

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 206/92

Date of Decision: 19.9.97

Ajay Shankar

Applicant.

Shri D.V.Gangal

Advocate for
Applicant.

Versus

Union of India & Anr.

Respondent(s)

Shri R.K.Shetty.


Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. P.P.Srivastava, Member(A).

- (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).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 206 /1992.

19th, this the 19th day of September 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri P.P.Srivastava, Member(J).

Ajay Shankar,
Quarter No.3/2,
Defence Estate,
Deolali,
Nasik.

... Applicant.

(By Advocate Shri D.V.Gangal)

V/s.

1. Union of India through
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Administrative Officer,
C R O (Officers) in the
office of Chief Engineer,
Delhi Zone,
Delhi - 110 010.

... Respondents.

(By Advocate Shri R.K.Shetty)

O R D E R

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

Heard Shri D.V.Gangal, counsel for the
applicant and Shri R.K.Shetty, counsel for the
respondents.

2. In this O.A. the applicant is challenging
the order passed by the Respondents on 16.2.1991
which reads as follows :

"The matter regarding initial fixation of pay
in respect of MES-145576 Shri Ajay Shankar, BE
on his appointment in MEB as AEF has been
reviewed in consultation with CODABC Chandigarh

and CODA New Delhi and it has been found that his pay as already fixed at Rs.860/- in the scale of Rs.700-1300 on/w.e.f. 24 Feb 75 under ... and at 900/- PM in the scale defence, New Delhi letter No.75628/874/E1B/229-9/D(Civ-I) dated of New 1985 is an order and therefore ~~the~~ will hold good."

2. The main thrust of argument on behalf of the applicant is that he is entitled to fixation of pay at Rs.940/- w.e.f. 24.2.1975 and will have to be granted yearly increment thereafter upto date. Therefore, the pay fixation done by the respondents is illegal and the same is required to be quashed.

3. On the other hand, the learned counsel for the Respondents Shri R.K.Shetty draws our attention to the decision rendered by the Chandigarh Bench in O.A.190-HP of 1988 on 20.12.1988, the very same matter has been agitated by the applicant before the Chandigarh Bench and the Tribunal had considered merits of the case and ultimately dismissed the application on the point of limitation. Therefore, the learned counsel for the respondents in the reply has formerly urged that since a coordinate Bench has already given a decision on the very same subject matter, this Tribunal does not have jurisdiction to entertain the same, therefore, it is barred by principles of res-judicata. Secondly, though the cause of action arose in the year 1985, this application has been filed in the year 1992 after a lapse of 7 years, on that score also the application is not maintainable. Further, any correspondence made in this respect does not create any further cause of action. The matter has been considered as back as in

1985 and his pay fixation ~~was~~ done in accordance with the F.R. 22-B and his contention has been rejected that his pay should be fixed at Rs.940/- in the scale of Rs.700-1300 w.e.f. 24.2.1975 and the same is not covered under any rules and his pay has been accordingly fixed at the rate of Rs.860/- p.m. under F.R. 22-B and at Rs.900/- p.m. w.e.f. 5.7.1977 under the provisions of F.R. 22-C. Thereby, no prejudice has been caused to the applicant in the fixation of pay. It may be recalled, that he has not been promoted from Class-II to Class-I. He has been appointed as a fresh candidate on the recommendation of U.P.S.C. w.e.f. 24.2.1985 and in accordance with the terms and conditions of the appointment and in terms of F.R. - S.R. the case of Government servant appointed to higher post through UPSC, where the UPSC recommend a specific rate of pay to be given to the Government servant, the person concerned should be eligible for that rate of pay. ~~It~~ ~~was~~ on the contrary the Commission recommend that the pay should be fixed "under normal rules" the pay may be fixed under F.R. 22-C. In the instant case no such recommendation has been made by the UPSC, therefore, his pay has been accordingly fixed under F.R. 22-B.

4. On a perusal of the pleadings, we find that the applicant has not challenged the Circular of the Respondent No.1 dt. 14.3.1983 nor challenged the fixation done by the respondents, except stating that it is illegal and he should have been fixed on the

promotion, that he has been promoted to the Class-I post which is found to be incorrect.

5. On the other hand, the counsel for the applicant submitted that dismissal of a case on limitation does not extinguish the right of a party. He is perforced to file this O.A. against the impugned order passed by the respondents in 1991 which is allegedly pursuant to the direction of the Tribunal vide its order in the year 1988. It is not the case of the applicant that he has not been given the benefit of F.R. 22. His pay has been protected in which he was drawing prior to joining of the present post and he has been given increment immediately after completion of his probation. Shri R.K.Shetty in support of his contention stated that this Tribunal does not have jurisdiction to entertain the matter, since it has already been dealt with by a co-ordinate Bench. He relies on the decision of the Apex Court in R.C.Tiwari V/s. M.P.State Co-operative Marketing Federation Ltd. & Ors. (1987 (II) LLJ 236) and on the decision of this Tribunal in K.R.Kalan V/s. The Postmaster, Kalyan City HEO & Ors. (1997(1) AISLJ 434). Therefore, he contends that the Tribunal cannot entertain this petition by way of fresh cause of action which has already been adjudicated by a co-ordinate Bench. His plea of incorrect fixation of pay has already been dealt with by the Chandigarh Bench and the same was dismissed by its

...5.

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order dt. 22.12.1988 and as such the question of any new cause of action does not arise. Therefore, in our view, there is no merit in the O.A. and the same is dismissed with no order as to costs.



(P.P. SRIVASTAVA)
MEMBER(A)



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

B.