

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH CA
CAMP NAGPUR

O.A. NO: 457/93
T.A. NO:

199

DATE OF DECISION 16.3.1995

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D.N. Sadhukhan & Anr. Petitioner

Shri G.H. Iyer.
Advocate for the Petitioners

Versus

Union of India & Ors. 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 their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? X

MR Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A).

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

Original Application No.457/93.

D.N.Sadhukhan, & Anr. ... Applicants.

v/s.

Union of India & Ors. ... Respondents.

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

Appearances:-

Applicants by Shri S.H.Iyer.
Respondents by Shri R.P.Darda.

JUDGMENT :-

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

In this OA, the two applicants have challenged the pay fixation in the post of Chargeman Gr.II consequent on promotion of the applicants as Chargeman w.e.f. 23.6.1986 Gr.I in the IVth Pay Commission pay scale of Rs.1600-2660 (vide Annexure A-7). By the Factory Order dt. 18.7.1990 the pay of applicant No.1 Shri D.N.Sadhukhan was fixed at Rs.1950/- as on 1.10.1986. Similarly, the pay of Shri J.K.Das (second applicant) was fixed by the same order w.e.f. 1.10.1986 at Rs.1950/-. We might reproduce with benefit, the extract from the pay fixation order :

Apptt./ Effective Pay Scale of Dt. of Pay after
Promotion date fixed pay next in- grant of
increment increment

SHRI D.N.SADHUKHAN, Ch'man-I/MM(887276)

Supervisor 1.10.73 Rs.425/-Rs.425-15- 1.10.74 Rs.440/-
'A'(Tech) 500-E8-15-1.10.75 Rs.455/-
560-20-7001.10.76 Rs.470/-
1.10.77 Rs.485/-

*Redesignated as Ch'man w.e.f. 1.1.80 1.10.78 Rs.500/-

NOTE : Financial benefit w.e.f. 7.5.88 1.10.79 Rs.515/-
*1.10.80 Rs.530/-

1	2	3	4	5	6
				1.10.81	Rs.545/-
				1.10.82	Rs.560/-
				1.10.83	Rs.580/-
				1.10.84	Rs.600/-
				1.10.85	Rs.620/-
	1.1.86	Rs.1800/-	Rs.1400-40-	1.10.86	-
			1800-EB-		
			50-2300		
Ch'man-I	23.6.86	Rs.1850/-	Rs.1600-50-		-
			2300-EB-		
			60-2600		
	1.10.86	Rs.1950/-	-do-	1.10.87	Rs.2000/-
				1.10.88	Rs.2050/-
				1.10.89	Rs.2100/-

2. However, the pay of Shri A.K.Ghosh who was junior to the applicants and who was promoted subsequently viz. 6.12.1986 was fixed on 1.10.1986 at Rs.1900/- and on 6.12.1986 at Rs.2000/-. The pay fixation of Shri A.K. Ghosh is given below:

Supervisor	1.10.73	Rs.425/-	Rs.425-15-	1.10.74	Rs.440/-
'A'(Tech)		500-EB-15-	1.10.75	Rs.455/-	
		15-560-20-	1.10.76	Rs.470/-	
		700/-	1.10.77	Rs.485/-	
			1.10.78	Rs.500/-	
*Redesignated as Ch'man Gr.II w.e.f. 1.1.1980			1.10.79	Rs.515/-	
<u>NOTE</u> : Financial benefit w.e.f. 7.5.88			*1.10.80	Rs.530/-	
			1.10.81	Rs.545/-	
			1.10.82	Rs.560/-	
			1.10.83	Rs.580/-	
			1.10.84	Rs.600/-	
			1.10.85	Rs.620/-	
Ch'man-II	1.10.86	Rs.1900/-	Rs.1400-40-	1.10.87	Rs.----
			1800-EB-50-		
			2300		
Ch'man-I	6.12.86	Rs.2000/-	Rs.1600-50-	1.12.87	Rs.2050/-
			2300-EB-60-	1.12.88	Rs.2100/-
			2660/-	1.12.89	Rs.2150/-

3. It is this differential pay fixation of Shri A.K.Ghosh which has been challenged by the applicants. According to the applicants, this pay fixation is not in accordance with the Government Orders on the subject viz. O.M. dt. 23.11.1987(at page 44)read with O.M. dt. 7.8.1989(at page 47).

