

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 1146/96

MUMBAI, THIS THE ⁷⁶13th DAY OF JUNE, 2001

HON'BLE SHRI S.L.JAIN, MEMBER (J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Amit Jain
Customs Quarters
Bldg. No.4 (Old), 2nd floor
Adenwala Road
Near Five Gardens, Matunga
MUMBAI - 400 019.

...Applicant

(By Advocate Shri G.K.Masand with
Shri R.R.Mishra)

V E R S U S

1. Union of India through
Secretary (Revenue)
Ministry of Finance
North Block, New Delhi.
2. Secretary,
Deptt. of Personnel
Ministry of Personnel, Public
Grievances & Pensions
North Block, New Delhi.
3. Central Board of Excise & Customs
represented by Chairman, Central
Board of Excise & Customs
North Block, New Delhi.
4. Commissioner of Customs (I)
New Custom House,
Ballard Estate
Mumbai - 400 038.

...Respondents.

(By Advocate Shri V.D.Vadhavkar, proxy
for Shri M.I.Sethna)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri Amit Jain, applicant in this OA seeks
directions to the respondents for re-fixation of his pay,

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granting him the benefit of protection of emoluments (basic + DA) drawn by him with his previous employers, with United India Insurance Company Ltd. with due increments in terms of OA No. 12/1/88-Estt (Pay-I) dated 7-8-1989 w.e.f. 1-8-1989 with notional benefits from the date of his joining the Central Government services along with arrears and the interest.

2. Heard Shri G.K.Masand & Shri R.R.Mishra, learned counsel for the applicant and Shri V.D.Vadhavkar, proxy counsel for Shri M.I.Sethna, for the respondents.

3. To narrate the facts in brief, the applicant who worked as Asstt. Administrative Officer (Accounts) with the United India Insurance Company Ltd., a subsidiary of General Insurance Corporation of India from 7-10-1980 to 7-12-1984, joined on 10-12-1984 as a Direct Recruit Appraiser Mumbai Customs House, Deptt. of Revenue Ministry of Finance. In the United India Insurance Company Ltd., at the time of his resignation, he was drawing a gross salary of Rs. 3154.60/- which was brought down to Rs. 1785.35/- on joining the Customs thereby entailing a substantial loss in emoluments. On coming to know sometime in 1995 that a few other officers similarly placed who had joined the Govt. service like him in Customs Department after serving Govt.

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undertakings and autonomus bodies were given the benefit of higher salary on account of an OM dated 1-8-1989, he made a representation for re-fixation of his pay and allowances on 23-8-1995 followed by a number of reminders which were finally replied on 23-9-1996 by the Department indicating that the relevent OM of the DOPT was effective from 1-8-1989 and that indefinite retrospective effect cannot be given to the said OM. This order is impugned in this OA.

4. Shri Masand, learned counsel for the applicant contends that the applicant is correctly entitled to the benefits of pay protection on the basis of OM No. 12/1/88-Estt. (Pay-I) dated 7-8-1989, which directs that the candidates working in Public Sector Undertakings, Universities, Semi-Govt. Institutions or Autonomus bodies, who are appointed as direct recruits through a properly constituted agency including the Departmental authorities making recruitment directly, their initial pay may be fixed at a stage in the scale of pay attached to the post so that the pay and DA, as admissible will protect the pay + DA already being drawn by them in their parent organisations. It is further directed that pay fixed under the above formulation will not exceed the maximum of the scale of the post to which they have been recruited. This OM was to take effect from 1-8-1989. According to the applicant this meant

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that those like him who joined the Govt. through UPSC as a direct recruit after having served the Govt. of India undertaking was entitled to have refixation of pay, keeping in mind the basic + DA they were drawing. Even assuming that the OM was effective from 1-8-1989 and thus prospective it only meant that benefit could be given from 1-8-1989 and not that this can be extended only to those who were recruited after 1-8-1989. Shri Masand, learned counsel argues that any interpretation to the contrary could be self-defeating and discriminatory, as it was creating class within a class and inequality among the equals. It was, according to him, incumbent on the respondents themselves to take action suo-moto and give the benefit of pay and allowances to all those who were covered by the Scheme, which they have not done. The adoption of the scheme for only those who joined the Department after 1-8-1989 was improper and to creation of unequals amongst the equals. The Hon'ble Supreme Court's decision in the case of T.S.Thiruvengadam Vs. Secretary to Govt. of India and Ors. (1993 SCC (L&S) 495) and D.S. Nakara & Ors. Vs. Union of India (1983 SCC (L&S) 145) squarely covered the situation and there was no reason why this benefit could be denied. He also prayed that by denial of the same benefit, persons junior to him who were also similarly placed have received the higher emoluments denied to him, which was incorrect and, therefore, he has been discriminated.

