

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

REVIEW PETITION NO. 77/96

in

ORIGINAL APPLICATION No. 248 of 1995

DATED: THIS 28th DAY OF AUGUST 1996

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

C.G.D. Nair

..Applicant

v/s.

Union of India & Ors.

..Respondents

ORDER (By Circulation)

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

In this Review Petition, the Review Petitioner, Original Applicant, has sought a review of my judgment dated 28.3.1996. That judgment has a peculiar history going back to the earlier O.A. No. 62/93 decided on 7.3.1994 in which the Tribunal directed the Respondents to fix the applicant's pay on the basis of his option dated 9.10.1989 as per O.M. dated 9.11.1987. This was done. The O.A. was filed to direct the respondents to pay the arrears arising out of the pay fixation consequent on acceptance of the option. It turned out that this pay fixation was not to the benefit of the applicant and in fact some recovery was required to be made. The Tribunal in para 3 of judgment in instant O.A. has observed as below:

"Therefore the pay fixation which has been done while conveying the sanction dated 21.12.94 is in accordance with the Rule. The Tribunal nowhere intended that the pay

fixation should be to the advantage of the applicant. The Tribunal was only concerned to see that the department should have acted in the revised option exercised by the applicant in terms of the rule. The applicant was entitled to the benefits if any in terms of the judgment. It is expected that an applicant who approaches the court knows the consequences of the relief claimed if granted. If the consequence turns out to be adverse to the government (servant), orders in terms of this relief cannot be challenged on that ground."

2. The main ground urged for review is that certain factual position has not been correctly taken into account in this judgment and the same is required to be corrected. The applicant contends that the sanction dated 21.12.1994 which has resulted in recovery from his pay was in terms of Government order especially the OM dated 27.5.88 Para 1 of that OM is as below:

" In accordance with the provisions contained in Rule 9 of the Central Civil Services (Revised Pay) Rules 1986, where a Government Servant continues to draw his pay in the existing scale and is brought over to the revised scale from a date later than the 1st day of January 1986 his pay from the later date in the revised scale is to be fixed under

Fundamental Rules and not under Rule 7 of the said Rules. On a representation from the staff side (JCM) Government vide this Ministry's OM No.7(52)-E.III/86 dated the 22nd December, 1986 decided that the benefit of fixation of pay under Rule 7 of the Central Civil Services (Revised Pay) Rules, 1986 may also be allowed to Government servants who elect to come over to the revised scales from the date of their next/31.12.1986 in respect of posts held by them on 1.1.1986/ increment falling after 1.1.1986 but not later than."

3. In terms of the above paragraph this Tribunal found that the pay fixation was done correctly. The contentions raised by the applicant were mainly to the effect that the applicant could not have given option for a pay fixation which is not advantageous to the applicant. This point has been dealt with in the judgment and it has been pointed out that the recovery was owing to the operation of rules and owing to the fact that the minimum benefit of Rs.25/- was covered in the increment of Rs.40/- to which the applicant was entitled and therefore the applicant could not get the benefit of Rs.40/- as an additionality. All this is entirely due to the operation of the rules.

4. The Review Petitioner has contended that the sanction dated 21.12.1994 has no relevance to the case. This is patently incorrect. The next contention

is that the effect of the judgment runs contrary to the judgment in O.A. 62/93 dated 7.3.94. It has already been pointed out that that judgment did not direct grant of any particular benefit to the applicant, but it only directed the acceptance of the option of the applicant. He next contends that the respondents having fixed a particular pay for the applicant are estopped from fixing a pay which is to the disadvantage of the applicant. It is well settled that there is no estoppel against the Rules. The other contentions raised by the applicant have already been considered by the Tribunal while deciding the case.

5. I, therefore, find that there is no factual inaccuracy or any other circumstance in terms of Rules under Order 47 of the Code of Civil Procedure, warranting review. The Review Petition is without merit and is therefore dismissed by circulation with no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)