

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1/96

13.4.99
Date of Decision:

Subhash Bains

Applicant.

Shri P.A.Prabhakaran

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.G.Rege

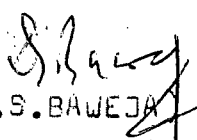
Advocate for
Respondent(s)


CORAM:

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

Hon'ble Shri. D.S.Baweja, Member (A)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.1/96

this the 13th day of April 1999.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

Subhash Bains,
A-202, New Income Tax Colony,
Dindoshi Bus Depot, Film City Road,
Goregaon (East), Mumbai.

By Advocate Shri P.A.Prabhakaran ... Applicant
V/S.

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Chairman,
Central Board of Direct Taxes,
through the Secretary,
Central Board of Direct Taxes,
New Delhi.
3. The Chief Commissioner of Income
Tax, Bombay, Aayakar Bhavan,
M.K.Road, Mumbai.

By Advocate Shri V.G.Rege ... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A))

The applicant was initially appointed as Asstt. Director in Indian Economic Service on 21.8.1984. He was confirmed in Indian Economic Service w.e.f. 18.5.1990. The applicant with proper permission appeared in Civil Service (Main) Examination 1989 and was successful. He was selected in Indian Revenue Service ^(IRS). The applicant submitted technical resignation on 4.6.1991 which was accepted w.e.f. 12.9.1991. The applicant joined Indian Revenue Service as a Probationer on 16.9.1991. Before joining

the Indian Revenue Service, the applicant was promoted in Grade III in the scale of Rs.3000-4500 in Indian Economic Service on 4.6.1990 and his pay was fixed at Rs.3000/-. He earned the increment on 1.6.1991 and therefore ^{when he} joined the Indian Revenue Service, the applicant was drawing a pay of Rs.3,100/- p.m. The pay of the applicant on joining Indian Revenue Service was fixed at Rs.2725/-p.m. The case of the applicant is that since he was holding a lien on the post of officer in Grade III in Indian Economic Service and the same was not suspended, therefore the applicant was entitled to draw a presumptive pay of the permanent post under F.R. 22-B(3)(a). The applicant made a representation with regard to his pay fixation bringing out that probationers who have joined along with the applicant from ^{Sectors} Public Undertakings and Nationalised banks were given pay protection but the applicant has been discriminated by not giving the pay protection to him. The representation of the applicant was rejected as per order dated 14.9.1995. Feeling aggrieved by the same, the present OA. has been filed on 27.11.1995.

2. The respondents have contested the claim of the applicant through the written statement. At the outset, the respondents have taken a plea that the application is barred by limitation. The respondents submit that the applicant was informed about his fixation of pay as per order dated 13.7.1993 and the letter dated 14.9.1995 which has been impugned was in reference to his second representation. The respondents contend that with reference to letter

was advised that he has already got the protection of pay. Since the protection of pay had not correctly been allowed to the applicant, a representation was made and his representation was rejected as per order dated 14.9.1995. In view of this, the cause of action arose only on 14.9.1995 and therefore in the opinion of the applicant, the present application is well within limitation period. The applicant further submits that as per the language of the Circular dated 7.8.1989, it is clear that Government intended to extend pay protection as granted to the Government servants who are appointed through U.P.S.C. in other services to those candidates who are recruited through public sector undertakings etc. Therefore the contention of the respondents that the case of the applicant is distinct from the cited cases is not tenable.

4. Heard the arguments of Shri P.A.Prabhakaran, learned counsel for the applicant and Shri V.G.Rege, learned counsel for the respondents. The material brought on record has also been carefully gone into.

5. Before going into merits, the technical objection raised by the respondents with regard to the application being barred by limitation shall be considered. The respondents have submitted that pay fixation of the applicant was done as per the order dated 13.7.1993. Thereafter, he was ^{also} informed about his pay fixation as per letter dated 13.4.1994. The respondents have further stated that the impugned order dated 14.9.1995 is only a reply to his second representation and therefore the cause of action arose with letter dated 13.7.1993 and this should be the

