countering the contentions urged for the applicant, the learned counsel for the respondents in justification of the action of the respondents in rejecting the applicant's claim contended that there being no post of Reporter or any equivalent post in the Collectorate of Central Excise and Customs, the applicant could not have been permitted to carry forward the pay scale of Rs. 650 - 960

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and since the applicant could be filled in the post of Inspector in the said Collectorate which post of Inspector was in the pay scale of Rs. 425 - 800, the applicant was rightly filled in that scale and since the applicant was drawing pay of Rs. 810/- in the scale of Rs. 650 - 960 as Reporter in the Commission, giving pay protection, his pay was fixed in the maximum in the scale of Rs. 425 - 800 at Rs. 800 P.M. plus Rs. 10/- P.M. as personal pay to him. The second leg of argument was that the applicant having given his consent and undertaking as per Annexure 'H' dated 19.9.77, the applicant is estopped from putting forth such a claim. His contention further was that consequent upon the winding up of the Commission w.e.f. 1.8.1976, the applicant has been treated as having retired and his subsequent posting as Inspector w.e.f. 14.2.77 has been treated as service afresh to the post of Inspector with pay scale of Rs. 425 - 800 and giving pay protection his pay was fixed at the maximum in that scale at Rs. 800/- plus Rs. 10/- being treated as pay personal to the applicant.

10. Adverting now to the contention regarding the alleged consent and undertaking given by the applicant, a close reading of Annexures 'G' and 'H' both dated 19.9.77 would show that this undertaking as per Annexure 'H' was given by the applicant in respect of his transfer to Bombay from Calcutta, and not regarding his redeployment as Inspector in the said collectorate at Calcutta from the erstwhile post of permanent Reader in the Commission. It is evident that after the applicant came to be posted and joined duty as Inspector in the said Collectorate at Calcutta from the surplus pool on the winding up

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of the Commission and subsequent to his joining the post as Inspector w.e.f. 14.2.77, the applicant sought for transfer to Bombay from Calcutta for personal reasons and it is only in respect of such transfer to Bombay from Calcutta that he was asked to give consent and undertaking as per Annexure 'G' to which he responded and gave the undertaking as per Annexure 'H'. Now that the applicant has not pressed for his seniority and other claims except regarding the claim for the pay scale of Rs. 650 - 960 as Reporter, thus undertaking given as per Annexure 'H' has lost its significance and cannot be taken as debarring or estopping the applicant from agitating the claim regarding grant of pay scale of Rs. 650 - 960. Barring Annexure 'H' no other material has been shown to us by the respondents to hold that the applicant had given any unconditional or unequivocal consent or undertaking that he was accepting to be placed in the pay scale of Rs. 425 - 800 and would not claim for carrying forward the pay scale of Rs. 625 - 960 in which he was when he came to be posted as Inspector in the said collectorate at Calcutta w.e.f. 14.2.1977. For these reasons we see no merit in this contention urged for the respondents.

11. Adverting now to the other contentions urged, it is seen from a close scrutiny of the materials on record and more particularly the recommendation made as per Annexure 'K', 'O', 'P', 'S' and 'W' by the Collector of Central Excise, Bombay that the applicant had not taken any compensation pension or other retiral benefits

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from the Commission but had accepted another appointment before the expiry of the notice period issued in pursuance of rule 39 (2) (a) of the Pension rules as intimated by the Collector in Annexure 'O' dated 6.9.1979. It is further seen from Annexure 'W' dated 14.10.81 which are the comments made by the Collector of Central Excise Bombay to the Memorial submitted by the applicant as per Annexure 'V' dated 9.9.81 that consequent upon the winding up of the Commission, the services of the applicants were placed at the disposal of the Central (Surplus staff) w.e.f. 31.7.76 afternoon and the applicant was relieved from that cell on 31.1.77 afternoon and after awaiting joining time he reported for duty at the Collectorate at Calcutta on 14.2.1977. In the light of these we find no merit in the contention that the applicant must be deemed to have retired from his earlier service as Reporter in the Commission w.e.f. the afternoon of 31.7.76 when the Commission was wound up and his service w.e.f. 14.2.77 in the collectorate at Calcutta as Inspector is altogether afresh and new service entitling him only to the pay scale of Rs. 425 - 800 and not carrying forward the pay scale of Rs. 650 - 960 in which he was as Reporter and that he was only entitled to the protection of his pay earlier received, in the lower scale of Rs. 425 - 800 as Rs. 800/- plus Rs. 10/- as personal pay per month.

