

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1301/94

DATE OF DECISION: 9.8.2001

Shri V.P. Bhoraskar Applicant.

Shri M.S. Ramamurthy Advocate for

Verses

Union of India and others Respondents.

Shri V.D. Vadhavkar for Shri M.I. Sethna Advocate for  
Respondents

CORAM

Hon'ble Shri S.L. Jain Member(J)

Hon'ble Smt. Shanta Shastry, Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to  
other Benches of the Tribunal?

(3) Library. ✓

*Shanta Shastry*  
(Shanta Shastry)  
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO:1301/94

the <sup>9<sup>th</sup></sup> day of AUGUST 2001

CORAM: Hon'ble Shri S.L. Jain, Member (J)

Hon'ble Smt. Shanta Shastry, Member(A)

V.P. Boraskar  
Flat No. 28, Isher Apartments  
Near Swastol Rubber Factory  
Khadki, Pune.

...Applicant.

By Advocate Shri M.S. Ramamurthy

V/s

1. Union of India through  
The Secretary,  
Ministry of Labour,  
Shramashakti Bhavan,  
Rafi Marg., New Delhi.

2. The Commandant  
512, Army Base Works Shop,  
Khadki, Pune.

3. The Secretary,  
Ministry of Personnel,  
Public Grievances, Training &  
Pension,  
The Department of Personnel,  
Administrative Reforms, Training,  
Public Grievances & Pension,  
New Delhi.

...Respondents

By Advocate Shri V.D. Vadhavkar for Shri M.I.Sethna

O R D E R

{Per Smt. Shanta Shastry, Member(A)}

The applicant in this OA is aggrieved by the letter dated 23rd March, 1993 issued by the Secretary, Ministry of Labour, New Delhi clarifying that the instructions contained in the OM dated 7.8.1989 of the Department of Personnel and Training are not applicable in his case and his pay has been fixed correctly.

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2. The applicant was initially appointed as Education Officer in the Central Board for Workers Education on 28th September, 1967 in the time scale of Rs. 325 - 575. After completion of training, he joined the Regional Central Board for Workers Education at Indore with effect from 6.4.1967. He worked there continuously upto 10.12.1976. Thereafter, he applied to UPSC for the post of Labour Officer in the Ministry of Labour. He was selected and appointed as a Labour Officer vide appointment letter dated 20th May, 1976. The applicant, thereafter, joined on 11.12.1976 at the Ordnance Factory, Warangao as Labour Officer. At the time of leaving the job of Education Officer in the Central Board for Workers Education, the applicant was having a basis pay of Rs. 750/- in the time scale of Rs. 550 - 900. After joining as Labour Officer under the Ministry of Labour his pay was fixed at Rs. 700/- i.e. the minimum of time scale of Rs. 700 - 1300. He did not get any benefit of pay fixation according to him. On 31.12.1986 he applied to the Ministry of Labour for giving him the benefit of continuous service by counting his previous service in the Central Board for Workers Education. The applicant was directed to refund the Government's contribution in his Contributory Provident Fund, which he had received along with his own subscription while leaving the job of Education Officer in the Central Board for Workers Education. Accordingly, the applicant refunded Rs. 10,500/- on 19.2.1990. Necessary endorsement to that effect was made in his service book. While recording the same, the respondents did not give any pay protection to the

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applicant at the time of fixing his pay in the scale of Labour Officer. The applicant had represented further on 23rd September, 1992 requesting to fix his pay after taking into consideration the last basic pay drawn by him in the Central Board of Workers Education and to that he received a reply dated 23rd March, 1993, which has been impugned in the present OA.

4. It is the contention of the applicant that the Department of Personnel and Training had granted pay protection to candidates, who initially worked in Public Sector Undertakings whether it is Government Institution or Autonomous Body and who were subsequently appointed as direct recruits in the Government Organisation vide their OM No. 12.1.1988 Est. (Pay - I) dated 7th August, 1989. The department gave effect to this order prospectively with effect from 1st August, 1989 only. According to the applicant, the cut off date fixed in the OM dated 7th August, 1989 is arbitrary and not based on any reason. The applicant submits that the principle regarding cut off date was discussed in the judgement of the Bangalore Bench of the Tribunal in OA 156/92 pronounced on 8.8.1993 and it was held that there cannot be any cut off date. The facts are identical in this case also and therefore, the applicant prays that he should be given the benefit of the said OM. It would be discriminatory to grant the benefit to those who were recruited subsequent to 1.8.1989 and not to grant it to those who were recruited prior to 1.8.1989. This is totally unreasonable and violative of provisions of Articles 14 and 16 of the Constitution of India.

