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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: OA No. 33/92

Transfer Application No:

DATE OF DECISION

2/3/93

1. C Krishnamurthy

Petitioner

~~2. M. S. Shetty~~

Advocate for the Petitioners

Versus

U.O.I. & 2 ors.

Respondent

Mr. R K Shetty

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri

Justice S.K. Dhaon, Vice Chairman

Ms. Usha Savara, Member(A)

The Hon'ble Shri

1. Whether 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 ?

Nb

Sny
v.e.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

OA NO. 33/92

1. C KRISHNAMURTHY

2. M S SHETTY

..APPLICANTS

V/S

Union of India
through Secretary
Ministry of Defence
Govt. of India
New Delhi & 2 ors.

..Respondents

Coram: Hon.Shri Justice S K Dhaon, Vice Chairman
Hon. Ms. Usha Savara, Member (A)

APPEARANCE:

Applicants
in person

Mr. R K Shetty
Counsel
for the respondents

JUDGMENT:
(Per: S K Dhaon, Vice Chairman)

DATE: 2/3/93

The applicant no.1 was on the date of institution of this application a senior grade Professor in the College of Military Engineering, Pune. The applicant no.2 was a retired senior grade professor in the said College. During the pendency of this application the applicant no.1 retired on 31.12.1992. The prayer, in main, is that it may be declared the applicants are eligible to the pay scale of Rs.4500-7300 so that they may be placed on par with all other professors of Engineering colleges in the country. The further prayer is that necessary direction may be issued to the respondents to fix the pay of the applicants in the

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grade of Rs.4500-7500 instead of Rs. 4500-5700 with effect from 1.4.1986. Admittedly the applicants were at the relevant time Professors in the Defence Establishment. The letter of appointment issued to them made it clear that they were Civilian Gazetted Officers and the conditions of their services will be governed by the rules under Article 309 of the Constitution of India (para 5 of the reply filed on behalf of the respondents). On or before 10.7.1986 Professors in the selection grade in the College of Military Engineering, Pune; Military College of Telecommunication Engineering, Mhow and the Military College of Electronics and Mechanical Engineering, Secunderabad (Technical Institutions of Army) wherein the pay was Rs.1300-100-2000, revised to Rs. 1500-60-1800-100-2000-125/2-2500 and brought at par with UGC/AICTE scale. The Under Secretary in the Ministry of Defence, Government of India sent a communication to the Chief of Army Staff, New Delhi conveying him the sanction of the President to the revision of scales of pay of the Civilian academic staff of the aforementioned technical institutions of the Army. The revised scale of pay of the professors in the selection grade was fixed at Rs.1500-60-1800-100-2000-125/2-2500. It was also stated in the order that the orders will take effect from 1.4.1986. It appears that the President took the decision for revising the pay scales of the teaching staff of the Technical Institutions of the Army so as to bring them in line with the pay scales revised for the other engineering institutions in the country.

2. On 6.4.87 a notification was issued whereby in the purported exercise of powers under the proviso to Article 309 of the Constitution the President further amended the Civilians in Defence Services (Revised Pay) Rules, 1986. The amendment rules were deemed to have come into force on 1.1.1986. The pay scale of the selection grade Professors was shown in the notification as Rs.1800-100-2000 and the revised scale was shown as Rs.4500-150-5700. There is also a note at the bottom: (revised to Rs.1500-60-1800-100-2000-125/2-2500 from 1.4.1986). It would be thus seen that the new rules which were nomenclatured as Civilians in Defence Services

(Revised Pay) Second Amendment Rules 1987 (hereinafter referred to as the Rules) entitled the applicants and others to the revised scale of Rs.4500-150-5700 from 1.1.1986. This means that the revision of the pay scale in pursuance of the notification dated 10.7.86 became redundant. It is not the case of the applicant nor can it be that they did not take advantage of the Rules and due salary in the revised pay scale with effect from 1.1.1986. We may also make it clear at this stage that it is not the case of the applicants that they at any stage ceased to be in the employment of the College of Military Engineering or they ceased to be Civilians in Defence Services.

3. It appears that by the order of Ministry of Human Resources Development pay scale of teaching staff of the Engineering Colleges, other than teaching staff in the Technical Institutions of the Army, has been enhanced to Rs.4500-7300. However, no decision has been taken so far by the Ministry of Defence to pay the teaching staff of the Technical Institutions of Army on par with the teaching staff of other staff of Engineering Colleges. No amendment to the Rules has been introduced. No executive direction too has been issued so far.

4. The validity of the rules are being challenged as violative of Articles 14 and 16 of the Constitution. Rules framed under the Constitution can be challenged on the same ground on which an Act of legislature can be challenged. The Defence Establishment constitutes a class distinct and separate from the other establishments. The Civilians in Defence services have been segregated into a separate class on a rational basis. The Technical Institutions of Army too fall in a class different to the other Engineering Institutions in the country. Therefore, it follows that the teaching staff of the Technical Institutions of Army also form a class distinct from the teaching staff of other engineering institutions in the country. The classification is based on an intelligible differentia

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which has a rational nexus with the object of classification in so far as Defence of the country is paramount. Merely because the teaching staff of the Technical Institutions of the Army are getting lesser emoluments than the teaching staff of the other Engineering Institutions in the country, it can not be said that there is per-se a discrimination so as to attract Article 16. The applicants have failed to prove by placing necessary data that equals are being treated as unequals.

5. In the reply filed on behalf of the respondents it is pointed out that the applicants have failed to lay any foundation or to produce an iota of evidence to show that their duties and responsibilities are comparable to the Professors working in the Universities and Colleges outside, controlled by the University Grants Commission or advised by the All India Council for Technical Education. This objection is valid. It is further pointed out in the reply that the value of fringe benefits enjoyed by the applicants is far greater and superior to the fringe benefits enjoyed by the Professors in the Colleges and Universities outside the Defence Establishments.

6. We are, therefor, convinced that the applicants cannot be granted any relief.

7. The applicants came to this Tribunal earlier by means of OA No. 635/87 and prayed for the following reliefs:

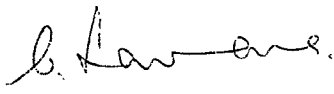
- a) Implementation of the AICTE pay scale for Professor at CME with effect from 1.1.1973 in line with the practice in all Civilian Engineering Institutions.
- b) Payment of arrears of Rs.23840/-(approx.) upto 1.4.1986
- c) Fixation of pay on 1.4.1986 @ Rs.2375/ plus allowances thus keeping continuity of the increments instead of the present fixation of Rs.2000/- after the revision.

This Tribunal disposed of the said OA in these words:

8. In these circumstances, the application deserves to succeed, in part in as much as the Respondents are to consider the applicant's prayer for grant of the said ~~scale~~ in arrears with effect from 1.1.1973, that is, the date on which the said scale of pay was accepted for other Professors of the Military establishment in accordance with law in the light of observations made in the judgment taking into consideration all the relevant facts in this behalf. Let decision in this behalf be taken within the period of 3 months from the date of communication of this order. There will be no order as to costs."

In the case before us there is not even a whisper that any Professor in any Military Establishment has been put in the pay scale of Rs.4500-7300.

8 This application fails and is dismissed, but without any order as to costs.


(Ms. Usha Savara)
Member(A)


(S.K. Dhaon)
Vice Chairman