

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:577/99

FRIDAY the 26th day of APRIL 2002

CORAM: Hon'ble Shri B.N. Bahadur, Member (A)

Hon'ble Shri S.L. Jain, Member (J)

Chandrashekhar Bhagwantrao Rokde
Dy. Municipal Commissioner,
Mumbai Corporation, Mumbai.

...Applicant.

By Advocate Shri S.S. Karkera for Shri P.M. Pradhan.

V/s

1. Union of India through
the Secretary,
Dept. of Home Affairs,
South Block, New Delhi.

2. The State of Maharashtra
represented by the Additional
Chief Secretary, Home Department of
Maharashtra State, Mantralaya,
Mumbai. ...Respondents.

By Advocate Shri V.S. Masurkar.

O R D E R

{Per S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 for direction to the respondents to pay the applicant the emoluments as per the pay scale of I.P.S. for Cadre Post for the period for which the applicant performed his duties holding the charge of Cadre Post as detailed in Annexure III of the application.

S.L.Jain

:2:

Annexure III states the period of applicant's previous/present postings as innumerated below:

S.No.	Posting	Period	Cadre/ Non Cadre
1.	Addl. S.P. Nashik	30.1.89 - 23.6.90	Cadre
2.	Principal, PTS, Nanviz	27.8.90 - 18.11.92	Non-cadre
3.	DCP Mumbai-SB-I (Security)	24.11.92 - 16.01.93	Cadre
4.	DCP Mumbai-Zone I	16.01.93 - 05.06.93	Cadre
5.	DCP Port Zone Mumbai	05.06.93 - 21.11.95	Cadre
6.	DCP HQ Mumbai	21.11.95 - 04.07.96	Cadre
7.	DC(L)CID (Int.) M.S. Mumbai.	05.07.96 till date	Cadre.

2. The applicant has claimed this relief on the basis of judgement reported in 1997 SCC (L & S) 1297 (I) State of H.P. v/s Vijay Pal Singh decided on 14.3.1997. The applicant represented for the said relief vide his representation dated 1.4.1998 (Annexure III) but no reply by the respondents.

3. The respondents have resisted the claim of the applicant by stating in para 5 and 8 of the written statement that the applicant was not a select list candidate or appointed to IPS and his posting to the cadre meant for the IPS beyond the period of three months without prior approval of the Central Government was not legal, in terms of Government of India's order dated 21.2.66 as reproduced below rule 9 of IPS (Cadre) Rules. He is not eligible for any benefit of pay fixation under IPS (Pay) Rules

Sub - 3...

say Rule 4(5) mainly because he was posted to work on the cadre post on Administrative ground is not entitled to particular grade as explained by him. The judgement relied on by the applicant is applicable to the particular facts of the case and it has no general application.

3. Though the claim is not resisted by the respondents on the ground of limitation but this being the question of law we have to examine first whether the OA is within the prescribed period of limitation. The applicant has claimed it to be within the prescribed period of limitation prescribed under Section 21 of the Administrative Tribunals Act 1985. The claim relates to the period commencing from 30.1.1989 k to 30.4.1998 while the OA is filed on 15.1.1999. Representation in this respect was filed on 1.4.1998. A delayed representation do not help the applicant. The cause of action in respect of the period beyond one year of filing of the OA for which he is not entitled to claim the relief as such the calim of the applicant is to be examined in view of Section 21 of the Administrative Tribunals Act 1985 which prescribed the period of limitation only one year.

4. Pay of the Cadre/non-cadre post become payable on 1st day of every next month for seeking the pay whether in cadre post. It is not necessary for any of the employees to put his grievance before any departmental authorities for the same. To be specific there is no necessity to exhaust the departmental remedy. As the OA is filed on 15.1.1999, the claim of the applicant can be pursued only for the period commencing from 1.1.1998 till 30.4.1998.

DRM

...4...

5. We have perused the judgement of the Apex Court in the case of State of H.P. v/s Vijay Pal Singh referred by the applicant and on perusal of the same it has been incorporated in the said judgement itself "but in view of the above rules which stand attracted to the fact-situation the result is not vitiated by any error of law warranting interference." The said judgement is based on facts. The Apex Court has clearly held that Article 39(d) of the Constitution is not applicable. The judgement of the Apex Court based on principle that Under Fundamental Rules an officer who performs duty of post is entitled to payment of salary of the pay. The learned counsel for the respondents stated that FR 22 is not applicable to State Police Officers belonging to State of Maharashtra. The judgement of the Apex Court relates to State of Himachal Pradesh. We are not able to get the facts for which period the claim was allowed by the Tribunal which was up-held by the Apex Court. State of Himachal Pradesh was also a Union Territory previously. In such circumstances we are unable to accept the argument that the applicant is entitled to the pay of the post for which he was posted i.e cadre post.

6. In the result the OA deserves to be dismissed and is dismissed accordingly with no order as to costs.

SLJ
(S.L.Jain)
Member (J)

B.N.Bahadur
(B.N. Bahadur)
Member (A)

NS

dt 26/4/2
Order/Judgement despatched
to Appellant/Respondent(s)
dt 2/5/2

M