

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 790/96

Date of Decision: 7/4/98

B.R.Daschoudhary

Applicant.

Shri R.P.Saxena

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.K.Shetty

Advocate for
Respondent(s)

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
(R.G.VAIDYANATHA)

VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 790/96.

Dated : The 7 day of April, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

B. R. Daschowdhary,
A.G.M. (Admn.),
Canteen Stores Department,
Head Office,
Bombay.

.. Applicant

(By Advocate Shri R.P. Saxena)

VERSUS

1. Union Of India through
The Secretary,
Ministry of Defence,
New Delhi.

2. The Secretary,
Board of Control,
Canteen Service,
Block L-1, Room No. 16,
Church Road,
New Delhi - 110 001.

.. Respondents.

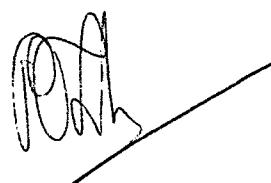
3. The General Manager,
Canteen Stores Department,
Adelphi, 119 M.K. Road,
Bombay - 400 020.

(By Advocate Shri R. K. Shetty)

: O R D E R :

¶ PER.: SHRI P. P. SRIVASTAVA, MEMBER (A) ¶

The applicant was appointed as a Manager,
Grade-I, Group - A Gazetted post, in the Canteen Stores
Department of the Ministry of Defence in the pay scale
of Rs. 2200-4000 through U.P.S.C. in 1982. The
applicant was due for promotion as Assistant General
Manager in the scale of Rs. 3000-4500 after putting in



...2

5 years of service in the grade of Manager Grade-I. Thus, the applicant became due for regular promotion in December 1987. The applicant was promoted on adhoc basis to the post of Assistant General Manager in the scale of Rs. 3000-4500 w.e.f. 26.06.1987 for a period of six months. Thereafter, the applicant was promoted from time to time after giving a technical break after the period of six months. Thus, the applicant continued to work in the post of Assistant General Manager on adhoc basis with technical breaks from 1987 onwards to 1994, details of which are given by the applicant in the O.A. The applicant was regularly promoted to the post of Assistant General Manager w.e.f. 23.09.1993. The applicant's pay was fixed after adding the increment for every span of one year of adhoc services. The pay fixation was done by the department vide their letter dated 23.06.1994 placed at exhibit 'C'. The applicant has further stated that on 10.01.1996 the respondents-administration issued a letter mentioning that the adhoc services cannot be considered for the purpose of fixation and directed that the recovery of the additional increment already paid on account of officiating/adhoc services. The applicant made a representation on 15.02.1996 against this order. However, the respondents-administration has not considered the representation properly and has issued pay fixation order by deleting the increments granted for adhoc services. The new fixation dated 9.4.1996 is placed at Annexure-'A'. The letter dated 10.1.1996 reads as under :-

"As per the ruling given by the audit authorities vide their letter no. AT/11/2412/2111 dated 26.06.1983, officiating/adhoc services rendered were taken into consideration for the purpose of pay fixation on regular promotion and pay fixed by adding additional increment for every spell of one year of adhoc service rendered.

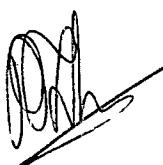
2. It has now been clarified by CDA (CSD) that, such officiating/adhoc services are not to be considered for the purpose of pay fixation and further directed to recover the additional increment already paid on account of officiating/adhoc.

3. Accordingly, all pay fixation done early by counting the officiating/adhoc services, will be reviewed/refixed and recoveries will be effected wherever necessary."

Aggrieved by this letter and pay fixation according to this letter, the applicant has approached this Tribunal and has sought the relief that the letter dated 10.01.1996 may be quashed and the pay fixation done vide their order dated 09.04.1996 be also quashed. The applicant has further prayed that the pay fixation done by the respondents vide order dated 23.06.1994 placed at exhibit 'C' be upheld.

2. The respondents have filed their reply and have opposed the O.A.

3. We have heard both the counsels and perused the records. The O.A. was previously heard by a Bench consisting of a Single Member and the O.A. was

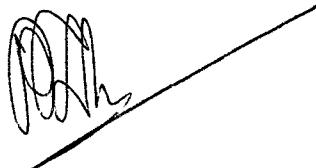


disposed by an order of this Tribunal dated 09.04.1996 by which the O.A. was allowed. The respondents, thereafter preferred a writ petition in the High Court of Bombay. The High Court disposed of the Writ Petition No. 3538 of 1997 by their order dated 08.09.1997. The High Court disposed of the writ petition on the short question that since the impugned order has been passed by one Member who is not a Judicial Member, the said order is set aside and the matter is remanded back to the Tribunal for deciding the matter afresh by a Bench of which atleast one member is Judicial Member.

