

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 156 /1996

Date of Decision: 6/9/96

Nanasaheb Tatyaba Kamble Petitioner/s

Shri A. I. Bhatkar, Advocate for the
Petitioner/

V/s.

Union Of India & Others, Respondent/s

Shri V. S. Masurkar, Advocate for the
Respondent/

CORAM:

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

~~Non-objection~~

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


(P.P. SRIVASTAVA)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 156 OF 1996

Dated this 6th day of SEPTEMBER, 1996.

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

Nanaheb Tatyaba Kamble,
135/3971, Kannanwar Nagar No. 2,
Vikhroli (East),
BOMBAY - 400 083. ...

Applicant

(By Advocate Shri A. I. Bhatkar).

VERSUS

1. Union Of India
through Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Flag Officer Commanding-
in-Chief, Headquarters,
Western Naval Command,
Shahid Bhagat Singh Road,
Bombay - 400 001.
3. The Material Superintendent,
Material Organisation,
Naval Store Depot,
Ghatkopar,
Bombay - 400 086.
4. The Controller of Defence,
Accounts (Navy),
Cooperage, Bombay. ...

Respondents.

(By Advocate Shri V. S. Masurkar).

: ORDER :

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

The applicant was appointed as Lower Division Clerk on 25.11.1969 and was promoted as Upper Division Clerk on 10.08.1981. The pay of the applicant on promotion as U.D.C. was fixed at Rs. 340/- in the pay scale of

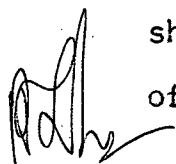


Rs. 330-560. The applicant's pay was fixed at Rs. 1,290/- after the IVth Pay Commission on 01.01.1986. The applicant came to know that one Shri G. N. Satpute, who was junior to him, was drawing more pay and his pay was fixed at Rs. 1,320/- w.e.f. 01.01.1986. The applicant submitted a representation dated 03.08.1987, placed at exhibit-4, against the anomaly of pay fixation but there was no response from the administration. Ultimately, the respondents replied vide their letter dated 06.11.1988 rejecting the claim of the applicant for fixation and stepping up of pay, which is placed at exhibit-1. The counsel for the applicant submitted that the applicant could not opt for fixation of pay as he was not aware of the options which were available to him. The counsel for the applicant has specifically drawn my attention to the circular concerning pay fixation which is at exhibit-13 and in para 5 of page 37 of the O.A., it has been mentioned as under :-

" Past cases decided on the basis of the existing* clarification may be reopened and an option for pay fixation obtained from the employees concerned with a period of three months from the date of issue of O.M. (viz. 28.1.1985) and their pay refixed wherever necessary. Arrears of pay on account of such refixation of pay may also be allowed in such cases."

(*Earlier, the option was not available).

The Counsel for the applicant has mentioned that it was the duty of the respondents to get the options from the applicant, which they have failed to do and the applicant should be permitted to opt for revised fixation in terms of these orders and his pay should be fixed accordingly.



2. The Counsel for the respondents submitted that the issue concerning the option, as argued, pertains to the year 1981 and therefore, this Tribunal has no jurisdiction to consider the matter, as the cause of action arose before the date when the Tribunal came into existence. However, it is seen that although the issue pertains to the year 1981, the orders which have been produced by the respondents, by which the provision of option was circulated, are dated 25.06.1986 and therefore, I am not able to accept this argument of the learned counsel for the respondents that the issue pertains to the period which is prior to the establishment of the Tribunal and therefore the Tribunal has no jurisdiction. The next point raised by the counsel for the respondents is concerning limitation. The Counsel for the respondents has argued that the question of option pertains to the circulars which were issued in 1986 and the applicant's plea for revised option was rejected in October, 1988 and thereafter, the applicant could have approached the Tribunal within one year but he came up with the O.A. only in the year 1996 and therefore, reopening the question of providing option pertaining to the issue of 1981, is absolutely barred by limitation. The Counsel for the applicant has argued that this is a continuous cause of action, as it is the question of pay fixation and therefore, the limitation would not apply in this case and if at all the limitation is to be applied, then in ^{Hon'ble} terms of the Supreme Court decision in M.R. Gupta V/s. Union Of India & Others (1995) 5 SCC 628 the limitation would be only on the question of payment of arrears and not

on fixation of pay.

3. I have considered the arguments of both the Counsel on the question of limitation concerning the option which was to be exercised for pay fixation in the year 1981. It is a fact that the circular for revising the option was issued in 1986 but the applicant has not exercised the option. The exercise of option cannot be considered as an ongoing cause of action even though this would result in less pay for the applicant continuously. After the applicant's plea was rejected by the respondents vide their letter dated 06.11.1988, the applicant should have approached the Tribunal well in time. No valid reason has been given by the applicant for the delay and therefore, I hold that the question of giving a chance to the applicant to opt for the revised fixation of pay from the year 1981 cannot be reopened at this belated date. I, therefore, dismiss the claim of the applicant as far as the prayer revised concerning giving him the option for fixation of pay from 1981 is concerned.

