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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 133/94
Transfer Application No.

Date of Decision : 8/6/95

V. S. Sonawane Petitioner

Shri S.R. Atre Advocate for the
Petitioners

Versus

Union of India and others. Respondents

Shri V.S. Masurkar Advocate for the
respondents

C O R A M :

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 X
other Benches of the Tribunal?

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

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 133/94

V.S. Sonawane

Applicant.

V/s.

The Union of India through
The Secretary, Ministry of
Finance, Department of
Economic Affairs, South Block
New Delhi.

The General Manager
India Security Press
Nashik Road,
Nashik.

The Works Manager,
India Security Press,
Nashik Road, Nashik.

Respondents.

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

Appearance:

Shri S.R. Atre, counsel
for the applicant.

Shri V.S. Masurkar, counsel
for the respondents.

JUDGEMENT

Dated: 8-6-95

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

In this O.A., under Section 19 of Administrative Tribunals Act, the applicant purports to challenge the order dated 15.10.90 passed by Ministry of defence rejecting the proposal made by India Security Press, Nasik Road dated 1.8.90 regarding pay fixation of the applicant in the grade 'B' scale of Industrial workers in the said office.

The counsel for the respondents has pointed out that the applicant had made a representation on 18.7.90 to the Joint Secretary to the Government of India, Ministry of Finance, Department of Economic Affairs, New Delhi and that his request for protection of pay on his remustering to 'B' grade has not been agreed to. He was informed accordingly on 12.11.90 (Exhibit R 3 to the written statement) which is really challenged in the O.A.

2. Subsequently the applicant continued to make representations and he was given a reply reiterating the earlier reply vide memorandum dated 21.5.92 (Exhibit R4 to the Written statement). Thereafter, the applicant took up the matter with the Assistant Labour Commissioner Pune in conciliation proceedings by his letter dated 10.6.92, but the same ended in failure vide the Assistant Labour Commissioner's letter dated 11.10.93 and O.A. was filed on 28.1.94. The first question is, therefore, whether the O.A. is within the period of limitation. According to the counsel for the respondents, the O.A. is barred by limitation because under Section 21 of the Administrative Tribunals Act the applicant ought to have approached this Tribunal within one year of the receipt of the letter dated 12.11.90. The fact that the applicant had approached the Labour Department being based on ignorance of the relevant provisions would not operate to extend limitation. The learned counsel for the applicant however contended that as he is an Industrial employee he was within his right to explore alternative remedies available to him. He also relies on the case of Jaswant Singh V/s. Union of India (1995) 29 ATC 267 of CAT, Jodhpur Bench, in which it is observed as below:

" We have considered the rival contentions on this issue and it will not be proper to say that after the admission the plea of alternative remedies cannot be raised by the opposite party. They had a right to raise the same at the right time. However, it is for the Court to exercise the discretion and once the case has been admitted then equity requires that it should be heard and disposed of on merits ordinarily. Taking into consideration the submissions made by the parties we are of the view that this Court should hear this petition and should decide the same on merits.

3. We are of the view that apart from the observations of the Jodhpur Bench in the case of Jaswant Singh V/s. Union of India referred to above, the applicant has satisfied us that he had sufficient cause for not making the application within one year of 12.11.90. We, therefore, propose and proceed to consider the O.A. on merits.

4. The facts of the case are as below:
The applicant was initially appointed as an Office Peon (Grade D) in the scale of pay of Rs. 196-3-220-EB-3-232. On 8.6.79 the applicant was transferred to I.S.P. Control Section. On completion of one year's period in the Industrial Cadre, the applicant was remustered/promoted to the 'B' grade in the scale of of pay of Rs. 210 - 290. At the time of transfer to the Industrial Cadre, the applicant was drawing a basic pay of Rs. 214/-. The applicant was granted increment from 1.3.80. The tabular statement of pay fixation of the applicant is at page 18 of the O.A. the relevant portion of the same are given below:

	Substantive pay as Office Peon	Actual pay drawn as worker.	Amount payable as worker.
1.3.80	Rs. 217/- (Increment in the old post)	Rs. 218/-	Rs. 217/-
1.6.80	Rs. 217/-	Rs. 218/-	Rs. 214/- + Rs. 3/- P.P. under FR 22(a)(ii) (Remustered in 'B' grade in the scale of Rs. 210-4-226-EB-4-250-EB-5-290).
1.3.81	Rs. 220/-	Rs. 222/-	Rs. 218/- (Personal Pay to the discontinued vide item of audit instructions under FR 22.)

