

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 407/92

~~Transfer Application No.~~

Date of decision 27 July 83.

Shri H.D.Parcholia Petitioner

Shri E.K.Thomas Advocate for the Petitioner

Versus

Union of India & Ors. Respondent

Shri V.S.Masurkar Advocate for the Respondent(s)

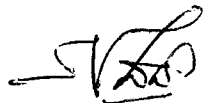
Coram :

The Hon'ble Shri V.D.Deshmukh, Member (J)

The Hon'ble Shri

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

} 20.


(V.D.DESHMUKH)
MEMBER (J)

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 407/92

Shri H.D.Parcholia

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (J) Shri V.D.Deshmukh

Appearance

Shri E.K.Thomas
Advocate
for the Applicant

Shri V.S.Masurkar
Advocate
for the Respondents

JUDGEMENT

Dated: 27 July 93.

(PER: V.D.Deshmukh, Member (J))

The applicant was a permanent employee of the State of Gujarat in the High Court of Judicature at Ahmedabad. He was appointed in the office of the Central Administrative Tribunal on deputation. Finally, the applicant retired as Deputy Registrar at Bombay Bench of the said Tribunal on 31.3.1992.

2. The applicant prior to his deputation to the CAT was working as a Section Officer in the Gujarat High Court in the pay scale of Rs.650-1200 which was revised to Rs.2000-3500 in 1986. When he was deputed to the CAT, he was appointed in the equivalent post of Section Officer w.e.f. 2.6.1986. The said post also carried the same pay scale, i.e. 2000-3500. The applicant was informed under the Memo. dated 6.5.1986 that he would be entitled to receive deputation allowance.

3. The applicant contends that he was receiving on 2.6.1986, the date on which he was appointed in CAT, the pay of Rs.2876/- as the Section Officer in Gujarat High Court. It is his further

(8)

contention that in view of the Office Memorandum (O.M.) dated 4.5.1961 he was entitled to receive deputation allowance at the rate of 10% of his pay in the parent department without any ceiling and accordingly was paid the deputation allowance of Rs.288/- p.m.

4. The recommendations of the Fourth Pay Commission were accepted and the pay scale of a Section Officer in Central Government service was revised from Rs.650-1200 to Rs.2000-3500 and the benefit was given with retrospective effect from 1.1.1986. These recommendations were accepted by the Gujarat Government and as per the revision in the parent department of the applicant, the applicant's pay in the parent department was refixed at Rs.2975/- p.m. with effect from 1.1.1986. The applicant contends that in view of the refixation in the parent department, he was entitled to receive deputation allowance of Rs.298/- in the month of June 1986. The applicant relies upon the O.M. dated 9.12.1986 issued by the Central Government under which the deputation allowance granted to the Central Government employees was fixed at 5% of basic pay subject to a ceiling of Rs.250/- for transfer within the same station and 10% of basic pay subject to a ceiling of Rs.500/- in all other cases. It is his contention that this O.M. was issued in supersession of an earlier O.M. dated 7.11.75 and as per the terms of O.M., he was entitled to the deputation allowance of Rs.298/- p.m. as it was below the ceiling of Rs.500/-.

5. Shri M.Ramachandran, Deputy Registrar, CAT, Bombay Bench has filed the affidavit in reply on behalf of the respondents, and it is the contention of the respondents that the claim of the applicant for the deputation allowance was entirely governed by the O.M. dated 26.12.1984 issued by the Central Government which was also made applicable to the State Government employees on deputation to Central Government. According to the orders

(10)

and further directed that the recoveries be made if the deputation allowance was paid to the applicant in excess of the ceiling limit of Rs.250/- per month. The Registrar of the then New Bombay Bench by his letter dated 21.1.1988 to the Financial Adviser & Chief Accounts Officer requested for clarification in this regard.

7. The then Dy. Controller of Accounts by his letter dated 28.1.1988 informed that the O.M. dated 9.12.1986 read with the O.M. dated 7.11.1975 was applicable to the applicant's case and the applicant was entitled to deputation duty allowance at the rate of 10% subject to a ceiling of Rs.500/-. A copy of this letter is Exhibit 'G' to the application.

8. The applicant's term of deputation was extended on 26.2.1988 and he claims that he was informed at that time that both the O.M.s dated 26.12.1984 and 9.12.1986 were applicable to his case. The applicant was in the meanwhile promoted w.e.f. 24.10.1986 as Assistant Registrar in his parent cadre in Gujarat and his pay in the parent cadre was fixed in the scale of Rs.2500-4200.

9. The applicant claims that in view of the above said letter he was entitled to the deputation allowance subject to the ceiling of Rs.500/-. The Dy. Controller of Accounts however issued a fresh letter dated 27/31.5.1988 addressed to the Registrar of this Tribunal and informed that the applicant's deputation allowance would be regulated by the O.M. dated 26.12.1984 and not by the O.M. dated 9.12.1986. It was further directed under the same letter that any amount of deputation allowance paid in excess of the ceiling of Rs.250/- should be recovered from the applicant. The applicant repaid the excess amount of Rs.849/- on 28.7.1988.

