

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1283/92

Dated: 10.8.1999.

D.M. Khandekar

Applicant.

Mr. V.M. Bendre

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr. M.I. Sethna along with Mr. V.D. Vadhavkar.

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

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

(1) To be referred to the Reporter or not? *NO*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *NO*

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1283/92.

Tuesday, this the 10th day of August, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member(A),

D.M.Khandekar,
Assistant News Editor (Retd.)
407-D, N-1 Sector 'C'
CIDCO,
Aurangabad - 431 003.
(By Advocate Mr.V.M.Bendre) ...Applicant.

Vs.

1. Union of India,
through the Secretary,
Ministry of Information and
Broad Casting, Government of
India,
New Delhi.
2. Director of Field Publicity,
Ministry of Information and
Broad Casting, Government of
India, R.K.Puram,
New Delhi.
3. Director of News Services,
Broad Casting House,
Parliament Street,
New Delhi.
(By Advocate Mr.M.I.Sethna along with
Mr.V.D.Vadhavkar). ...Respondents.

: O R D E R (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard Mr.V.M.Bendre, the learned counsel for the applicant and Mr.M.I.Sethna along with Mr.Vadhavkar, the learned counsel for the respondents.

2. The point in dispute lies in a narrow compass. We will

...2.



mention only the basic facts which are necessary for deciding the point at issue.

The applicant was working in the Ministry of Information and Broadcasting. He came to be promoted on ad-hoc basis as Field Publicity Officer in 1963. He was allowed to cross Efficiency Bar in that post w.e.f. 18.4.1973. During that time the IIIrd Pay Commission Report came into force and it was accepted by the Government and given effect to from 1.1.1973. The IIIrd Pay Commission recommended that the entire Grade IV services which includes 135 posts of Field Publicity Officers should be en bloc placed in Grade III, that means Field Publicity Officers who were getting the pre-revised scale of Rs.370-485 were kept in the revised pay scale of Rs.650-1200 which is the revised pay of Grade.III. The applicant's promotion as a Field Publicity Officer came to be regularised by order dt. 27.1.1977. The applicant was not given the benefit of the revised pay scale of Rs.650-1200 from 1.1.1973, but he was given the benefit of the pay scale only from 27.1.1977. The applicant's prayer is that he should get the revised pay scale on the basis of the IIIrd Pay Commission Report from 1.1.1973 with all consequential arrears and consequential benefits including pension and pensionary benefits.

3. The respondents in their reply have admitted the IIIrd Pay Commission Report and acceptance of the same. But, their contention is that the applicant was on ad-hoc promotion when the Pay Commission Report came to be implemented from 1.1.1973. Since the applicant was on ad-hoc promotion at that time and came to be regularised only in 1977, he cannot get monetary benefits and seniority in the cadre from 1.1.1973. It is also stated that

there were many seniors who were left out and if the benefit is given to the applicant it would affect the other senior officers. The applicant cannot be given the benefit unless all the seniors to the applicant could be accommodated in Gr.III. It is therefore stated that the applicant is not entitled to the benefit of the IIIrd Pay Commission Report w.e.f. 1.1.1973. It is also stated that the application is barred by limitation, delay and laches.

4. As far as the merits are concerned, we find that the question is concluded by a Judgment of the Supreme Court and also a Judgment of a Division Bench of this Tribunal in O.A. 2753/91. The copy of the Judgment is at page 15 of the paper book. The Tribunal has clearly held that the Gr.III Officers are entitled to the pay scale of Rs.650-1200 w.e.f. 1.1.1973. The Bench has also quoted the observation of the Supreme Court in Writ Petition No.1888/78 where the Supreme Court has observed that the benefit cannot be denied even if there are some administrative difficulties, since it will be discriminatory.

We are not impressed by the arguments of the learned counsel for the respondents about seniors being left out from the cadre. We do not find sufficient factual details in the reply filed in this case. We do now know whether there were more seniors over and above 135 Field Publicity Officers. We do not know as to what was the position of the applicant in that seniority list. Irrespective of the question of seniority, even a person on ad-hoc promotion is entitled to the pay of the post. It is not disputed that the applicant has worked as Field Publicity Officer from 1.1.1973 till he was again regularised in 1977. Irrespective of the question of seniority, when the

applicant has worked in the post of Field Publicity Officer, even though on ad-hoc basis, he is entitled to pay of the post from 1.1.1973 which has been fixed in the scale of Rs.650-1200 on the recommendation of the pay Commission Report. Therefore, we hold that applicant should get the pay scale of Rs.650-1200 from 1.1.1973.

5. We find sufficient force in the submission of the respondents counsel that the claim is barred by limitation delay and laches. The applicant has filed the present application in 1992 claiming monetary benefits since about 19 years viz. from 1.1.1973. The claim is purely a money claim and applicant has approached this Tribunal after 19 years and that too after his retirement. We do not know the date on which he retired, but at any rate he had retired prior to the filing of the present application. Merely because he came across a judgment of the Tribunal or a Court, it will not give a fresh cause of action to claim arrears of monetary benefits. But, the applicant's grievance is that he must get proper fixation of pay on the basis of acceptance of the IIIrd Pay Commission Report. As far as the fixation of proper pay is concerned, as ruled by the Supreme Court in M.R.Gupta Vs. Union of India (1995 (5) SCC 628), fixation of pay is a continuous cause of action and there is no limitation at all. Here what the applicant is asking is that he must be fixed in the revised scale w.e.f. 1.1.1973. Since this is a fixation of pay, the applicant's case squarely comes under the rule laid down by the Apex Court in M.R.Gupta's case. As far as arrears are concerned, the Supreme Court itself ruled out that the arrears is subject to limitation. Therefore, in the

facts and circumstances of the case though we are upholding the claim of the applicant that his proper pay should be fixed as on 1.1.1973 in the revised pay scale of Rs.650-1200, he will not get arrears of pay at all. The administration should fix the pay of the applicant notionally as on 1.1.1973 and similarly the notional fixation of pay must be continued till the applicant retired from service. On the basis of the said notional fixation of pay, the applicant's pension should be revised.

6. In the result, the OA is partly allowed. The respondents are directed to refix the applicant's pay on a notional basis w.e.f. 1.1.1973 in the pay scale of Rs.650-1200. After notional fixation of pay as on 1.1.1973, the respondents should continue to fix the pay notionally from time to time till the date of retirement of the applicant. On the basis of notional fixation of pay on the date of retirement applicant's pension shall be revised. Then the applicant should be paid the arrears of pension on the new rate limiting it to three years prior to the filing of the present application or from the date of actual retirement whichever is later (we note that the date of filing of the application is 18.12.1992). It is made clear that the applicant will not be entitled to gratuity or any other pensionary benefits except fixation of pension and arrears of pension as mentioned in the order. The respondents to comply with this order within a period of four months from the date of receipt of copy of this order. No order as to costs.

B.N.BAHADUR
(B.N. BAHADUR)

MEMBER(A)

R.G.Vaidyanatha
(R.G. VAIDYANATHA)

VICE-CHAIRMAN