

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: QA/1287/92.

Transfar Application No:

DATE OF DECISION: 16.06.1994.

Shri D. G. Kataria, Petitioner

Shri S. L. Desai, Advocate for the Petitioners

Versus  
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Western Railway, Respondent

Shri A. L. Kasture, Advocate for the Respondent(s)

CORAM :  
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The Hon'ble Shri **B.S. Hegde, Member (J).**

The Hon'ble Shri

1. To be referred to the Reporter or not ? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal ?

  
( B. S. HEGDE )

MEMBER (J).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. 1287/92

Shri D. G. Kataria ... Applicant

Versus

Western Railway ... Respondent.

CORAM : Hon'ble Shri B. S. Hegde, Member (J).

APPEARANCES :

1. Shri S. L. Desai,  
Counsel for the Applicant.
2. Shri A. L. Kasture,  
Counsel for the Respondent.

ORAL JUDGEMENT

DATED : 16.06.1994.

¶ Per B. S. Hegde, Member (J) ¶

1. Heard the arguments of both the parties. The applicant has made an application under Section 19 of the A.I. Act praying for the following relief -

" I pray that my pay in the post of Section Officer (Accounts) in the revised pay scale (functional grade) be ordered to be fixed with effect from 1st January, 1986 in the light of Government Order No. FC/IV/86/IMP/42 dated 20th September 1988 (Ex."E") and my pay fixation should be done under Rule 2018/B/R.II and not under Rule 2027/RII in the interest of law and justice I may be granted relief prayed for".

2. Admittedly, the applicant has retired on Superannuation on 31.07.1987. The applicant has filed an earlier OA No. 494 of 1990 wherein he made a similar prayer which has been disposed of by the Tribunal vide order dated

06.02.1992 by the Division Bench of this Tribunal.

The operative portion reads as follows :-

"Accordingly the application is allowed to that extent and the respondents are directed to consider within three months from the date of receipt of a copy of this order as to whether the applicant is entitled to that particular grade w.e.f. 01.01.1986 in view of the duties and higher responsibilities discharged by him. Incase it is found that he was discharging higher duties and responsibilities, he may be given benefit from that date, otherwise this application should be deemed to have been dismissed in toto. There will be no order as to cost."

3. Pursuant to the judgement of the Tribunal, the respondent vide their letter dated 25.05.1992 considered the direction given by the Tribunal and came to the following decision which reads as follows :-

"With reference to the operative part of the Judgement, it is stated that as per Railway Board's letter dated 24.09.1986 the staff in Selection Grade of Rs. 775-1000 were allowed revised pay scale of Rs. 2000-3200 on personal basis from 01.01.1986. After the recommendations of IV-Pay Commission, the Selection Grade was abolished and Functional Scale Rs. 2000-3200 was introduced in the Accounts Department. However, the Commission had left the question of determination of number of posts to be placed in the higher functional scale to be decided by the Government, which was decided some time in 1987. The Pay

on appointment to the Selection Grade was fixed at the same stage at which the pay was drawn in the ordinary grade, if there is such a stage in the scale of pay in the Selection Grade or at the next higher stage if there is no such stage and not under Rule 2018-B/1316(R-II)(FR-22-C). When functional scale is introduced, the appointments have to be made on normal promotion procedure. The number of posts to be placed in functional scale were decided sometime in 1987 and as such, the appointments to the functional scale were made from 01.04.1987. It is only appointment to functional scale that involves higher duties and responsibilities and the employees become entitled to benefit of Rule 1316-R-II (FR-22-c). This position was clarified in Board's letter no. FCIV/86/Imp./42 dated 14.08.1989.

*fsk*  
Your argument regarding higher duties and responsibilities cannot be accepted as no criteria of higher duties and responsibilities has been laid down in the instructions relating to allotment of Selection Grade/functional scale. Moreover, the basic issue for grant of functional scale with effect from 01.01.1986 instead of 01.04.1987 is pending before Supreme Court. Implementation of the orders in the present case will cause discrimination between similarly placed government servants.