12. The strong ground urged for the respondents is that since there is no post of Reporter in the Collectorate of Central Excise and Customs or in any other department of the Government of India, the applicant came to be posted in the grade of Inspector

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being in the pay scale of Rs. 425 - 800 the applicant had to be granted that pay scale only, subject to the protection of the pay he was drawing as Reporter in the erstwhile Commission. It was contended for the respondents relying on the provisions of the Redeployment of surplus staff rules that when a person is redeployed otherwise than at his own request, in a post carrying a lower scale of pay the surplus employee shall be permitted to carry his previous pay scale along with him to the next post. Relying on the undertaking given by the applicant as per Annexure 'H' dated 19.9.77 it was emphasised that since the posting of the applicant as Inspector in the Collectorate at Calcutta was at his own request, the applicant is not entitled to carry forward his previous pay scale of Rs. 650 - 960. This contention overlooks the basic fact that Annexure 'H' is only the undertaking given by the applicant while seeking his transfer on request from Calcutta to Bombay. As we have earlier pointed out there is nothing placed before us to show that the applicant had given any unequivocal or unconditional undertaking to any effect when he came to be posted as Inspector in the Calcutta Collectorate w.e.f. 14.2.77.

13. A perusal of Annexure 'Q' appended to the letter of the Collector Bombay, dated 1.4.80 on Annexure 'P' would show that some of the other erstwhile staff of the Commission who were Redeployed to the other departments were allowed to carry forward the pay scale in which they were placed in the erstwhile Commission. The argument that since those office staff had same or equivalent post in the other departments to which they had been redeployed in the other department, they were allowed and since there

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is no post or equivalent post of Reporter the applicant cannot be allowed that benefit does not appeal to us. It would be unjust to deny such benefit to the applicant when the redeployment is to a post carrying a lower pay scale and where his redeployment to that post is not despite availability of a post in a matching or a higher pay scale and at his own request.

14. The learned counsel for the applicant drew our attention to the passage found in para 7 of the ruling rendered in the case of B.S. Gupta and another Vs Union of India reported in 1(1988) ATLT(HC) 103. Para 7 of the judgement in that case refers to the decision taken by the Ministry of Home Affairs in such matters and reads thus:

"The Ministry of Home Affairs took a decision and communicated in the memorandum dated March 28, 1967. The decision was that the surplus staff was allowed to carry with them the pay scale as personal to them in case the Cell sponsors the surplus staff against lower posts but that surplus staff could not take the benefit of past service towards seniority in the recipient organisation and that they would be treated as fresh entrants for that purpose."

15. On consideration of the respective contention urged and ⁱⁿ to the light of the materials on record we hold that the applicant is entitled to the relief canvassed before us. The applicant should have been permitted to carry the pay scale of Rs. 650 - 960 in which he was placed as Reader when he came to be posted as Inspector in the Collecorate of Central Excise and Customs at Calcutta. The denial to extend such benefit to him is in our opinion not warranted and would amount to discremenation besides the same being not in conformity with the relevant rules. We accordingly allow this

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application in part. We direct the respondents to re-fix the pay of the applicant in the scale of Rs. 650 - 960 w.e.f. 14.2.1977 when the applicant joined the post of Inspector at Calcutta. His pay should be worked out on that basis upto the date of his retirement from service on 31.3.1983. The respondents shall pay to the applicant the difference in emoluments worked out on that basis from 14.2.77 to 31.3.83 and also re-fix his pension and other retiral benefits on that basis and pay the difference. We reject the other reliefs sought for by the applicant as not pressed. Respondents to comply with the directions aforesaid within a period of four months from the date of receipt of a copy of this order. No costs.

Syafar
30/4/92
(S.F. RAZVI)
MEMBER (J)

U. Savara
30.4.92
(USHA SAVARA)
MEMBER (A)

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