

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.809/2001 .

Dated this Wednesday the 10th Day of April, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman.
Hon'ble Smt. Shanta Shastry, Member (Administrative).

Shri J.A. Khan,
Retired Senior Audit Officer,
Resident of F-2454, B-202, C.G.S.
Quarters, Antop Hill,
Mumbai - 400 037.

.. Applicant.

(Applicant in person)

Versus

1. Union of India, through the
Secretary, Ministry of Finance,
Department of Expenditure,
Govt. of India, New Delhi.

2. The Comptroller and Auditor
General of India,
Indraprastha Head Post Office,
10, Bahadur Zafar Marg,
New Delhi - 110 002.

3. The Accountant General (A & E),
Maharashtra-I, 101, Maharshi
Karve Road, Old C.G.O. Building,
Mumbai - 400 020.

4. Principal Directorate of Audit (Central),
Bandra Kurla Reclamation, Bandra,
Mumbai - 400 050.

5. Principal Accountant General (Audit),
Maharashtra-I, Old C.G.O. Building,
Maharashi Karve Road,
Mumbai - 400 020.

.. Respondents.

(By Advocate Shri Vinod Joshi)

ORDER (Oral)
{ Per : Smt.Shanta Shastry, Member.(A) }

The applicant has approached this Tribunal for a
direction to the respondents to refix his pay by stepping
up the same to the level of his junior as on 1.12.1977 in

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the grade of Section Officer and to carry out consequent refixation of pay in the higher grade of Assistant Audit Officer, Audit Officer and Senior Audit Officer from the due dates and pay the arrears of emoluments flowing from the aforesaid refixation of pay in different grades. The applicant has also claimed interest at 12% per annum on the arrears on account of difference in pay.

2. The applicant was directly recruited as U.D.C. in the year 1962 and was promoted from time to time to various grades. One Smt.S.D. Vaswani was also appointed as U.D.C. on 26.10.1962 i.e. 10 months after the appointment of the applicant. Smt.Vaswani also came to be promoted to different grades, everytime after the applicant came to be promoted. Smt.Vaswani was always junior to the applicant till 1977. Thereafter Smt.Vaswani filed O.A.514/94 seeking stepping up of her pay with reference to her junior one Smt.Meghrajani. The O.A. was allowed and directions were given to the respondents to refix the pay of Smt.Vaswani in the grade of selection grade of Auditor as from 20.5.1975 with all consequential benefits. The order was passed on 10.4.1997. Thereafter the matter was taken to the High Court of Bombay and the High Court also upheld the order of the Tribunal vide order dated 9.1.1998. The applicant approached the respondents to consider his case on the same lines as that of Smt.Vaswani. There was

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correspondence between the Sr.Audit Officer and the Sr.Accounts Officer, the office of A.G. Maharashtra. Thereafter on 3.1.2001, the Sr.Audit Officer wrote to the applicant that anomaly in the pay of the applicant occurred on 1.12.1977 and since this was prior to 1.3.1984, the matter may be referred to the A.G. Maharashtra. The matter was taken up with A.G. Maharashtra vide letter dated 15.1.2001 of the applicant. The Sr.Accounts Officer wrote to the Principal Director of Audit requesting to look into the case of the applicant as the applicant belonged to the office of Principal Director of Audit.

3. The applicant has approached this Tribunal being aggrieved that so far the respondents have not considered his demand.

4. The respondents did not deny that the applicant was drawing higher pay through out the period from 2.1.1962 to 1.12.1977 than the pay drawn by Smt.Vaswani. Although the applicant had made representation in the past in 1980 itself that was rejected. The respondents have explained that Smt.Vaswani had filed O.A.514/94 and the same was allowed. Smt.Vaswani was allowed to be given the pay fixation notionally with effect from

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20.5.1975 in the grade of selection grade of Auditor. It is because of this effect that the applicant's pay has become lower than that of Smt.Vaswani.

5. We have heard the applicant in person and Learned Counsel for respondents. The respondents had not denied that there is anomaly in the pay scale of the applicant vis-a-vis that of Smt.Vaswani. In our considered view this is a genuine case where a stepping up of pay of the applicant to that of his junior Smt. Vaswani is required to be considered.