5. The applicant made a representation vide his letter dated 23.9.1992 to which a reply was received on 23.3.1993 i.e. impugned letter informing that the O.M. dated 7.8.1989 is effective from 1.1.1989 and as such the benefits therein are not available in applicant's case. The applicant was appointed in the Central Government with effect from 11.12.1976 i.e. 13 years before the issue of the O.M. The applicant represented again on 18.4.1993 and sent a reminder on 13.9.1994 but did not receive any reply.

6. The respondents are opposing the claim of the applicant. According to the respondents the O.M. of the DOP & T dated 7.8.1989 incorporated the concept of pay protection for the first time. In this O.M. it was stated that an employee who joins in the Government department on or after 1.8.1989 on leaving his immediately preceding employment in any Public Sector undertaking and any other Autonomous Body more specifically prescribed in the circular, such an employee cannot be entitled to get a starting basic salary to the extent of what he was drawing at the institution which he left for joining the Government department provided other relevant conditions were fulfilled. This O.M. unambiguously mentioned 1.8.1989 as the effective date for confirming such pay protection. When the applicant joined the Government of India he was totally outside the perview of the benefit conferred by the said circular dated 7.8.1989. While joining he was fully aware that he was starting his employment with the Ministry of Labour at the basic salary of Rs. 700/- p.m.

though the salary which he was getting in his earlier Institution was Rs. 750/- p.m. He knowingly accepted the lower salary, therefore he is not now entitled to any benefit of pay protection.

7. The applicant joined Ministry of Labour on the recommendation of the Union Public Service Commission and the UPSC while recommending his appointment indicated that the pay of the applicant will be fixed at minimum of the scale i.e. 750/in the scale of Rs. 700 - 1300. Since UPSC specifically recommended the salary of the applicant cannot get higher salary than that.

8. Commenting on the judgement referred to by the applicant in OA No. 156/92 the respondents submitted that the judgement in a particular case depends upon the facts and circumstances of that case and is operative only in respect of the applicant in that case. Therefore the judgement of the Bangalore Bench cannot be made applicable in the present case.

9. Further issuing of the order having financial implication and giving effect to it from a specific date is a policy matter for the Executive to decide. In view of the decision of the Supreme Court in the case of Mallikarjuna Rao V/s State of A.P. (AIR 1990 SC 1251) the Court cannot usurp the functions assigned to the Executive under the Constitution and cannot even

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indirectly require the Executive to exercise their rule-making power in any manner, therefore the contention of the applicant to give effect to the O.M. dated 7.8.1989 from an earlier date is not maintainable.

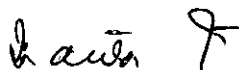
10. We have heard the learned counsel for both sides and I have given careful consideration to the pleadings.

11. The factual position is not disputed. The only question is whether the benefit of O.M. dated 7.8.1989 can be extended in the case of the applicant who joined much before the Scheme was introduced, in fact 13 years prior to the issue of O.M. dated 7.8.1989. This O.M. became effective from 1.1.1989. Thus literally taken it does not apply to the applicants's case. However we find that the judgement of the Bangalore Bench of the Tribunal clearly laid down that cut off date is arbitrary as it does not specify any reason for restricting the benefit to only those who have been recruited after the cut off date. The facts of the applicant's case are identical to the facts in that particular OA. Therefore, the respondents contention that the judgement is not applicable in the case of the applicant is not acceptable. This proposition has been discussed further in OA No 1146/96 decided recently by another bench of this Tribunal in which one of us, Hon'ble Shri S.L. Jain was a Member. It has been held therein also that cut off date is relevant for giving actual effect to the O.M. dated 7.8.1989 from 1.8.1989. It is nowhere stated in the O.M. that the benefit shall be applicable

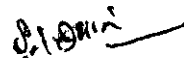
to only those who joined after 1.8.1989 and not to those who joined prior to the issue of the O.M. As this particular issue has already been decided, we have to fall in line with the aforesaid judgement. It was also held that limitation does not apply in that case as pay protection is a continuous cause of action. In fact relying on the aforesaid judgement of this Tribunal we have similarly disposed of any OA No 123/96 separately, holding the same view.

