

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH ~~AT NAGPUR~~
~~CAMP NAGPUR~~

(5)

O.A. NO: 718/92
T.A. NO:

199

DATE OF DECISION 16.3.1995

P.K.Sahasrabudhe

Petitioner

Shri M.K.Deshpande,

Advocate for the Petitioners

Versus

Union of India & Anr.

Respondent

Shri R.P.Darda.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. M.R.Kolhatkar, Member(A).

The Hon'ble Mr.

- ~~1. Whether Reporters of local papers may be allowed to see the judgement?~~
2. To be referred to the Reporter or not? X
- ~~3. Whether the said Reporters are to see the judgement of the Tribunal?~~
4. Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH,
CAMP AT NAGPUR.

Original Application No.718/92.

P.K.Sahasrabuddhe. ... Applicant.

V/s.

Union of India & Another. ... Respondents.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri M.K.Deshpande.
Respondents by Shri R.P.Darda.

JUDGMENT :-

¶ Per Shri M.R.Kolhatkar, Member(A) ¶ Dt. 16.3.1995.

The applicant is an employee of Respondent No.2. He was appointed as an L.D.C. w.e.f. 4.8.1955. On 11.6.1984 he was promoted as Accounts Officer and his pay was fixed at the stage of Rs.920/- in the scale Rs.840-1200 under F.R. 22(a)(i) and at Rs.1000/- on 1.1.1985 under F.R. 22(c). The same was replaced by IVth Pay Commission scale w.e.f. 1.1.1986 by the scale of Rs.2,375-3,500 and his pay was fixed at Rs.2,900/- as on 1.1.1986. The applicant was drawing Rs.3,400/- when he retired on superannuation on 30.6.1992. The grievance of the applicant is that a new intermediary cadre was introduced in the Accounts Wing w.e.f. 1.4.1987 viz. Assistant Accounts Officer in the scale Rs.2,000-3,200, as a result of which cases arose where Junior Accounts Officers promoted as Accounts Officers before 1.4.1987 started drawing less pay than their juniors who were promoted as Accounts Officers after 1.4.1987 in the cadre of Assistant Accounts Officer. In order to remove this anomaly the Government directed vide O.M. dt.26.11.1990

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that the pay of Accounts Officers who were promoted from the post of Junior Accounts Officers directly without passing through the intermediary grade of Assistant Accounts Officers may be stepped up subject to the following condition :

- "i) The scale of pay of the lower grade (before introduction of intermediary posts of A.A.Os) and higher post in which the Junior and Senior are entitled to draw pay should be identical;
- ii) The Senior person should have been eligible for appointment to the intermediary posts but for his working in the higher grade on or before the date on which the Junior was appointed to the intermediary post;
- iii) The Junior person should not have drawn more pay than the Senior by virtue of fixation of pay under normal rules or any advance increment(s) granted to him in the lower post and anomaly should be directly as a result of the Junior person holding the intermediary post at the time of his promotion to the higher grade;
- iv) The stepping up of pay would be done w.e.f. the date of promotion of the Junior to the higher grade to the actual benefit would be available w.e.f. 1st December, 1989 or the date anomaly whichever is later;
- v) The stepping of pay in such cases will be done strictly in accordance with the circle seniority i.e. Senior and Junior should belong to same circle."

2. The applicant states that there was one Shri K.D.Landge who was junior to him, who was drawing more pay and the reliefs claimed by the applicant are as below:

- "(1) Strike down condition No.(iv) under para '2' of the O.M. dated 26.11.1990 at Annexure No.1 to the extent that the actual benefit would be available w.e.f. 1st December, 1989 or the date of anomaly whichever is later, and direct the respondents to -
- (2) grant stepping up of pay to the stage of Rs.3300/- w.e.f. 7.11.1989, the date from which his junior Shri K.D.Landge started drawing this pay in the higher grade of Accounts Officer in the scale of Rs.2375-75-3200-EB-100-3500 together with arrears on this account with usual allowances from that date;"

3. The O.A. has been opposed by the Respondents. Their main contention is that the drawing of the higher pay by Shri K.D.Landge, Junior Officer was due to fortuitous circumstances viz. Shri K.D.Landge had refused promotion to Accounts Officer's cadre on earlier occasions for his personal reason and this has given him the opportunity to receive the benefits in Assistant Accounts Officer's cadre w.e.f. 1.4.1987. According to provisions of rules contained in item vii of the Annexure appended to the Departmental O.M. dt. 26.11.1990 referred to by the applicant, the request of the applicant could not be considered.

4. On 14.2.1995, the Respondents filed M.P. No.24/95 pointing out that the OA does not survive because during the pendency of the O.A. Government issued orders dated 9.11.1993, according to which certain Accounts Officers ^{including the applicant} ~~were~~ promoted as Senior Accounts Officers in the scale of Rs.2200-4000 with a notional date of promotion. The applicant was promoted as Senior Accounts Officer w.e.f. 1.7.1988 and his pay was fixed at Rs.3300/- on 1.1.1989. Therefore, the claim of the applicant does not survive.

5. When the matter was finally heard on 9.3.1995, at the argument stage, counsel for the applicant conceded that the orders dt. 9.11.1993 had afforded partial relief to him, but he pointed out that the Government Orders specified that no arrears of pay would be admissible for the period prior to 1.4.1992. If the OA had been decided earlier viz. prior to the issue of orders on 9.11.1993, he would have got arrears of pay scale in the lower pay scale w.e.f. 7.11.1989, the date from which his junior Shri D.N.Landge began to draw the pay of Rs.3300/-.

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6. We have considered the matter carefully. The applicant retired on 30.6.1992. The arrears of the revised pay scale of the Senior Accounts Officer have not been allowed to him for the period up to 31st March, 1992. We could have considered allowing him the arrears of the pay on the basis of a right vested in him in terms of Government Memorandum dt. 26.11.1990. However, this vested right has to be the context of considered in the subsequent orders dt. 9.11.1993 which granted higher pay scale to the applicant w.e.f. 1.7.1988, i.e. to say, a date earlier to the date of the Government Memorandum dt. 26.11.1990. The applicant admittedly has accepted the promotion and fixation in the promotional post. We are, therefore, to consider the case on the basis of his retrospective promotion. Considered in that perspective, the first condition prescribed by the O.M. dt. 26.11.1990 i.e. identity of the scale of pay of the lower grade and the higher post in which the junior and the senior are entitled to draw pay is not satisfied. Since this is a pre-requisite condition and since the applicant has not challenged this condition the applicant cannot make a grievance of not getting arrears, merely because came to be the case decided after the issue of the promotional order dt. 9.11.1993. We, therefore, find that the contention of the Respondents that the case has become infuctuous is valid and find that the OA is required to be dismissed, which we accordingly dismiss. There will be no orders as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A)