5. In the reply filed on behalf of the respondents duly reiterated during the oral submissions by Shri Vadhavkar, learned counsel, for the respondents, it is pointed out that the application was mis-conceived and the applicant's case was not at all covered by the relevant OM as he had joined much before the issuance of this OM and that the OM was totally prospective in nature. According to the counsel, the applicant was seeking to arrogate to himself certain benefits which did not exist at the time of his joining the Department, through this OA. This cannot succeed. More so his case was hit by limitation, as he was seeking to re-open in 1995, an issue on the basis of an OM which had come into force in August 1989. Shri Vadhavkar fairly concedes that one or two persons junior to him have been given the benefits arising from the OM, as they were correctly entitled to get it having joined the Department after issuance of the OM. Pay protection was correctly available to them. Learned counsel further points out that the Tribunal cannot consider the case of the applicant as it was hit by limitation and without there being an application for condonation of delay and it was thus hit by the decision of the apex Court in Ramesh Chand Sharma etc. Vs. Udham Singh Kamal & Ors. (1999 (2) SCSLJ 294) stating that the Tribunal was not right while deciding the OA on merits, overlooking the

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statutory provisions contained instructions in Section 21 (3) of the Administrative Tribunals Act, 1985. Shri Vadhavkar has argued that the fixation of specific cut off date for any purpose was not discriminatory as held by the Hon'ble Supreme Court in the case of Krishena Kumar Vs. Union of India and Ors. (AIR 1990 SC 1782). He has also stated that in the policy matters regarding pay fixation admittedly no direction could be given. He has further stated that grant of this request would create inconvenience and the request made by the applicant for grant of benefit from the date of his joining in 1984 would create insurmountable problems in implementation. The application, therefore, has to fail, is what the learned counsel prays.

6. We have carefully considered the matter and deliberated upon the rival contentions.

7. Undisputed facts in this case are that the applicant was infact receiving the higher emoluments in his previous job i.e. with the New India Insurance Co. Ltd./United India Insurance Co. Ltd., which he left to join the Customs organisation as Appraiser by selection through the UPSC and that the contents of the OM No.12/1/88-Estt. (Pay-I) dated 7-8-1989 effective from 1-8-1989 had covered the case of persons similarly

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placed. The plea by the respondents is that the OAs was only prospective in nature and the applicant cannot, therefore, claim any benefits.

8. In this context, perusal of the memorandum No. 12/1/88-Estt. (Pay-I) dated 7-8-1989 is relevant. The same is reproduced below in full :-

"The undersigned is directed to say that as per extent rules, orders on the subject, pay protection is granted to candidates who are appointed by the method of recruitment by selection through the UPSC, if such candidates are in Government service. No such pay protection is granted to candidates working in public Sector Undertakings, Universities, Semi-Govt. Institutions or Autonomus Bodies, when they are so appointed in Government. As a result of this, it has not been possible for Government to draw upon the talent, that is available in non-Government organisations.

The question as to how pay protection can be given in the case of candidates recruited from Public Sector Undertakings, etc. has been engaging the attention of the Government for sometime. The matter has been carefully considered and the President is pleased to decide that in respect of candidates working in Public Sector Undertakings, Universities, Semi-Govt. Institutions or Autonomus Bodies, who are appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly, their initial pay may be fixed at a stage in the scale of pay attached to the post so that the pay and DA, as admissible in the Government will protect the pay + DA already being drawn by them in their parent organisations. In the event of such a stage not being available in the post to which they have been recruited, their pay may be fixed at a stage just below in the scale of the post to which they have been recruited, so as to ensure a minimum loss to the candidates. The pay fixed under this formulation will not exceed the maximum of the scale of the post to which they have been recruited. The pay fixation is to be made by the employing Ministries/Departments after verification of all the relevant documents to be produced by the candidates who were employed in such organisations.

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3. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued with the concurrence of the Comptroller and Auditor General of India.