In view of the circumstances explained above, there is no merit in your claim for performing higher duties and responsibilities with effect from 01.01.1986."

4. The Learned Counsel for the respondents Shri A. L. Kasture, submits that similar prayer has already been considered by the Tribunal in O.A. No. 494/90 and disposed of the matter in merits. On the ground of resjudicata, this petition stands disposed of, as the Applicant has brought out no new points in this petition. It is clearly stated in the judgement that while allowing the petition of the applicant to that extent, the respondents are directed to consider within 3 months from the date of receipt of the copy of this order as to whether the applicant is entitled to that particular grade w.e.f. 01.01.1986 in view of the duties and responsibilities discharged by him. Keeping in view of the directions and having considered the case on merit, the Applicant cannot reagitate the same matter again. Further, the respondent had given a speaking order in Exhibit 'E' which clarified all the dues raised by the Applicant.

5. The main contention of the Applicant is that, he should get the benefit of Functional Scale w.e.f. 01.01.1986 instead of 01.04.1987. Admittedly, prior to 01.04.1987 the Functional Grade was not in existence. As per Railway Board's letter no. FCIV/86/IMP/30 dated 18.06.1987 Selection Grades were abolished and it was decided

that the scale of pay of Rs. 1400-2600 and Rs. 2000-3200 were to be treated as functional grades. The proportion of the posts was also given in the said letter and these orders were to take effect from 01.04.1987.


6. In support of this contention, the Learned Counsel for the respondent Shri A. L. Kasture, draws my attention to the decision of the Supreme Court in 1992(1) Union Of India and Others Versus Secretary, Madras CA&A Association & Others (SC) Voluntary Services lodged on Page 93, wherein the Supreme Court has gone into the merits of the decision rendered by the Full Bench of the Tribunal while disagreeing with the findings of the Full Bench as well as Bangalore Bench. It is further observed that "In the instant case the question is whether there was apparent reason to give different dates of implementation of the recommendations of the Pay Commission in respect of the members of the Accounts wing and whether such an implementation Articles 14 and 16 in any matter? It is not in dispute that after the report of the Pay Commission the Government considered the matter and accepted the substational part of the recommendations and gave effect to the revised scales of pay with effect from 01.01.1986. It is clearly indicated in the report that in regard to recommendations in other matters the Government will have to take specific decisions to give effect to them from a suitable date keeping in view all the relevant aspects including the administrative and accounting of work. The second part of the recommendations relates to

treatment of scales of pay of Rs. 1400-2000 and Rs. 2000-3200 as functional grades requiring promotion as per normal procedure and also the number of posts to be placed in these scales of pay. These recommendations clearly fall in the category of other recommendations and the Pay Commission itself has indicated that in respect of such recommendations the Government will have to take specific decisions to give effect from a suitable date".

7. Keeping the rationale laid down to the Supreme Court decision, admittedly, the Applicant has not occupied the Functional Post and assumed the higher responsibilities prior to 01.04.1987. Regarding discrimination, especially the aforesaid Judgement of the Supreme Court is dealt in detail and no useful purpose shall be served in dragging the case further. As rightly pointed out by the Learned Counsel for the Respondent, since the matter has already been disposed of by the Tribunal in the earlier occasion, it is not open to the Applicant to reagitate the matter once again. The Applicant is fully aware with the directions given by the Tribunal on earlier occasion to the respondent to consider the request of the Applicant within a period of three months, which has been considered and passed as speaking order. Having complied with the same, it is not open to the respondent to reagitate the matter once again. Further, in view of the decision

of the Supreme Court, I do not find any merit in the present O.A., as the Respondents have already stated that the subject matter is already pending before the Supreme Court. Therefore, as and when the matter is decided by the Supreme Court, and if the decision is in favour of the Petitioners of this Writ Petition, then in that case, it is open to the Applicant to make representation to the Respondent to consider his case also in the light of the Supreme Court order.

