

(22)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 281/89

Transfer Application No.

Date of Decision

19/4/89

A.R.Momin

Petitioner/s

Shri Y.R.Singh

Advocate for
the Petitioners

Versus

National Sample Survey Organisation, Pune & ors.

Respondent/s

Shri S.S.Karkera for Shri P.M.Pradhan


Advocate for
the Respondents

CORAM :

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. P.P.Srivastava, Member (A)

- (1) To be referred to the Reporter or not ? No
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? No


(P.P.SRIVASTAVA)

MEMBER (A)


(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

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QA.NO. 281/89

Promoted

Dated this the 5th day of September, 1997

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

Abdul Razzaq Abdul Sattar Momin
Asstt. Superintendent,
National Sample Survey Organisation
(Field Operations Division),
26-A, Annaji Sunder Road,
Charai, Thane - 400 601.

By Advocate Shri Y.R.Singh

!!! Applicant

V/S.

1. The Assistant Director
Maharashtra (South) Region,
National Sample Survey Organisation
(Field Operation Division),
Pune-411 037.
2. The Assistant Director,
Maharashtra (West) Region,
National Sample Survey Organisation
(Field Operations Division),
Bombay- 400 001.
3. The Director
National Sample Survey Organisation
(Field Operations Division,
Ministry of Planning,
New Delhi-110 066.

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan, C.G.S.C.

... Respondents

ORDER

(Per: Shri P.P.Srivastava, Member (A))

The applicant was working as Assistant Superintendent in the National Sample Survey Organisation, Thane under Ministry of Planning. In this QA. the applicant has claimed the main relief concerning crossing of his E.B. from 1.4.1976 in the pay scale


[Signature]

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of Rs.470-750 at the stage of Rs.530/- ^{from 1.4.76} and also at the stage of Rs.650/- from 1.4.1981. The applicant has also claimed the leave period from 1.5.1980 to 12.9.1980 and from 1.10.1981 to 2.5.1982 as extra ordinary leave and to be counted for increment.

2. The counsel for the applicant submits that the only relief the applicant is pressing is crossing of the E.B. at the stage of Rs.530/- ^{from 1.4.76} in the scale of Rs.470-750. Therefore, only this relief would be considered as other reliefs are not being pressed by the applicant.

3. The applicant was working in the pay scale of Rs.425-15-500-EB-15-560-20-700. He was permitted to cross the Efficiency Bar from 1.4.1974 in terms of the administration's letter dated 4.9.1974 placed at page 32. The applicant along with others was granted the revised pay scale ^{from 1.4.73} as a result of Arbitration Award which was Rs.470-15-530-EB-20-650-EB-25-750. The applicant has submitted that since he had already crossed the Efficiency Bar provided in the old pay scale at the stage of Rs.500/-, he should not be required to cross the Efficiency Bar again in the new pay scale and should be treated as automatically allowed to cross the E.B. For this purpose, the applicant has placed his reliance on F.R.31(2) and F.R.22-C as it then existed in the year 1976 before the amendment to F.R.22-C




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4. Respondents have submitted that the case of the applicant would not ^{be} ^{ed} cover either by F.R.31(2) or F.R.22-C as the above two rules deal with fixation of pay on promotion and the case of the applicant is not that of promotion from one stage to another stage but replacement of pay ^{scale} by Arbitration Award. Therefore the provisions below F.R.31 under Government of India's orders in Item No. 3 automatical fixation on the refixation under F.R.31(2) is not applicable in the case of the applicant.

5. After considering the arguments of both the sides, we are of the view that the case of the applicant is not covered by the provisions which the applicant has quoted and the automatic crossing of the E.B. as claimed by the applicant on the basis of F.R.31(2) and F.R.22-C cannot be granted.

6. It is also seen that the applicant was permitted to cross the E.B. ^{in new scale} from 1.4.1977 instead of from 1.4.1976. This order has been passed by the administration on 18.7.1977 placed at Exhibit-'H' page 35. The applicant has not protested or filed any representation against this order upto 1983. On 3.12.1983 the applicant has represented that he should be allowed to cross the Efficiency Bar at the stage of Rs.530/- from 1.4.1976 and his pay should be raised from Rs.530/- to Rs.550/- from that date.



7. The respondent administration had issued a letter dated 24.10.1983 which is placed at Ex.-'I' by which the pay of the applicant had been refixed. It is seen that the applicant's pay was refixed on the basis of his crossing the Efficiency Bar in April, 1977 instead of April, 1976 and as a result some recoveries have been shown in the above letter dated 24.10.1983. This letter shows the recovery which is being made as the pay of the applicant was wrongly fixed by treating him as crossing the Efficiency Bar from 1.4.1976. It is seen that the applicant has not explained why he has waited upto 1989 in filing the OA. against the order of Efficiency Bar which is dated 18.7.1977 and the recovery which is as a consequence of later order which is dated 24.10.1983.

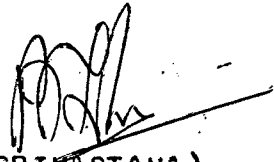
8. Learned counsel for the respondents has brought the issue of jurisdiction of the Tribunal in cases where the cause of action arose before 1.11.1982 by saying that the order of 18.7.1977 cannot be challenged in the Tribunal for want of jurisdiction. However, since the OA. has been admitted and the effect of the order of July, 1977 in monetary terms was issued only in 1983, we are permitting the OA. to be heard before us as the applicant has challenged the order dated 24.10.1983 by which the recovery has been ordered against him. However, we find that there is no satisfactory explanation of delay from 1983 to 1989 from the applicant. is not explained



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by the applicant as to why he has not approached the Tribunal within the stipulated time under the Administrative Tribunals Act after 24.10.1983. We are, therefore, of the opinion that the applicant has not explained the delay between the cause of action which is dated 24.10.1983 and the filing of the OA. which is 9.3.1989. The application, therefore, also cannot be entertained as the limitation would apply and on that ground also the application is liable to be dismissed.

9. We are, therefore, of the view that the application would be liable to be dismissed both on the ground of limitation as well as on merits and is accordingly so dismissed. There will be no orders as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.