10. The applicant thereafter made representations.

However, his representations were rejected by the letter of the Deputy Registrar of the Principal Bench dated 16.11.1988

(Ex.'O'). The letter stated^S that the applicant was governed by the O.M. dated 26.12.1984 and ^{though} originally these orders were framed for the employees of Public Sector Undertakings when

they were deputed on reverse Foreign Service terms in the Govt. of India, ^{but} later on, these orders were extended to the State Govt. employees on deputation to the Govt. of India.

The letter thereafter mentioned^{S/as} to the option which is available to the employees on deputation to the Central Government.

Ultimately, the letter states that in view of the option exercised by the applicant and the provisions of the O.M. dated 26.12.1984, the applicant was entitled to deputation duty allowance at 10%, but subject to the ceiling of Rs.250/- per month.

11. The applicant preferred an appeal before the Hon'ble Chairman of this Tribunal. However, by the letter dated 19.2.1992 the claim of the applicant was rejected. This letter addressed to the Registrar of the Bombay Bench states that the appeal of the applicant was referred to the Department of Personnel & Training for seeking clarifications and the ^{Said} ~~same~~ Department by its letter dated 16.2.1992 had intimated that the claim of the applicant was found to be without any basis.

12. The applicant has filed the present application in the above circumstances. He claims refund of the amount recovered from him and that the order dated 19.2.1992 be quashed and it be declared that he is entitled to deputation duty allowance under the O.M. dated 9.12.1986.

13. I heard the learned advocates^f for the applicant and the respondents. Most of the facts as regards the post held by the applicant in the State of Gujarat, the scale drawn by

9

dated 26.12.1984 the State Govt. employees had the option to draw either (a) pay in the scale of post held by them under the Central Govt. or (b) draw their grade pay in the parent department plus deputation duty allowance at the rate of 10% of the grade pay subject to the ceiling of Rs.250/-. The respondents, therefore, contended that in view of these orders contained in the O.M. dated 26.12.1984 the applicant was entitled to deputation duty allowance subject to the ceiling of Rs.250/-. They also denied that the deputation duty allowance payable to the applicant was based on the order dated 7.11.1975. It is the case of the respondents that the applicant was appointed on deputation w.e.f. 2.6.1986, before the O.M. dated 9.12.1986 was issued, and as such his terms of appointment would be regulated in terms of O.M. dated 26.12.1984. The learned advocate for the respondents has pointed out that the O.M. dated 9.12.1986 had not been issued in supersession of the O.M. dated 26.12.1984 and the O.M. dated 26.12.1984 is valid and in force for all purposes.

6. The applicant claims that his basic pay after the refixation was Rs.2975/- and as he was on deputation out of the parent state, he was entitled to the deputation duty allowance to the extent of Rs.298/- which was paid to him ^{as it ~~is~~} and was below the ceiling of Rs.500/- fixed by the O.M. dated 9.12.1986. The Deputy Controller of Accounts of the Principal Bench of this Tribunal however wrote a letter on 19.3.1987 to the Registrar of the New Bombay Bench (Ex.'C') and informed that the pay of officers who had come on deputation should be fixed under the O.M. dated 26.12.1984, i.e. at the rate of 10% subject to a ceiling of Rs.250/- p.m. The Deputy Controller of Accounts consequent upon the above Circular directed vide his letter dated 28.10.1987 that the deputation allowance of the applicant should have been fixed in accordance with the O.M. dated 26.12.1984

(12)

him in his parent department, re-fixation of the scale after the Fourth Pay Commission, option exercised by the applicant and the various letters and orders are not disputed. The entire dispute is whether the deputation allowance payable to the applicant is governed by the O.M. dated 26.12.1984 or 9.12.1986. The contention of the respondents ~~is~~^{was} that the applicant's case was not governed by the O.M. dated 7.11.1975 of the Ministry of Finance but by the O.M. dated 4.5.1961 is supported by the O.M. dated 6.5.1986 (Ex. 'A') under which the applicant was selected for appointment as Court Officer/Section Officer in CAT, New Bombay Bench, New Bombay. It was strenuously urged on behalf of the applicant that the O.M. dated 26.12.1984 was not applicable to the State Government employees on deputation to Central Government and it dealt with exclusively the deputation of employees of Public Sector Undertaking on reverse ~~of~~ foreign service in Govt. of India. No doubt the copy of the O.M. has the above said title. The O.M. mentions that the individual cases of employees of public sector undertakings on reverse foreign service were regulated by the O.M. dated 7.11.1975, but consequent on the revision of the pay scales of the employees of public sector undertakings practical difficulties ~~have~~^{had} arisen ~~in the said O.M.~~^{the application of} The O.M. further mentions that in order to overcome these difficulties, the President had decided that the employees of public sector undertakings, who were in receipt of industrial rates of Dearness Allowance and who were appointed on deputation under the Central Government may be offered the terms in the O.M. in respect of their pay and allowances. It offered an option to such employees to opt either for (a) pay in the scale of the post held by him on reverse foreign service under the Central Government or (b) to draw his grade pay in the public sector undertaking plus deputation duty allowance at 10% of the grade pay subject to a ceiling of Rs.250/- per month.