4. These orders take effect from the first of the month in which this OM is issued."

9. It is evident from the above that the respondents had recognised the need for attracting talent available elsewhere to the Civil Services and recognising them by protecting their pay which they have been drawing in their parent organisations. The applicant having been employed with a Govt. Undertaking was clearly covered by the Scheme. The OM, ofcourse, states that it takes effect from first of the month i.e. 1-8-1989, but that would mean that the effect of the Scheme would be only from that date and not that only those persons who joined the service thereafter would be entitled for the benefits. Hon'ble Apex Court's decision in the cases of T.S.Thiruvengadam and D.S.Nakara (supra) are correctly applicable to this case and the points decided by the Apex Court with regard to the pension squarely covers the refixation in this OA. There is no reason why the same would not be granted to the applicant. The respondents' arguments that accepting the plea by the applicant meant that the Tribunal would be transgressing on the powers of policy formulation of the Union of Govt. is not correct. The Tribunal is not laying down or upsetting any policy but is only analysing the manner of its implementation.

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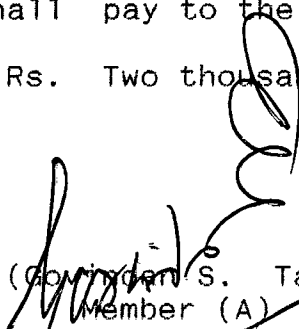
The OM per se does not state that it should apply only to individuals who joined service thereafter, but that effect of the OM would be only from that particular date. As such the decision of the Hon'ble Apex Court relied upon by respondents is clearly distinguishable. The preliminary objection raised by the applicant that the case is hit by limitation is not correct, as this is a case for fixation of pay, which is a continuous cause of action and squarely covered by the decision of the Hon'ble Supreme Court in M.R.Gupta & Ors. Vs. Union of India (1995 (2) SCSLJ 337). Shri Masand, learned counsel for the applicant had himself indicated at the bar that he was not pressing the point regarding stepping up of the pay raised in the OA and was asking only for notional fixation from the date of issue of the OM and for arrears for the period for which he is legally entitled.

10. In the above circumstances, we are convinced that the applicant has a case and he should get the benefits of re-fixation as prayed for.

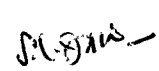
11. The application, therefore, succeeds and is accordingly allowed. The respondents are directed to grant the applicant the benefit of re-fixation in terms of OM No.12/1/88-Estt. (Pay-I) dated 7-8-1989 effective from 1-8-1989 working it out from the pay he was drawing in the earlier organisation when he left it to join

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Customs Department on 10-12-1984 . This should be fixed as his pay on notional basis and increments granted thereafter. He would be entitled for arrears of pay and allowance on refixation only from 1-11-1995, one year prior to the date this OA has been filed by him. This exercise should be completed within a period of four months from the receipt of a copy of this order or by 31-10-2001 latest. We also order the respondents that they shall pay to the applicant costs quantified at Rs. 2500/- (Rs. Two thousand and five hundred only)


(Govindan S. Tampt)
Member (A)

/vikas/


(S.L.Jain)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH: :MUMBAI

MISCELLANEOUS APPLICATION NO. 149/2004
IN
ORIGINAL APPLICATION NO. 1146/1996

THIS THE 29th DAY OF SEPTEMBER, 2006

CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN
HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

Shri Amit Jain. ... Applicant

By Advocate Shri G.K. Masand

Versus

Union of India & 3 Others. ... Respondents


By Advocate Shri R.R. Shetty.

O R D E R

Per: Shri Muzaffar Husain. Member (J)

The applicant has moved this M.P. For directing the respondents to implement the judgment and order dated 13.6.2001 in OA 1146/96 which has become final with the dismissal of Writ Petition No. 516/02 by Hon'ble High Court. The applicant has also prayed for awarding interest of the entire period and further prayed that a specific time schedule be fixed for compliance of the order dated 13.6.2001.