4. The Respondents have not disputed the facts regarding dates of promotion and the pay fixation as

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actually done. They have, however, denied that the pay fixation ~~specially~~ of Shri A.K.Ghosh was wrongly done. According to them the pay fixation in respect of the applicants has been done in accordance with explanation(2), to Rule 5 of CDS (RP) Rules, 1986. They have specifically stated vide reply to the M.P. dt. 1.1.1994 that:-

"as per CDS(R.P.)Rules, 1986, the option for fixing the pay from next increment date is applicable in case of an existing scale and not applicable in case of promotion/appointment. The applicants were promoted w.e.f. 23.6.1986, hence as per provisions of CDS (RP) Rules, 1986, they were required to be brought in the revised scales of pay w.e.f. 1.1.1986. As their next increment in the grade of Chargeman Gr.II was due after the date of promotion, their pay was fixed in the revised scale w.e.f. 1.1.1986. Then, as per FR 22(a)(i) their pay was fixed on the date of promotion. Their pay was again fixed on the date of increment under FR 22(C) as per their option. In case of Shri A.K.Ghosh, he opted for fixation of pay from his next increment date i.e. 1.10.1986 and as he was holding the grade of Chargeman Gr.II on that date his pay was fixed in the revised scale w.e.f. 1.10.1986. Shri A.K.Ghosh was promoted to Chargeman Gr.I (Tech), on 6.12.1986, hence his case cannot be compared with that of the applicants."

5. The explanation (2) quoted by the Respondents reads as below:

"The aforesaid option shall not be admissible to any person appointed to a post on or after 1st January, 1986, whether for the first time in government service, or by transfer or promotion to ~~another~~ post and he shall be allowed to pay only in the revised scale."

6. The applicant, however, contends that the Civilians in Defence Services (Revised Pay) Rules, 1986 were notified on 23.9.1986 (vide page 112) and (2) to Rule 5 applies explanation not only to the applicants, but also to Shri A.K.Ghosh. (In the case of) Shri A.K.Ghosh, however (2) to Rule 5 the respondents have not made the explanation ~~applicable~~ and allowed him the option, whereas, they have not calculated pay fixation of applicants in accordance with the option of the applicants. It appears to us that the reliance on Explanation (2) to CDS(RP) Rules, 1986 is not in order. It is on record that

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both the applicants, as well as, Shri A.K.Ghosh were in fact afforded option. What has happened, however, is that the option exercised by the applicants does not appear to have been acted upon and the option given by Shri A.K.Ghosh appears to have been acted upon. In this connection, the applicants have invited our attention to the working sheet at page 7 of their application in which they have shown how if the existing orders were correctly applied the applicants would also get Rs.2000/- as on 1.10.1986 :

Pay in the existing scale of pay of Rs.425-700 <u>As on 23.6.86</u> of the applicants and the reckonable DA, IR,etc for the purpose of fixation, notionally	Rs.620/- Rs.933-10 ----- Rs.122-00 ----- Rs.1675.00	Basic Pay DA all kinds Interim Relief I & II
Add 20% of Basic Pay	<u>Rs. 124.00</u>	
Total	Rs.1799.10	
Pay in the new scale in lower grade/post	Rs.1800.00	
Pay to be fixed on <u>23.6.1986</u> in the post of Chargeman <u>Gr.I</u> , in revised scale, under F.R. 22(a)(i)/CSR Rule 156 (the stage of pay above that of pay in lower post) in scale Rs.1600-50-2300-EB-2660	<u>Rs.1850/-</u>	
As on 1.10.1986 after drawal of increment in lower post in the existing scale (substantive pay reckonable for fixation in existing scale)	Rs. 640/- Rs. 963.20 ----- Rs. 124.00 ----- Rs.1727.20	Basic Pay DA all kinds Interim Relief I & II
Add 20% Basic Pay	<u>Rs. 128.00</u>	
Total	Rs.1855.20	
Substantive pay fixed in the Revised Scales Rs.1400-40-1800-EB-50-2300, as per option exercised under CDS (RP) Rules, 1986, as <u>on 1.10.1986</u> , in the post of Chargeman II(T)	<u>Rs.1900-00</u>	

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Pay to be fixed on
promotion to Chargeeman
Gr. I in the Revised
Scale of Pay Rs.1600-50-
2300-EB-60-2660, as
per option on promotion,
under F.R. 22 (C)/CSR
156(A) w.e.f. 1.10.1986 Rs.2000.00