1.3.82	Rs. 223/-	Rs. 226/-	Rs. 222/-
1.3.83	Rs. 226/-	Rs. 230/-	Rs. 226/-
1.3.84	Rs. 229/-	Rs. 234/-	Rs. 230/-
1.3.85	Rs. 232/-	Rs. 238/-	Rs. 234/-
	Revised fixation in the scale of Rs. 750- 12-870-EB-14-940	Revised fixation in the scale of Rs. 800-15-1010-EB 20-1150	Revised fixa- tion in the scale of Rs. 800-15-1010-EB- 20-1150.
1.1.86	Rs. 884/-	Rs. 905/-	Rs. 890/-
1.3.86	Rs. 898/-	Rs. 920/-	Rs. 905/-
1.3.87	Rs. 912/-	Rs. 935/-	Rs. 920/-
1.3.88	Rs. 926/-	Rs. 950/-	Rs. 935/-
1.3.89	Rs. 940/-	---	Rs. 950/-
1.3.90	Rs. 954/-	---	Rs. 965/-

5. According to the department the applicant was wrongly allowed one increment of Rs. 4/- in B grade instead of Rs. 3/- in 'A' grade. This is on account of the fact that when an appointment to the new post does not involve the assumption of duties or responsibilities of greater importance than those attaching to such permanent post he will draw as initial pay the stage of the time scale which is equal to his substantive pay in respect of the old post or if there is no such stage, the stage next below that pay plus personal pay equal to the difference and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post or for the period after which an increment is earned in the time scale of the new post whichever is less as indicated under FR 22(a)(ii). According to the respondents, re-mustering of a worker from 'A' grade to 'B' grade is not treated as promotion by the appointing authority. The Government of India by their O.M. No. 1/2/86-Est(Pay I) dated 22.5.89 stipulated that when a government servant is appointed to a post which does

not involve assumption of duties and responsibilities of greater importance than those attached to the post already held by him, then he will draw his initial pay at the stage of the time scale of the new post which is equal to his pay in respect of the old post, or if there is no such stage, the stage next above his pay in respect of the old post. The orders, however were effective from 1.1.86. The department had made a proposal that the persons indicated earlier to 1.1.86 and re-mustered in the 'B' grade may also be given the benefit of the order. But this proposal of the department was not approved by the Ministry of Finance and accordingly a reply was given to the applicant. It is this communication which has been impugned by the applicant.

6. The main contention of the counsel for the applicant is that though the O.M. dated 22.5.89 does not apply, this case has to be seen in the context of Verma Award under which the classification of the various occupations in the India Security Press took place. It is not necessary to go into the particulars of the Verma Award but only to refer to the letter of the Government of India dated 5.4.51 (Exhibit R-1) containing instructions for implementation of the award. The portion which is relevant in this letter is as below:

" When a regular worker is appointed to the higher scale, as a result of the award he will be put at the same stage in the higher scale, if any, otherwise at the next higher stage. "

According to the applicant, on 1.3.80 he started drawing a salary at the basic pay of Rs. 218/- when his substantive pay as Office Peon was Rs. 217/- . He was remustered in the higher scale of Rs. 210-4-226-EB-4-250-EB-5-290

(Please see tabular statement reproduced on on page 3/4 ante.) The next increment in the scale is that of Rs. 4/-.


According to the order dated 5.4.51 referred to above since there is no scale corresponding to Rs. 217/- in the new scale of Rs. 210 - 290, the applicant was required to be put at the next higher stage namely Rs. 218/-. Apart from the FR 22(a)(ii) read with O.M. dated 22.5.89 on which I.S.P. relied, the Government of India order dated 5.4.51 supports the case of the applicant and it appears that the pay had been fixed correctly in terms of O.M. dated 5.4.51.

7. According to the counsel for the respondents the instructions in Verma Award referred to above not being in consonance with FR 22 (a)(ii) could not have implemented. The applicant however would rely on inconsistency between FR 22(a)(ii) which is a general rule and the letter of the Government of India dated 5.4.51 which embodies a particular rule in which case latter prevails. In this connection he referred to the relevant paras of G.P. Singh : Statutory Interpretation 5th Edition at page 379 which is reproduced below:-

" A prior general Act may be affected by a subsequent particular Act if the subject matter of the particular Act prior to its enforcement was being governed by the general provisions of the earlier Act. In such a case the operation of the particular Act may have the effect of partially repealing the general Act or curtailing its operation, or adding conditions to its operation for the particular cases. "

We are inclined to agree with this interpretation and its consequences.

8. We are therefore of the view that the originally fixed pay of the applicant as given in column 2 of the tabular statement reproduced above was correctly done and it was not proper for the department to withhold the increment of the applicant with effect from 1.3.88 by way of rectification of pay fixation. The letter of the department dated 12.11.90 is therefore quashed and the department is directed to re-fix the pay of the applicant on the basis that the applicant was correctly drawing Rs. 935/- as on 1.3.87 and therefore the increment of Rs. 15/- due on 1.3.88 should not have been withheld and the pay of the applicant should be re-fixed on this basis. All his withheld increments should be released and arrears of pay if any be paid to the applicant within three months of the communication of the order. However the payment of arrears be restricted to one year prior to the date of filing of the application. There will be no order as to costs.


(M.R. Kolhatkar)
Member (A)

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