2. The applicant has filed OA 1146/96 for granting him the benefit of past service rendered in earlier employment with the Public Sector Undertaking. The Tribunal allowed the OA by order dated 13.6.2001 and directed implementation of the order latest by 31.10.2001. The respondents had challenged the order by filing writ petition No. 516/02. When the said writ petition was called out before the



Division Bench of Bombay High Court on 09.8.2002 none had appeared on behalf of the petitioner (Respondents in OA) and thus, the writ petition was dismissed in default. There was exchange of correspondence by the applicant seeking enforcement of direction of the Tribunal ~~on~~ dismissal of writ petition. The petitioner invoked the jurisdiction of the Tribunal by filing MP 149/04 seeking enforcement of its judgment and order dated 13.6.2001. The Tribunal dismissed the MP on the ground that it was instituted beyond the period of one year from the date on which the order of the Tribunal has become executable under Section 27 of the Administrative Tribunals Act, 1985. The said order of the Tribunal was challenged before Hon'ble High Court of Bombay in writ petition No. 6964/04. Hon'ble High Court vide its order dated 20th April, 2004 allowed the writ petition by setting aside the order of the Tribunal dated 19th April, 2004 in MP 149/04 in OA 1146/96 and restored the MP 149/04 to the file of the Tribunal for disposal on merit.

3. It is the contention of the applicant that even before filing of the writ petition he had addressed letters dated 02.7.2001 and 10.12.2001 requesting the respondents to give effect to the order passed in OA. Even after dismissal of the writ petition, the petitioner had addressed letter



dated 23.6.2003 to the Secretary (Revenue), Ministry of Finance, North Block, New Delhi and the Chairman, Central Board of Excise & Customs, New Delhi with copy endorsed to the Joint Secretary (Admn.), Ministry of Finance, Department of Revenue, Central Board of Customs, New Delhi and the Commissioner of Customs (I), New Customs House, Mumbai, in regard to the implementation of the judgment and order. He was informed by letter dated 21.7.2003 by the Assistant Commissioner of Customs that Writ Petition has been filed and that the matter is pending before the High Court, hence the department could not take any action in the matter. Thereafter, the Petitioner wrote a letter dated 09.10.2003 to the Secretary (Revenue), North Block, New Delhi as well as Chairman, Central Board of Excise and Customs, North Block, New Delhi with copies to the respective offices mentioning that the writ petition has already been dismissed on 09.8.2003 and requesting to implement the order dated 13.6.2001. As there was no response, he submitted reminders dated 24.11.2003 and 22.12.2003 and thus he filed this M.P.

4. The respondents, in reply to the MP has taken the only ground that the MP is not maintainable, being barred by limitation.

5. We have heard Shri G.K. Masand learned counsel for the

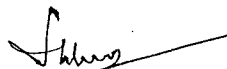


applicant and Shri R.R. Shetty learned counsel for the respondents.

6. The MP has been moved under Rule 24 of CAT (Procedure) , Rules, 1987 for directing the respondents to implement the judgment and order dated 13.6.2001 in OA 1146/96 passed by this Tribunal. Rule 24 of CAT (Procedure) rules, 1987 provides that

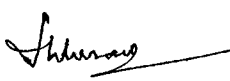
"The Tribunal may make such orders or give such direction as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

The respondents have contested the MP mainly on the ground of limitation. Though the ground of limitation was accepted by the Tribunal and MP was dismissed, but Hon'ble High Court quashed the order of Tribunal holding that the objection raised by the respondents to the maintainability of the application on the ground of limitation was misconceived. Thus, the sole ground taken by the respondents was rejected by the Hon'ble High Court, no other ground has been taken by the respondents. The applicant invoked the jurisdiction of this Tribunal seeking enforcement of the judgment and order dated 13.6.2001. It is an admitted fact that the writ petition 516/2002 filed against the order of the Tribunal was dismissed in default by order of the Division Bench dated 09.8.2002. The



respondents have not made any efforts for restoration of that writ petition. This fact has been conceded by learned counsel for the respondents. Thus, the Tribunal's order has become final and the respondents are under legal obligation to implement the order of the Tribunal. But they are not giving effect to the judgment and order passed by this Tribunal and this attitude of the respondents caused a legitimate grievance to the applicant. The Tribunal under Rule 24 of CAT (Procedure) Rules 1987 may make such orders or give such direction as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

7. In the result MP 149/04 allowed. Respondents are directed to implement the order of the Tribunal dated 13th June, 2001 in OA 1146/96 within a period of four months from the date of receipt of copy of this order. In the circumstances of the case, we are not inclined to grant any interest on the payment likely to be accrued. There will be no order as to costs.


(MUZAFFAR HUSAIN)
MEMBER (J)


(A.K. AGARWAL)
VICE CHAIRMAN

Gajan