reference point for determination of limitation for
the application filed on 27.11.1995. The applicant,
on the other hand, has contested the submission
of the respondents in the rejoinder reply stating
that after knowing about his pay fixation, he
represented on 10.4.1995 and his representation
was replied by the impugned order dated 14.9.1995.
Keeping this in view, the applicant contends that
his representation has only been rejected as per
order dated 14.9.1995 and therefore the OA. filed
on 27.11.1995 is within limitation. After careful
consideration of the facts as brought out by the
either party, we are not inclined to accept the
contention of the applicant that cause of action
arose with reply to his representation dated 10.4.1995
by letter dated 14.9.1995. The pay of the applicant
was fixed as per the order dated 13.7.1993 as brought
out in Para 4.9 of the OA. and copy of this order
has also been brought on record. Therefore, the
applicant was aware of his pay fixation at Rs.2,725/-
p.m. and if the applicant had been aggrieved by this
order, he could have either represented the matter
or sought legal remedy. It is noted that he made
a representation only on 10.4.1995. Keeping these
facts in view, we are inclined to accept the contention
of the respondents that cause of action arose with the
issue of the order dated 13.7.1993. However, we are
of the considered view that contention of the respondents
that the present application deserves to be dismissed
being barred by limitation is not sustainable. The
issue involved is with regard to fixation of pay and
therefore it involves ^a recurring cause of action as held



by the Hon'ble Supreme Court in the case of M.R.Gupta vs. Union of India & Ors., 1995(5) SCC 628. Keeping in view what is held by Hon'ble Supreme Court in this judgement, we do not find any merit in the objection of the respondents and therefore the matter is being considered on merits.

6. From the facts stated earlier, it is noted that applicant while working as Deputy Director, Planning Commission in Indian Economic Service in the scale of Rs.3,000-4,500 and drawing the pay of Rs.3,100/- was selected in Indian Revenue Service. He was appointed as a Probationer from 16.9.1991 in the scale of Rs.2,200-4,000. The pay of the applicant as per the respondents has been fixed at Rs.2,725/- w.e.f. 16.9.1991 in the scale of Rs.2200-4000. The claim of the applicant is that he is entitled for pay fixation at Rs.3200/- p.m. from 16.9.1991 under F.R.22-B. Keeping these rival contentions in view, the short question which requires determination is whether the claim of the applicant of fixation of pay at Rs.3200/- under F.R. 22-B is tenable.

7. Before going into merits of the reliefs claimed by the applicant, it will be appropriate here to reproduce the F.R. 22-B.

"F.R. 22-B.(1) Notwithstanding anything contained in these Rules, the following provisions shall govern the pay of a Government servant who is appointed as a probationer in another service or cadre, and subsequently confirmed in that service or cadre —

(a) during the period of probation he shall draw pay at the minimum of the time-scale or at the probationary stages of the time-scale of the service or post, as the case may be:

Provided that if the presumptive pay of

the permanent post on which he holds a lien or would hold a lien had his lien not been suspended, should at any time be greater than the pay fixed under this clause, he shall draw the presumptive pay of the permanent post;

(b) on confirmation in the service or post after the expiry of the period of probation, the pay of the Government servant shall be fixed in the time-scale of the service or post in accordance with the provisions of Rule 22 or Rule 22-C, as the case may be :

Provided that the pay of Government servant shall not be so fixed under Rule 22 or Rule 22-C with reference to the pay that he would have drawn in the previous post which he was holding in a temporary capacity, but he shall continue to draw the pay in the time-scale of the service or post.

(2) The provisions contained in sub-rule (1) shall apply mutatis mutandis to cases of Government servants appointed on probation with definite conditions against temporary posts in another service or cadre where recruitment to permanent posts of such service or cadre is made as probationers, except that in such cases the fixation of pay in the manner indicated in clause (b) of sub-rule(1) shall be done under Rule 31 of these Rules immediately on the expiry of the period of probation and on regular officiating appointment to a post, either permanent or temporary, in the service or cadre.

(3) Notwithstanding anything contained in these Rules, a Government servant appointed as an apprentice in another service or cadre shall draw —

- (a) During the period of apprenticeship, the stipend or pay prescribed for such period provided that if the presumptive pay of the permanent post, other than a tenure post, on which he holds a lien or would hold a lien had his lien not been suspended, should at any time be greater than the stipend or pay fixed under this clause, he shall draw the presumptive pay of the permanent post.
- (b) on satisfactory completion of the apprenticeship and regular appointment to a post in the service or cadre, the pay as fixed in the time-scale of the service or post under Rule 22 or 22-C or 31, as the case may be, of these Rules.

①

Provided that the pay of the Government servant shall not be so fixed under Rule 22 or Rule 22-C with reference to the pay that he would have drawn in the previous post which he was holding in a temporary capacity, but he shall continue to draw the pay in the time-scale of the service or post."

