

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 784/96 /199

Date of Decision:

21-1-1997

R.Narsing Rao

Petitioner/s

Ms. Nilima Gohad for Mr. S.P. Saxena

Advocate for the
Petitioner/s

V/S.

U.O.I.

Respondent/s

Mr.R.K.Shetty

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member(A)

Hon'ble Shri

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

M.R.Kolhatkar
(M.R.KOLHATKAR)
M(A)

M

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 784/96

Tuesday, this the 21st day of January, 1997

CORAM:

HON'BLE SHRI M.R. KOLHATKAR, MEMBER(A)

R. Narsing Rao,
Assistant Store-keeper,
CAFVD, Kirkee,
Pune - 411 003.

By Advocate Ms. Nilima Gohad for
Mr. S.P. Saxena

.. Applicant

-versus-

1. Union of India
through
The Secretary,
Ministry of Defence,
South Block,
New Delhi. 110 011.
2. Director General of
Ordnance Services (D.C. BC) II
M.G.G. Branch, Army Head Quarters,
New Delhi - 110 011.
3. Officer-in-Charge,
A.C.C. Records,
P.O. Tirmelgheeri,
Secunderabad - 15.
4. The Commandant,
C.A.F.V.D., Khadki,
Pune - 411 003.

By counsel Shri R.K. Shetty

.. Respondents

The application having been heard on 21st January, 1997
the Tribunal on the same day delivered the following :

O R D E R

(Per M.R. Kolhatkar, Member(A))

This is third round of litigation.
decided on 6-4-95

In O.A. 1217/92 this Tribunal (division bench)

(xxxxx: xxx (xxxxx)) gave certain directions to the
respondents viz. to offer the appointment to the
applicant in terms of letter dt. 8-9-1989. There was
delay in implementation of the order and in C.P. 128/95
the Tribunal while discharging the C.P. on 5-2-96

M directed that the applicant shall be given only the

benefit of seniority w.e.f. the date ~~Mrs. Kamble~~ was directed to be appointed i.e. from 31-3-90. The respondents have implemented this order but the grievance of the applicant is that the respondents ~~have not given~~ proper pay fixation to the applicant in the scale of Rs.950-1500. Instead of giving the benefit of notional pay fixation the respondents have fixed the pay of the applicant at the lowest of ~~the~~ scale viz. at Rs.950/-

2. Respondents have opposed the O.A. According to them O.A. is barred by principles analogous to the principle of res judicata because in the O.A. 1217/92 the relief of consequential benefits was sought and since the same was not conceded the same is required to be taken/have been rejected. Secondly the respondents state that the applicant could not be considered against promotion quota because he failed in the test in 1992 but all the same the respondents have given the appointment to the applicant in compliance with the direction of the Tribunal. The O.A. according to the respondents is in abuse of the process of the court. Respondents have further contended that since the applicant has not actually worked in the post he cannot be given the payment of backwages. For this purpose respondents rely on the judgment of the Supreme Court in ~~Union~~ of India vs. Palluru Ramkrishnaiah, 1989-II LLJ 47. They have also relied on FR 17 according to which an officer shall begin to draw the pay and allowances attached to his tenure of a post w.e.f. the date when he assumes the duties of that post.

3. It is true that relief of consequential benefits was not in terms granted by the Tribunal. Respondents however are expected to deal with their employees fairly and in accordance with the rules.

The contention that the applicant had failed in the

test and was not entitled to payment would not hold water because ~~in~~ our judgment in O.A. 1217/92 dt. 6-4-95 shows that the applicant is directed to be posted against direct recruitment quota. Palluru Ramkrishnaiah's case does not apply because applicant ~~has~~ not sought backwages. What the applicant has sought is to have notional pay fixation. On this point it is not Rule ~~in~~ FR 17 but the Rule ~~in~~ ⁱⁿ FR 26 which is applicable according to which all duty in a post on time-scale counts for increments in that time-scale. Since the respondents are allowing ~~in~~ ^{the} pay to the applicant in the time scale from 31-3-90 the respondents must allow the increments earned by the applicant in terms of FR 26 ~~and~~ ⁱⁿ ~~in~~ ⁱⁿ the respondents are bound to fix the pay of the applicant notionally on the basis that he was appointed on 31-3-90. O.A. therefore must succeed to this extent. Respondents are directed to grant notional pay fixation to the applicant on the footing that he was appointed on 31-3-90 and he has earned increments for successive years and fix the pay of the applicant accordingly and grant the same to the applicant from the date orders in CP were passed viz. 5-2-96. Arrears in respect of pay from 5-2-96 till the date of pronouncement of the order should be given.

4. There will be no order as to costs.

M.R.Kolhatkar

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(M.R.KOLHATKAR)
Member(A)

16) 06.10.1997

C.P. NO. 53/97

Ms. Nileema Chonad for the
applicant.

Shri R.K. Shetty for the
respondent

The counsel for the
applicant submits that pursuant
to the direction of the
Tribunal, the respondents
have complied with the
order and, therefore, nothing
survives in the C.P.

The C.P. NO. 53/97 is
accordingly discharged.

M.R. Kolhatkar B.S. Hegde
(M.R. Kolhatkar) (B.S. Hegde)
M.G. M.G.

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06.10.1997
order/~~judgment~~ despatched
to Shri R.K. Shetty respondent (s)
on 20.10.1997

23.10.1997