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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 :-

"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."

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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