On going through Rule 22-B, it would be seen that it covers two categories of appointment on probation. One is covered by F.R.22-B(1) and another is covered by F.R.22-B(2). Neither the applicant nor the respondents have brought out under what category the case of the applicant falls. If the Government servant is appointed as Probationer with certain conditions, then the case of Government servant for fixation of pay is covered by F.R.22-B(2) otherwise under F.R.22-B(1). In this connection, Audit instructions in Para 3(1) Chapter II Section I of Manual of Audit Instructions under Rule 9 concerning the status of Probationers under various situations are to be kept in view. The applicant in Para 5(iii) in QA. has averred that he was entitled to draw presumptive pay of permanent post under F.R.22-B(3). On reference to this rule, it is noted that it is applicable on appointment as Apprentice and does not apply to the case of the applicant as he was appointed as Probationer. In the present case, it is understood from the averments of the applicant that he was required to submit his technical resignation from Indian Economic Service before permitted to join IRS as Probationer. From Annexure- 'A-2', it is clear that the applicant has been given the benefit of counting of his past service as well as carry forward of leave under Rule 26(2) of Central Civil Services(Pension) Rules, 1972. In such a event, it is clear that the case of the applicant for pay fixation would be covered under Rule 26(2) of CCS(Pension) Rules, 1972, and not under F.R.22-B as made out by the applicant. F.R.22 read with Rule 26(2) of CCS (Pension) Rules will be relevant. For giving the benefit of

(C)

of the contention made by the learned counsel for the respondents was that the claim of the applicant for fixation of pay under Rule 22-B is not maintainable in view of the Govt. of India orders dated 6.11.1965 below F.R.22-B. The learned counsel for the applicant strongly refuted this contention and stated that executive instructions cannot curtail the substantive provisions of the rules and therefore the provisions of F.R.22-B will be over-riding. Keeping in view what is held above, the contention made by either side is not material and therefore the same is not being gone into on merits.

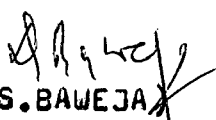
8. The applicant has also made a plea of discrimination stating that other probationers who have been appointed ^{from} the Public Sector Undertakings and Nationalised Banks have been allowed protection of pay while the applicant has been discriminated. The applicant has given a few names but no other details with regard to the scale in which they were initially working has been furnished. It is also not brought out whether the appointment as a probationer involved the appointment to a post involving higher responsibilities than of the post they were holding before being promoted. The respondents have controverted the submission of the applicant by stating that the probationers referred to by the applicant in Para 5 (iv) ^{were} allowed fixation of pay in terms of Government of India, Ministry of Personnel & Public Grievances O.M. dated 12.1.1988. We have gone through these instructions and find that these

fixation of pay for the Government servants who submit technical resignation for joining another post under Rule 26 (2) of CCS (Pension) Rules, the fixation of pay is covered under F.R. 22. On going through Govt. of India instructions issued under F.R. 22, it is noted that the Govt. of India orders at Sl.No. 4^{dtd.17.6.65}/cover the case of fixation of pay under the submission of resignation as a technical formality. On going through these instructions, it is noted that under such a situation, the fixation of pay in the new post treating resignation as a technical formality is to be done under F.R. 27. On referring to F.R.27, it is noted that this rule provides that competent authority may grant premature increments to the Government servant on a time scale of pay. In the present case, it is noted that the applicant has been given a fixation of pay of Rs.2725/- in the scale of Rs.2200-4000. The applicant joined Indian Economic Service on 21.8.1984 and was appointed as a Probationer in IRS on 16.9.1991. By fixing the pay at Rs.2725/-, it is noted that the respondents have allowed benefit of 7 years of ^{his previous} service by allowing 7 increments in the time scale. Keeping in view these provisions of the rules, we are of the considered opinion that fixation of pay as allowed to the applicant is in accordance ^{with relevant} / rules. The contention of the applicant that he is governed by F.R.22-B is not tenable keeping in view the fact that the applicant had joined IRS after putting in technical resignation and therefore he is to be governed by provisions of Rule 26⁽²⁾/of CCS (Pension) Rules. During the course of arguments, one

instruction have been issued under F.R.22.

As discussed earlier, the case of the applicant who has joined IRS after submitted technical resignation under Rule 26(2) of CCS(Pension) Rules is to be governed by the relevant rules and therefore his case for pay protection and fixation is to be dealt with accordingly rule and no comparison could be drawn with regard to the appointments of the candidates from public sector undertakings and nationalised banks etc. who are covered by specific orders. We, therefore, do not find that there is any case of discrimination as the applicant has been given benefit of pay protection by counting of his previous service as permissible as per the extant rules applicable to his case.

9. In the result of the above, we are unable to persuade ourselves to find any ^{merit in the} claim in the application. The OA. therefore deserves to be dismissed and is accordingly dismissed. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN
13-4-99

mrj.