

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 321/91
T.A. No.

198

DATE OF DECISION 26.3.1992SHRI V.P.KALEKAR, & ors. PetitionerMr. S.P.Saxena, Advocate for the Petitioner(s)

Versus

The Union of India & ors. RespondentMr. V.M.Bendre for Mr. P.M. Pradhan, counsel for Respondents Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.Y.PRIOLKAR, MEMBER (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *N*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *N*


 (M.Y.PRIOLKAR)
 MEMBER(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

7

ORIGINAL APPLICATION NO.321/91

SHRI V.P. KALEKAR,
D'man-I, and ors.

....Applicants

V/s

The Union of India and
ors.

....Respondents

CORAM : HON'BLE MEMBER SHRI M.Y.PRIOLKAR, MEMBER (A)

Appearance:

Shri S.P.Saxena, Adv.
for the applicant.

MR.J.P.DEODHAR, Adv
for the respondents.

ORAL JUDGEMENT

26TH MARCH 1992

(PER : M.Y.PRIOLKAR, M/A)

The three applicants in this case were D'man Grade -II in the office of the Director General of Quality Assurance under the Ministry of Defence in the pay scale of Rs.205-280(PS). In pursuance of 3rd Pay Commission's Recommendations, a higher pay scale of Rs.425-700 was approved for the senior 50 per cent of the D'man Grade-II and the lower pay scale of Rs.330-560 to the Junion 50 per cent of D'man Grade-III. Accordingly, all the applicants who were among the lower 50 percent were offered the pay scale of Rs.330-560 and their options were also invited on that basis. While applicant No.1 opted for this revised pay scale from 28th February 1973, the other two applicants opted for the revised pay scale with effect from 1.1.1973.

2

Subsequently, some of the similarly placed D'man approached this Tribunal and certain others filed petitions in the Supreme Court and finally on the basis of the decision of the Supreme Court, by Presidential order dated 27.10.1987 as modified by order dated 16.5.1988, a uniform pay scale of Rs.425-700(PR) was approved for D'man Grade-II with effect from 1.1.1973. Meanwhile, the applicants had also been promoted to the grade of D'man Grade-I in the scale of Rs.550-750.

2. The grievance of the applicants is that their pay was re-fixed from 1.1.1973 in the higher scale of Rs.425-700 and subsequent corresponding scales approved as a result of 4th Pay Commission's recommendations and on that basis certain recoveries are sought to be made. The government has however, since decided to waive the recovery of such over payments by order dated 12.12.1991. The grievance in respect of all the applicants, therefore, no longer subsists. The applicant No.1's subsisting grievance is however that in pursuance of third Pay Commission's recommendations, he had given option for re-fixation of his pay with effect from 28.2.1973 in the pay scale of Rs.330-560. His pay in the revised pay scale of Rs.425-700 has been accordingly fixed by Respondent No.1 with effect from 28.2.1973. His contention is that since a higher pay scale has been now made applicable to all the D'man Grade-II under the Supreme Court Judgement, a fresh option should have been given to him. The only ground on which this contention is resisted by the respondents is that the applicant No.1 had given option earlier and on that basis the applicant No.1's pay was fixed and once the option is exercised, no further option can be given. This argument of the respondents cannot be accepted as the earlier option was given by the applicant No.1 for the lower pay scale of Rs.330-560, and option for higher scale

W

(9)

i.e. Rs.425-700 has not been called by the respondents before re-fixing the pay of the applicant. The respondents should have given a fresh option in respect of the higher pay scale and if such option had been given, according to the applicant, he would have exercised such option with effect from 1.1.1973, since, this would be more beneficial to him in the higher scale of Rs.425-700.

3. The respondents are accordingly directed to re-fix the pay of the applicant No.1 in the higher pay scale of Rs.425-700 with effect from 1.1.1973. Any additional payments to him or recovery from him can be made only on this basis. Needless to say, if the applicant No.1 is still aggrieved by revision of pay fixation, it will be open to him to approach afresh this Tribunal in accordance with law. Let this new fixation be done within a period of 3 months from the date of receipt of the communication of this order. With these directions this application is disposed of finally with no order as to costs.


(M.Y.PRIOLKAR)
MEMBER(A)