

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1377/94

Transfer Application No: --

DATE OF DECISION: 30-1-96

Dhwar Kondiba Kardile

Petitioner

Mr. V. M. Bendre

Advocate for the Petitioners

Versus

U.O.I.

Respondent

Mr. Ravi Shetty for Mr. R. K. Shetty

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

M.R. Kolhatkar

(M. R. Kolhatkar)
Member(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 1377/94

Pronounced this the 30th day of Jan 1996

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

Ishwar Kondiba Kardile,
Plot No.17,
Survey No.588,
Dhanurdhary Housing Society,
Market Yard,
Pune - 37.

(By advocate Shri V.M.Bendre) .. Applicant

-versus-

1. The Union of India
through
The Secretary,
Ministry of Defence,
Sena Bhavan,
New Delhi - 110 011.
2. The Director General of E.M.E.
Army Headquarters,
Govt. of India,
Ministry of Defence,
Delhi Cantonment - 110 010.
3. The Commander,
512, Army Base Workshop,
Kirkee,
Pune - 37.
(Shri Ravi Shetty for
Shri R.K.Shetty counsel) .. Respondents

ORDER

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

In this O.A. u/s. 19 of the A.T. Act the relief claimed is that ^{of} re-designation of the post held by the applicant as from Compounder to Pharmacist and grant ^{of} the pay scale of Pharmacist as paid in the R&D as well as in CGHS viz. Rs.1350-2200 instead of Rs.1200-2040. It is not disputed that there was an O.A. 331 & 332 of 1990 by S/Shri N.H.Lakshmanappa, and A.Ramanjanappa which was decided ^{by Bangalore Bench} on 17-6-1991.

The operative portion of the order reads as below :

"(i) The respondents will consider the question of re-designating the Compounders in the EME as Pharmacists and granting them the scales of pay of Rs.1350-2200, afresh, in the light of the findings given and observations made by us in para-6 above, and take a final decision within a period of four months from the date of receipt of this order.

(ii) Till a final decision is taken by the respondents, as directed above, there shall not be any recovery from the pay of the applicants."

It is not disputed that so far as the applicants in the O.A. before Bangalore Bench were concerned they were given the relief of redesignation and revised pay scale w.e.f. 14-7-1992 vide Annexure A-3 which date was subsequently pre-poned to 1-11-91 vide Annexure A-4(J). The relief was not made available however to other Compounders similarly situated in other EME formations including the applicant till the promulgation of SRO 82 dt. 19-4-1994 which appears at Ex.R-1.

2. The limited question for decision before us is whether the revised pay scale should be made effective from 1-1-86, the date from which the IVth Pay Commission recommendation became effective, as claimed by the applicant, or from 1-7-1987 when the applicant was appointed as Compounder/Dispenser in the pay scale of Rs.1200-2040 or from 1-11-91 as in Bangalore or 19-4-94 as claimed by respondents. According to the applicant the judgment of C.A.T. Bangalore was judgment in rem and the benefits which

were extended to the applicants before CAT Bangalore Bench ought to have been extended to all other similarly placed Compounders under the EME and in particular to the applicant because it amounts to discrimination and also contempt of the judgment of CAT Bangalore Bench. The respondents on the other hand would contend that prescribing of pay scale effective from a specific date is a policy matter and in view of the Supreme Court judgment in Mallikarjuna Rao vs. State of Andhra Pradesh (AIR 1990 SC 1251) and Indian Railway Service of Mechanical Engineers Assn. & Ors. v. U.O.I. in C.A. No. 2389/1993 this Tribunal has no competence to direct that the payment of the revised pay scale should be made from a particular date.

3. We note with reference to relief No.2 in the Bangalore Bench judgment that the concerned employees at Bangalore were in fact given the revised pay scale viz. Rs.1350-2200 by mistake but later on the same was withdrawn. The applicant has enclosed correspondence from his office going on from May, 1989 and especially vide Annexure A-4(b) which is a letter specifically with reference to the representation of the applicant that he was praying for revised pay scale of Rs.1350-2200 as was being given to Compounders/ Dispensers at the Army Base Workshop, Bangalore. The Central Govt. while implementing the order of the Tribunal has made a distinction between Bangalore employees and others because the pay scale has been made effective

from 1-11-1991 for the former apparently on the consideration that the judgment was delivered on 17-6-1991 and the Govt. were asked to take a decision within four months of the judgment. We also note that the directions given by the Bangalore Bench were in general terms and not with reference to the applicants in that O.A. In view of this it is difficult for me to sustain the action of the respondents to make the applicant eligible for revised designation and revised pay scale only after the issue of SRO. The case of the applicant particularly is on a stronger footing than the case of other employees in other formation because the correspondence in his case was going on since 1991. I am therefore of the view that the applicant is on a firm footing when he urges that a gross violation of Article 14 and 16 of the Constitution has been committed while revising the pay scale from the date of issue of SRO viz. 19-4-94 in his case while revising it from 1-11-91 in the case of applicants before Bangalore Bench.

4. There is another consideration while deciding the date for giving effect to the revised designation and the pay scale. Normally the decision as to the date from which a revised pay scale is to be made effective is a policy decision and not to be interfered with unless it could be shown that the date so fixed is purely fortuitous without any reasonable basis. It has been held by the apex court in another context vide D.R. Nim v. U.C.I. AIR 1967 SC 1301 that if it could be shown that the date fixed is so to say taken out of the hat then the Tribunal may

interfere with the Govt. decision. In this particular case it has come on record that there was a genuine misunderstanding especially regarding revised pay scales of Rs.1350-2200 being made applicable and as a result of this misunderstanding the Compounders at Bangalore Base camp got revised pay from 1-1-86. The date 1-1-86 is, of course, the date from which IVth Pay recommendation became effective. On this basis Compounders at Bangalore Base camp did receive the benefit of pay fixation which later on ^{was} sought to be corrected. On the basis of action at Bangalore Base camp the authorities at Pune Base camp entered into correspondence regarding revision of pay scale for Mr. I.K. Kardile, the applicant in this case. The applicants at Bangalore Base camp got the relief of direction from the Bangalore Bench which had given direction in general terms and on that basis the date 1-11-91 came to be fixed. So far as the date 19-4-94 is concerned viz. the date of issue of SRO that date has no particular sanctity. If the department had expedited the matter SRO could have been issued earlier. The SRO came to be issued only in April, 1994. Thus the date of issue of SRO is clearly fortuitous and cannot be the basis for fixing the date from which pay fixation has to be ~~made~~ effective. This is another ground which persuades us to give the relief in this particular case.

5. The O.A. is therefore allowed and the respondents are directed to give revised designation

and revised pay scale to the applicant in this O.A. from the same date on which applicants before Bangalore Bench were given revised designation and revised pay scale viz. 1-11-1991. The applicant would also be entitled to arrears of pay. In the facts and circumstances of the case I am not inclined to grant any interest. There will be no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

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