7. The CDS(RP) Rules, 1986 were notified on 23.9.1986. However, they were to come into force as on 1.1.1986. The Respondents, however, appear to implicitly have worked on the basis that the retrospective operation of the rules applies only in respect of Officers who were promoted prior to the issue of the orders viz. prior to 23.9.1986. It is these Officers who the Respondents appear to have held ineligible for the benefit of the options even though they actually exercised the same. Since the applicants were promoted on 23.6.1986 they were not given the benefit of the option. Since Shri A.K.Ghosh was promoted on 6.12.1986 i.e. to say after the issue of the CDS(RP) Rules, 1986 he was given the benefit of the option. It is only in this manner that the irrational working out of the pay scales of the applicants can be explained. The applicants have contended that we should declare Explanation 2 to the CDS(RP) Rules, 1986 to be invalid. In our view, we are not required to go into the validity of the rules. We can decide the matter on the point of discrimination. It is not disputed that both the applicants and Shri A.K.Ghosh belonged to the same cadre of the Civilian Defence Service. The applicants are senior to Shri A.K.Ghosh, inspite of this the respondents have given the benefit of option to Shri A.K.Ghosh and fixed his pay at Rs.2000/- w.e.f. 6.12.1986 the

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date of his promotion. According to us the applicants are also entitled to have their pay fixed at Rs.2000/- w.e.f. 23.5.1986 the date of their promotion, and Respondents are not entitled to practise discrimination between similarly situated employees. We, therefore, direct the respondents to fix the pay of the applicants as indicated on page 7 of the application reproduced in para 6 above and on the basis of this revised pay fixation, give all consequential benefits to the applicants including arrears of pay and promotion, if any. There will be no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

B.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CAMP AT NAGPUR

Review Petition No. (N)19/95

and
Misc. Petition No. (N)302/95
in
O.A. NO:457/93

Decided on the 11th day of Jan 1996

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

1. Union of India
through
its Secretary,
Govt. of India,
Ministry of Defence,
New Delhi.
2. Director General,
Ordnance Factory,
10-A, Auckland Road,
Calcutta.
3. General Manager,
Ordnance Factory,
Ambazari,
Nagpur - 21.

.. Review Petitioners

-versus-

1. D.N.Sadhukhan
2. J.K.Das

.. Respondents

O R D E R (BY CIRCULATION)

(Per M.R.Kolhatkar, Member(A))

This is a review petition filed by original respondents viz. Union of India & Ors. against my judgment dt. 16-3-95. Under the rules Review Petition is required to be filed within a month of receipt of the copy of the judgment. It is not disputed that the copy of the judgment was received by the respondents on or about 27-3-95 and the review petition ought to have been filed by 27-4-95. The Review Petition has, however, been filed on 19th October, 1995 i.e. after a delay of

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about six months. The main ground for delay advanced is that there was inter departmental consultation as to filing of SLP and the decision not to file the SLP and to file a ~~Review~~ petition could be arrived at because of the various formalities involved only, during this time. In my view these reasons for delay are not satisfactory especially considering the length of delay and the Review Petition is therefore liable to be dismissed on the ground of delay alone.

2. Coming to the merits, the review petitioners have contended that the pay fixation is in accordance with CDS(RP) Rules 1986 and the Tribunal has not considered any part of the rules including ^{Rule 5} explanation (2) below Rule 5 of CDS(RP) 1986 invalid. The petitioners have then covered the ground traversed by them in the written statement and have finally stated that the Government as a matter of liberalisation, issued order that if a Government Servant opts the revised scale of pay from the date of increment falling during 1986 or 1987, he can be allowed the benefit of Rule 7 ibid. Unfortunately, Shri Sadhukhan is not in ~~a~~ position to avail of this option because he was promoted before the date of increment falling during 1986. Thus, it can be said that the case of Shri Sadhukhan is hard one but it cannot be said that the pay fixed is wrong. This type of hardship can also arise even in cases where the pay is not fixed under CDS(RP)Rules, 1986 viz. where a senior Government servant is promoted before the date of increment in the lower post and the junior is promoted after drawal of increment in

the lower post. In such cases the pay of the senior is not revised from the date of promotion. However, his pay is stepped up from the date the junior has started drawing more pay. The Government is ready to allow the same benefit in the instant case. In non consideration of this aspect of matter, error is apparent on the face of record and hence the judgment needs to be reviewed.

3. I have considered the matter. In the O.A. the applicants wanted to decide the matter on the point of unconstitutionality of the rules involved. I did not go into that aspect because it was possible to decide the case on the ground of discrimination in terms of Articles 14 and 16 of the Constitution, which gives equality of treatment. In my view, therefore, the judgment has been correctly rendered and there is no error apparent on the face of the record as such as would necessitate a review of my judgment in terms of Rule under Order 47 of CPC.

4. Review Petition is therefore dismissed on the ground of limitation as well as on merit. The Review Petition is being decided by circulation as is permissible under rules. MP (N) 302/95 also stands disposed of.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)