6. The applicant has however approached this Tribunal belatedly in the year 2001. The Judgment in the case of Smt.Vaswani was given by this Tribunal in 1997, further confirmed by the High Court in 1998. The applicant in his rejoinder has pointed out that in 1980 the Tribunal was not in existence and thereafter he did not have much time and it was difficult for a salary earner like him to approach the High Court. Now that he has retired, he is pursuing the matter. The applicant is also relying on the Judgment in the case of M.R. Gupta, 1995 (2) ATJ 567. According to the applicant he has suffered a lot on account of the anomalous situation. He has been getting lower pay every month his junior Smt.Vaswani, therefore, it is a continuous cause of

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action and delay is condonable. We agree that this is a continuous cause of action, the delay needs to be condoned.

7. In the facts and circumstances of the case, we direct the respondents to grant the stepping up of pay to the applicant with reference to Smt. Vaswani from the date her pay was fixed higher than that of the applicant. The applicant's pay be refixed in the grade of selection grade Auditor i.e. from 20.5.1975 at Rs.600/- in place of Rs.560/-. Pay fixation may be done consequently in the higher grades of Section Officer/Assitant Audit Officer and Audit Officer as well as subsequent promotion post. The entire pay fixation will be on a notional basis. The applicant shall be entitled to arrears of pay on account of refixation of pay only from one year prior to the date of the filing of this application i.e. from 20.11.2000. This exercise shall be completed within a period of 2 months from the date of receipt of a copy of this order. The O.A. is allowed accordingly, without any cost.

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(Smt. Shanta Shastry)
Member (A)

B. Dikshit

(Birendra Dikshit)
Vice Chairman.

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dt 10/4/2
Order of judgement forwarded
to applicant/Respondent (s)
on 11/5/2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

REVIEW PETITION NO. 30/2002
IN
ORIGINAL APPLICATION NO. 809/2001

THIS THE ~~22ND~~ DAY OF AUGUST, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT
VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

Union of India And Others. .. Review Petitioners/
Original Respondents

Versus

Shri J.A. Khan .. Respondent/
Original Applicant

O R D E R

Hon'ble Smt. Shanta Shastri. Member (A)

This review petition has been preferred against the order dated 10.4.2002 passed in OA 809/2001 by the original respondents. The operative part of the order reads as follows:

"We direct the respondents to grant the stepping up of pay to the applicant with reference to Smt. Vaswani from the date her pay was fixed higher than that of the applicant. The applicant's pay be refixed in the grade of selection grade Auditor i.e. from 20.5.1975 at Rs.600/- in place of Rs.560/-. Pay fixation may be done consequently in the higher grades of Selection Officer/ Assistant Audit Officer and Audit Officer as well as subsequent promotion post. The entire pay fixation will be on a notional basis. The applicant shall be entitled to arrears of pay on account of refixation of pay only from one year prior to the date of filing of this application i.e. from 20.11.2000. This exercise shall be completed within a period of 2 months from the date of receipt of a copy of this order. The O.A. is allowed accordingly, without any cost."

According to the review petitioners, as per orders of

the Tribunal, the pay of the applicant was to be stepped up only notionally and arrears of pay were to be paid from 20.11.2000. However, the applicant had retired on 30.9.1996, therefore, no arrears can be paid to him. However, as per the extent pension rules, pension is based on average of last 10 months of pay actually drawn by the Government servant. Since the applicant had not actually drawn the amount of stepped up pay and it was only notional fixation, enhanced rate of pension is not admissible to him. The petitioners, therefore want the order dated 10.4.2002 to be revised.

2. The petitioners have further argued that repeated representations by the applicant could not extend the period of limitation as held in the case of S.S. Rathore Vs. State of Madhya Pradesh and therefore, the condonation of delay by the Tribunal also needs to be reviewed.

3. The present application has been filed on 21.6.2002 i.e. after more than one month after the order was passed. The petitioners have filed MP for condonation of delay. According to them, they received the certified copy on 01.5.2002 and due to summer vacation, there was delay in filing of the review petition.

4. We have perused the grounds taken in the review petition for review. According to us, having allowed

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the OA, it goes without saying that the applicant was entitled to all the consequential benefits and therefore, though the pay was to be fixed notionally from 20.11.2000, his pension also would have to be enhanced notionally and arrears shall become payable only from 20.11.2000 onwards. According to us, therefore, the applicant shall be entitled for enhanced pension from 20.11.2000. Therefore, the order does not call for any review. Thus, on the ground of limitation as well as on merits, the review petition is dismissed.

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(SMT. SHANTA SHASTRY)
MEMBER (A)

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(BIRENDRA DIKSHIT)
VICE CHAIRMAN

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