4. The applicant has further raised the issue of pay fixation in terms of O.M. No. 1(14)/E/III/89 dated 16.06.1989 issued by the Ministry of Finance, placed at page 30 of the O.A. The applicant has submitted that his pay fixation should have been rectified after the IVth Pay Commission with reference to his juniors. In this connection, the applicant has brought out that the respondents vide their letter dated 20.04.1989 placed at exhibit-5 issued a circular giving the pay particulars of Shri S. Y. Chemburkar, U.D.C., and invited representations

and proposals for fixation of pay viz.-a-viz. Shri S.Y. Chemburkar. The applicant submitted a representation dated 28.04.1989 which is placed at exhibit-6 wherein he has compared his pay with Shri Chemburkar and has shown the anomaly which has arisen in his case. The applicant has shown that he was promoted as U.D.C. in 1981 while Shri Chemburkar has been promoted as U.D.C. in 1987. He has also shown that his pay has been fixed less than that of Shri Chemburkar on 01.01.1986 and had requested to remove this anomaly. The counsel for the applicant submitted that there is no reply to this representation. The counsel for the applicant has argued that in para 1 of letter dated 16.06.1989 it has been mentioned as under :-

"The attention is invited to Note 7 below Rule 7 of CCS (RP) Rules, 1986 where senior Government Servant promoted to a higher post before the 1st day of January 1986 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1986, the pay of the senior stepped upto an amount equal to the pay as fixed for his junior in that higher post. Such stepping up is permissible if the anomaly has arisen as a result of the application of the provisions of F.R. 22 C or any other rules or order regulating pay fixation on such promotion in the revised scale vis-a-vis the fulfilment of other conditions mentioned therein. The anomaly can be said to exist only if a senior employee drawing equal or more pay than his junior in the lower post and promoted earlier, starts drawing less pay than such junior promoted later on regular basis."

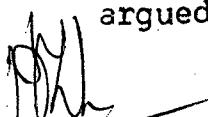


The Counsel for the applicant has also drawn my attention to para 3 of the circular dated 16.6.1989 which reads as follows :-

"Nevertheless, the Government is of the view that even if the anomaly is as a result of increments in terms of Proviso 3 and 4 of Rule 8 of CCS (RP) Rules, 1986 combined with application of F.R. 22-C, anomaly may be rectified by stepping up the pay of senior promoted before 01.01.1986 equal to junior promoted on or after 01.01.1986 subject to fulfilment of following conditions :

- (a) both the junior and the senior Government servants should belong to the same cadre and/ posts in which they have been promoted should be identical in the same cadre.
- (b) The pre-revised and revised scales of pay of the lower and higher posts which they are entitled to draw pay should be identical, and
- (c) the senior Govt. servant promoted before 01.01.1986 has been drawing equal or more pay in the lower post than his junior promoted after 01.01.1986."

The Counsel for the applicant has argued that the case of the applicant is completely covered by these provisions. The applicant was drawing more pay in the lower cadre than Shri Chemburkar and the respondents should have taken action in terms of this circular, refixing the pay of the applicant by stepping it up equal to the pay of Shri Chemburkar. The Counsel for the applicant further argued that he has brought out in detail, the position



of the applicant viz-a-viz Chemburkar in para 4.11 and 4.12 of his O.A. No reply has been given in the written statement of the respondents except stating in para 20 that the case of the applicant has been examined viz-a-viz Chemburkar but he does not fall within the purview of anomaly.

5. The Counsel for the respondents has argued that the anomaly has arisen because the applicant has not opted for revised fixated and therefore, he cannot now be given the benefit of provisions of the circular dated 16.06.1989. I am unable to accept this argument of the respondents. The respondents have invited representations and proposals for fixation of pay viz-a-viz Chemburkar vide their letter dated 20.04.1989 placed at exhibit-5. The applicant has submitted his representation dated 28.04.1989 which is placed at exhibit-6 but no reply to that has been given by the respondents. Even in the written statement, no explanation has been given by the respondents as to why the case of the applicant does not fall within the frame work of the circular dated 16.06.1989 referred to above, Even though the applicant has brought out in detail as to how his case comes under the purview of the circular in para 4.11 and 4.12 of the O.A. I am of the opinion that the case of the applicant is covered by para 2 and 3 of the circular dated 16.06.1989. However, the counsel for the applicant is not able to categorically bring out whether the applicant was drawing equal or more pay in the lower post than his junior? who was promoted after 01.01.1986, which is one of the condition brought out



in para 3(c) of the circular dated 16.06.1989. In the absence of details concerning the pay, which the applicant was drawing before 01.01.1986, I am not in a position to specifically come to the conclusion whether the applicant fulfills all the conditions as prescribed under para 3(a), (b) and (c) of the circular dated 16.06.1989.

6. In the facts and circumstances of this case, I hereby direct that the respondents would consider the case of the applicant in terms of para 3 of the circular dated 16.06.1989 and fix the pay of the applicant viz-a-viz Shri Chemburkar in terms of this circular. However, the applicant would be entitled to arrears of pay only from 05.02.1995 i.e. one year before the date of filing of the O.A. The respondents would complete this process within a period of three months from the date of receipt of a copy of this order.

7. The O.A. is disposed of with the above directions. There will be no order as to costs.


(P. P. SRIVASTAVA)
MEMBER (A).

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