Although para 1 thus show^s that it dealt with the employees of public sector undertakings, para 3 of the O.M. expressly deals with State Government employees on deputation to the Govt. of India. This para mentions that it was decided that the terms as contained in para 1 of the O.M. in respect of pay and allowances as admissible to the employees of public sector undertakings on reverse foreign service may also be extended to the State Government employees during their deputation to the Government of India. No doubt the word 'may' has been used, however, this para has to be read in reference to the context and the entire para has to be read as^a whole. The entire para and the context clearly show that it was already decided that the terms of the O.M. shall be made applicable to the employees of the State Government on deputation to the Govt. of India. The letter of Deputy Registrar (A) of the Principal Bench of this Tribunal dated 16.11.1988 addressed to the Deputy Registrar of the then New Bombay Bench ^{also states} that the orders dated 26.12.1984 were extended to the State Govt. employees on deputation to the Govt. of India. In this view of the matter, there cannot be any doubt that the deputation allowance payable to the applicant would be governed by the O.M. dated 26.12.1984 unless it was superseded or repealed subsequently.

14. The learned advocate for the applicant relied upon Section II in the compilation of the orders/instructions which are taken from Swamy's Establishment and Administration 1993 Edition (Annexure-I to the rejoinder). The very title of this Section shows that the orders compiled in the Section were as regards transfer of Central Government employees on deputation to State Governments, Municipalities, Companies, Corporations, etc. The orders are in ^{reference} to the O.M. dated 7.11.1975. ^{As} has been stated earlier as per the O.M. dated 6.5.1986 appointing the applicant in CAT, his deputation allowance was to be governed

(14)

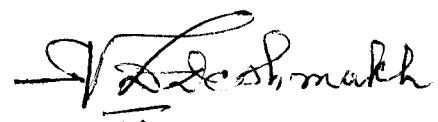
by the O.M. dated 4.5.1961. There is absolutely nothing in this entire compilation to show that the O.M. dated 9.12.1986 was issued in supersession of the O.M. dated 4.5.1961. No doubt the O.M. dated 26.12.1984 shows that it was in ~~reference~~^{reference} to the O.M. dated 7.11.1975 and it also mentions that the deputation allowance payable to the State Government employees on deputation to Govt. of India ~~were~~^{was} regulated till then by the O.M. dated 7.11.1975, but it expressly states that it was decided that the terms of the O.M. dated 26.12.1984 were made applicable to the State Government employees on deputation to the Govt. of India. Hence, it is clear that after the O.M. dated 26.12.1984 was issued, the deputation allowance payable to the State Government employees was governed exclusively by the said O.M. dated 26.12.1984. It was not thereafter governed by the O.M. dated 7.11.1975. In view of the above position, it was necessary for the applicant to show that the O.M. dated 26.12.1984 was either expressly superseded or implied^{-ly} repealed by the O.M. dated 9.12.1986. However, there is absolutely nothing to show that. The letter issued by the Ministry of Personnel, Public Grievances & Pensions dated 9.12.1986 clearly mentions that the O.M. dated 9.12.1986 related to the grant of deputation allowance to the Central Government employees who were regulated under paras 4.1 and 9.4 of the O.M. dated 7.11.1975. It clearly dealt with the Central Government employees who were on deputation to State Government or other bodies. The compilation relied upon by the applicant nowhere shows that the O.M. dated 26.12.1984 was expressly repealed or superseded. No doubt para 12 in the compilation shows that the orders shall apply to all Central Government employees and employees of State Governments deputed to hold posts in the Central Government except the cases mentioned therein. However, unless the O.M. dated 26.12.1984 stood repealed expressly or by necessary implications, it cannot

15

be said that it was no more in existence or in force. It was pointed out that the O.M. dated 26.12.1984 was not included in the compilation. However, it does not mean that O.M. stood repealed merely because it was not included in the compilation. After considering para 3 of the O.M. dated 26.12.1984 and the contents of the O.M. dated 9.12.1986, it is obvious that the intention was that the State Government employees on deputation to the Central Government shall be governed by the O.M. dated 26.12.1984 as regards the deputation allowance payable to them.

15. The correspondence referred to ^{in the} the above discussion ^{at the} show^s that different decisions were taken ~~on~~ different stages. However, it cannot be said that the Administration ^{for} could not correct its own decisions. Considering all the contentions raised on behalf of both the sides and the relevant official Memoranda, I find that the decision communicated by the impugned letter dated 19.2.1992 is correct and in pursuance of the O.M. dated 26.12.1984. The applicant is, therefore, not entitled to any relief.

16. In view of the reasons discussed above, the application is dismissed with no order as to costs.


(V.D.DESHMUKH)
MEMBER (J)

mrj.