

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614

O.A. NO. 322/86

Shri V T Gujar
457 Raviwar Peth
Pune 411002

Applicant

V/s.

Commandant
Central Ordnance Depot
Dehu Road

Respondent

Coram : Hon'ble Member(A) J G Rajadhyaksha
Hon'ble Member(J) M B Mujumdar

Appearance:

Shri D V Gangal
Advocate
as amicus curiae
for the applicant

JUDGMENT

(PER: M B Mujumdar, Member[J])

DATED : 15.4.1988

The applicant Shri V T Gujar has filed this application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant was employed on 1.11.1943 as a Clerical Leading Hand at the Central Ordnance Depot, Dehu, and was paid Rs. 2 per day. During the period from 1.7.1945 to 30.6.1946 he was paid Rs.4.75 per day. It was raised to Rs. 5 per day from 1.7.1946. Unified pay scales were introduced in 1947. There was no rule for granting increments. He elected the CDS (RP) rules 1947 with effect from 1.1.1948. This option would be effective from 1.6.1946 for the applicant and his pay on that date would be relevant, and therefore he was given Grade B (LDC). According to him his pay in the unified scale should have been fixed in Grade A in the pay scale of Rs.100-200 from 1.7.1946. His representations against fixing his grade below the Grade A were rejected. Hence in 1973, when he was still in service he filed Regular Civil Suit No. 138 of 1973 in the Court of Civil Judge, Senior Division, Pune, for a declaration that the defendant had given him discriminatory treatment in the matter of refixation of his pay and scale in

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the unified pay scale as against those who were junior to him, by not putting him in the Grade-A of the unified scale. On 4.8.1973 the learned Civil Judge, Senior Division, Pune, decreed the suit and directed the respondent to refix his pay in the unified scale of pay of Rs.100-200 by placing him in the Grade A since 1.7.1946, with consequential reliefs including arrears and consideration for promotion, as per rules. The respondent preferred civil appeal no. 799 of 1975 in the District Court, Pune. The Learned Extra Joint District Judge allowed the appeal and set aside the decree passed by the Learned Civil Judge and dismissed the suit with costs.

3. The applicant preferred Second Appeal No.60 of 1977 in the High Court of Judicature at Bombay. After hearing both the sides, the High Court found that the applicant had no case on merits and the appellate court was right in dismissing the suit. The High Court, in the result, dismissed the second appeal with no order as to costs. However, in para 5 of the judgment the High Court observed as follows:

"However, it does appear that the appellant plaintiff is failing, firstly, because of his option, and secondly, because of paucity of evidence with regard to the position prior to June 1945 in granting of the increments. There are ample powers with the Executive Government to meet justice in such cases and not to stand on technicalities. In view of this, I am inclined to observe that this is a fit case where the respondent-Government may make some ex gratia order so as to relieve the appellant-plaintiff of the hardship which he is suffering due to the technicalities and may be due to his initial mistake. Such an order can well be restricted to the pensionary benefit in view of the fact that the appellant plaintiff has retired from service. Mr. Dalvi submitted that the appellant plaintiff would be well satisfied if his notional

fixation is made without actual payment and he is given the pensionary benefit on that basis. That appears to be quite fair."

4. On 18.10.1984, the applicant made a representation to the respondent for giving relief to him as per the observations of the High Court. He had quoted the relevant observations from the judgment of the High Court. He had also attached a copy of the judgment of the High Court. But the respondents by their letter dated 5.12.1984 informed the applicant that as his second appeal was dismissed by the High Court, his representation dated 18.10.1984 for grant of ex gratia payment cannot be accepted.

5. In the meanwhile he retired on 1.10.1982 as Office Superintendent. On 6.10.1986 he has filed the present application under section 19 of the Administrative Tribunals Act 1985 for grant of ex gratia payment and pensionary benefits according to the pay as refixed for ex gratia payment, i.e., in short, for enforcing the above quoted observations of the High Court.

6. Before the application was admitted the respondents have filed their say opposing the admission. They have not filed any reply after the application was admitted. They have pointed out in their say that after the decision of the High Court, the respondent had written a letter dated 12.1.1985 to the Director of Ordnance Services, Army Head Quarters, New Delhi. But the Director General of Ordnance Services by his letter dated 22.3.1985 pointed out that no further action can be taken in the matter.

7. We have heard Mr. D V Gangal, who was appointed as *amicus curiae* by this Tribunal on behalf of the applicant and Mr. J D Desai (for Mr. M I Sethna) for the respondent.

8. It is clear that though the suit of the applicant was decreed by the learned Civil Judge it was dismissed

by the learned Extra Joint District Judge, Pune, after considering all the points raised before him. The High Court agreed with the findings of the learned Extra Joint District Judge. The judgment of the Extra Joint District Judge shows that the applicant was appointed as Extra Temporary Establishment Clerk. Such clerks were allowed the option to move on to the unified scale of pay either from 1.9.1944 or from 1.6.1946. The option once exercised was to become final. On the basis of evidence, the Extra Joint District Judge as well as the High Court found that the applicant was drawing only Rs.4.75 per day on 1.6.1946 and hence the monthly rate of pay was rightly fixed at Rs.118.75 i.e., below Rs.120. It was on the basis of 25 days' earnings. Thus the High Court found that the application of the scale and placement of the applicant in Grade B had been properly done. Hence agreeing with the learned Extra Joint District Judge, the High Court dismissed the suit.

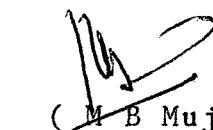
9. Still the High Court has made certain observations in para 5 of its judgment for passing some ex gratia orders. According to the High Court such order could be restricted to the pensionary benefits as the applicant had retired by that time. As already pointed out the respondent had moved the higher authorities for taking necessary action. In para 6 of that letter they pointed out that if any special treatment was accorded to the applicant that would cause wide repercussions on similarly situated individuals and the Government would not be able to resist the demands for similar treatment. In view of this position, the Director General of Ordnance Services found that no further action was called for.

10. It is clear that the High Court did not find any merit in the applicant's case. However, some observations and recommendations were made by the High Court for relieving the applicant of the hardships. These observations were not mandatory in nature. If the High

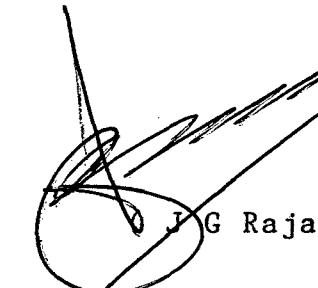


Court so wanted it could have given some directions to the respondent. But as the applicant has no case on merits, it has not done so. After considering the recommendations, if the authorities felt that they cannot be accepted, they cannot be blamed for it. A distinction has to be made between mandatory directions and recommendations. The former are enforceable, while the latter are not. We do not think that not carrying out recommendations would give a fresh cause of action to the persons like the applicant in this case.

11. We, therefore, find that this application is devoid of any merit and hence dismiss it with no order as to costs.



(M B Mujumdar)
Member (J)



(J G Rajadhyaksha)
Member (A)