4. In pursuance of this order of the Hon'ble High Court, the matter has been placed for hearing before the Tribunal and the matter was heard on 18.03.1998. On that day, the respondents- administration had filed a supplementary written statement and some documents which were taken on record vide Tribunal's order in M.P. No. 182/98 dated 18.03.1990.

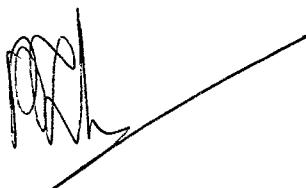
5. The question to be decided in this O.A. is, whether the adhoc services rendered by the applicant would count for the purpose of pay fixation when the applicant is promoted on regular basis in the same grade in which he was working on adhoc basis.

6. The question concerning counting of adhoc services for the purpose of pay fixation is no longer controversial and it has been settled by series of judgement of this Tribunal and the Hon'ble Supreme Court.



Moreover, in terms of rules also, it is clearly laid down that the adhoc service is required to be counted for the purpose of grant of increment. In the supplementary written statement submitted by the respondents, in para 3 and 4 they have accepted the position that the applicant is entitled to increments for 6 years and 3 months in all and the break of 24 days while officiating is required to be excluded for the purpose of fixing the next increment in terms of clause (a) of F.R. 26. The only question which the respondents-administration have raised is concerning fixation of pay on the basis of the rules as per F.R. 22. In para 4 of the supplementary written statement the respondents have mentioned as under :-

"The respondents respectfully submit that the error committed in fixing the applicant at Rs. 3,875/- in the scale of pay of Rs. 3000-4500 in the post of Assistant General Manager was on account of their adding an increment of Rs. 100/- as per FR (22). They further erroneously granted six increments of Rs. 100/-, Rs. 100/-, Rs. 100/-, Rs. 125/-, Rs. 125/- and Rs. 125/- in the scale of pay of Rs. 3000-4500 in addition to the six increments of Rs. 100/- each in the substantial scale of pay of Rs. 2200-4000, of the applicant thus granting to the applicant Rs. 250/- more than what is due to him under the rules. In other words, the applicant should have been fixed at Rs. 3,625/- as on 23.09.1993 instead of fixing him at Rs. 3,875/- in the scale of Rs. 3000-4500 in the post of Assistant General Manager. The respondents sincerely regret this erroneous fixation of pay of the applicant."



Thus, it can be seen that the respondent administration has accepted the position that adhoc service excluding the short break is required to be counted for the purpose of fixation but the fixation is to be guided in terms of the rules on the subject and clarification issued by the DOP vide their letter dated 4.12.1996 placed at Annexure-'R-2', relevant portion of which reads as under :-

" The benefits of broken period of officiation is admissible only if, on repromotion, either adhoc or regular, the pay is fixed at the same stage as fixed during the last officiation period(s). If pay on repromotion is fixed at higher stage the benefits of previous officiation is not admissible.

In short, increment becomes due only, if an employee has spent one year's of duty at one stage, in terms of FR-26".

In view of the position brought out above, the administration's letters dated 9.4.1996 and 10.1.1996 placed at Annexure-'A' which have been challenged by the applicant do not survive and are liable to be quashed. Accordingly, the letters dated 9.4.1996 and 10.1.1996 are quashed.

7. The applicant has also prayed that the order dated 23.6.1994 regarding pay fixation be upheld. We are unable to accept this prayer of the applicant in view of the fact that the respondents have brought out and have accepted that there has been a mistake in fixation of the pay of the applicant in Para 4 of their additional written statement dated 16.3.1998, part of which has been reproduced in Para 6 above. We, therefore, are not in a position to



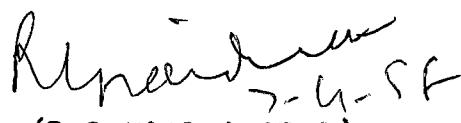
upheld the fixation done by the respondents dated 23.6.1994 placed at Exhibit-'C' of the OA. The same is also required to be quashed and is therefore quashed.

8. The respondent administration is directed to workout the fixation of the pay interms of the rules and their averment in Para 4 of the additional written statement and this new fixation should be brought to the notice of the applicant, who would be at liberty to file his objections to the new fixation. The respondent administration is further directed to take into account all those objections and pass a final order. The whole exercise should be done within a period of three months from the date of receipt of this order. No recovery would be permitted till the new fixation is done.

9. Needless to say that the applicant would be at liberty to take whatever legal remedies are available to him under the law if he is aggrieved by the action taken by the respondent administration. The OA. is disposed of with the above directions. No orders as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)



R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.

(5)