8. On the aforesaid direction, there is no merit in this O.A. Accordingly, the O.A. stands dismissed. No order as to cost.

  
( B. S. HEGDE )  
MEMBER (J).

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BOMBAY BENCH

R.P. NO.: 90/94

IN

O.A. NO.: 1287/92.

D. G. Kataria ... Applicant

## Versus

Union Of India & Another ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).


Tribunal's Order by Circulation :

Dated : 7.11.94,

{ Per. Shri B. S. Hegde, Member (J) }.

1. This Review Application is filed by the Applicant seeking review of the Judgement dated 16.06.1994 in O.A. No. 1287/92.

2. I have perused the review application. It may be recalled that the Applicant has retired from service on 31.07.1987 and he has filed an earlier O.A. No. 494 of 1990, wherein he made a similar prayer which has been disposed of by the Tribunal vide order dated 06.02.1992 by the Division Bench of this Tribunal, with the following observations :-



3. Pursuant to the judgement of the Tribunal, the Respondents vide their letter dated 25.05.1992, passed the following orders :-

"After the recommendations of IVth Pay Commission, the Selection Grade was abolished and Functional Scale Rs. 2000-3200 was introduced in the Accounts Department. However, the Commission had left the question of determination of number of posts to be placed in the higher functional scale to be decided by the Government, which was decided sometime in 1987. The pay on appointment to the Selection Grade was fixed at the same stage at which the pay was drawn in the ordinary grade, if there is such a stage in the scale of pay in the Selection Grade, etc. When Functional scale is introduced, the appointments have to be made on normal promotion procedure. The number of posts to be placed in the functional scale were decided sometime in 1987 and as such, the appointments to the functional scale were made from 01.04.1987. It is only appointment to functional scale that involves higher duties and responsibilities and the employees become entitled to the benefit of Rule 1316-R-II(FR-22-C).


4. The main contention of the Applicant is that, he should be given functional scale with effect from 01.01.1986 instead of 01.04.1987. The basic issue for grant of functional scale with effect from 01.01.1986 instead of 01.04.1987 is pending before Supreme Court, therefore, the department is not in a position to take any further decision in the matter, till the Supreme Court finally disposes of the case. The Respondent's Counsel, Shri A. L. Kasturey, has drawn the attention of the Tribunal that while disposing of the O.A. No. 494/90, a similar prayer was made by the applicant, which was disposed of on merit. Therefore, on the ground of resjudicata, this petition

stands disposed of, as the Applicant has brought out no new points in this Petition. It is an admitted fact that prior to 01.04.1987, the functional grade was not in existence. The Selection Grade was abolished and it was decided that the scale of pay of Rs. 1400-2600 and Rs. 2000-3200 were to be treated as functional grades. It is also not disputed that after the report of the Pay Commission, the Government considered the matter and accepted the substantial part of the recommendations and gave effect to the revised scales of pay with effect from 01.01.1986. Nevertheless, regarding the functional grade, the decision was taken by the Respondents only on 01.04.1987 and the applicant was given benefit from that date. In the circumstances, since the matter has been disposed of on merits earlier, it is not open to the applicant to reopen the matter again and again by filing a Review Petition.

5. After perusing the review application, I find that none of the ingredients referred to above, have been made out to warrant a review of the aforesaid judgement. It is not the case of the applicant that he has been discriminated from that of others and he is not disputing the decision of the Government to treat the functional grade with effect from 01.04.1987, though the Pay Commission recommendation was given effect from 01.01.1986.

6. In the circumstances, I am of the opinion that neither an error on the face of the record has been pointed out nor any new facts have been brought to my notice calling for the review of the judgement. The new documents furnished

by the applicant ~~are not~~ authentic. Accordingly, I do not see any merit in the review application and the same is, therefore, dismissed.

  
(B. S. HEGDE)  
MEMBER (J)

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