12. In our considered view, therefore the applicant in the present case is entitled to the benefit of the O.M. dated 7.8.1989. We however note that when the applicant joined in 1976 in the Ministry of Labour there was no scheme for pay protection nor did this Tribunal have any jurisdiction at that time. The applicant has approached this Tribunal in 1994 after his representation was rejected. [In view of this the applicant's pay shall be protected only from one year prior to the filing of the present OA. The protection of pay will be given notionally from 1.8.1989 and the arrears due to pay fixation on that basis shall become payable from 25.10.1993 only.]

13. In the result OA is allowed. No costs.



(Smt. Shanta Shastry)  
Member(A)



(S.L.Jain)  
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

C.P.Nos.9/2002 & 12/2002  
in  
O.A.Nos.123/96 & 1301/94.

Dated this Friday the 21st Day of June, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman  
Hon'ble Shri M.P. Singh, Member (Administrative).

K.K. Dahuja, presently working  
as Dy.Labour Welfare  
Commissioner at Ordnance Factory,  
Bhusaval under General Manager,  
Ordnance Factory,  
Bhusaval.

( By Advocate Shri G.K. Masand )

Versus

1. Union of India, through  
The Secretary, Ministry  
of Labour, Shramshakti  
Bhavan, Rafi Marg,  
New Delhi.
2. The General Manager,  
Ammunition Factory,  
Khadki, Pune-411003.
3. The Secretary,  
Ministry of Personnel,  
Public Grievances,  
Training & Pension,  
The Department of Personnel  
Administrative Reforms, Training,  
Public Grievances & Pension,  
New Delhi.

..Respondents.

And

1. Shri Vinod Vaish,  
The Secretary, Ministry of  
Labour, Shramshakti Bhavan,  
Rafi Marg, New Delhi.
2. G.P. Sinha,  
General Manager,  
Ordnance Factory,  
Bhusaval.

... Opponents.

( By Advocate Shri R.R. Shetty )

C.P.No.12/2002 in O.A.No.1301/94.

V.P. Bhoraskar, residing at  
Flat No.28, Isher Apartments,  
Near Swastol Rubber Factory,  
Khadki, Pune.

.. Petitioner.

( By Advocate Shri G.K. Masand )

Versus

1. Union of India, through  
The Secretary, Ministry  
of Labour, Shramshakti Bhavan,  
Rafi Marg, New Delhi.
2. The Commandant,  
512, Army Base Works Shop,  
Khadki, Pune.
3. The Secretary,  
Ministry of Personnel, Public  
Grievances, Training & Pension,  
The Department of Personnel  
Administrative Reforms, training,  
Public Grievances & Pension,  
New Delhi.

.. Respondents.

Shri Vinod Vaish,  
The Secretary, Ministry of  
Labour, Shramshakti Bhavan,  
Rafi Marg, New Delhi.

.. Opponent.

Order (Oral)

Justice Birendra Dikshit, Vice Chairman.

Shri G.K. Masand, Counsel appearing for  
applicant in this case states that by an interim order,  
High Court has stayed the operation of order. Although  
we have issued notice in this case but once the order has  
been stayed, we would not like to proceed with this  
petition and take any action as the operation of order  
stands suspended in view of the stay order. The Contempt  
Petition is liable to be dismissed at this stage. It is  
kept open for applicant to approach this Tribunal again  
in case he succeeds before the High Court and if the

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respondents committed any wilful disobedience of the order. Subject to above observation the Contempt Petition is dismissed and notice and proceedings are dropped at this stage.

2. An M.P. has been filed on 22.2.2002 wherein it was prayed that the Contempt Petition be adjourned for 6 weeks. In view of the above order, it is infructuous and is dismissed. No costs.

CAT/MUM/JUDL/OA.123/96,1301/94

Dated:

Copy to :-

1. Shri. G.K. Masand, Counsel for Applicant.
2. Shri. R.K. Shetty, Counsel for Respondents.

Section Officer.