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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 81/1995

Transfer Application No:

DATE OF DECISION: 20-2-96

Dr. Sahdeo Dnyandeo Bohsale & Anr. Petitioners

Shri S.S. Karkera. Advocate for the Petitioners

Versus

Union of India & Ors.

----- Respondent

Shri V.S. Masurkar. 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? ☒

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

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 81 OF 1995.

Pronounced this the 20th day of Feb. 1996.

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

Dr. Sahdeo Dnyandeo Bhosale
and Another.

... Applicants.

(By Shri S.S.Karkera, counsel
for the applicants)

V/s.

Union of India & Ors.

... Respondents.

(By Shri V.S.Masurkar, counsel
for the respondents).

O R D E R

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

This is a joint application. Applicant No.1 Shri S.P.Bhosale joined Service with Respondent No.3 some time in 1981. He has been drawing salary in the pay scale Rs.1600-2660 as Farm Supervisor since 1.1.1986 plus applicable non-practising allowance as a Veterinary Doctor. It is not in dispute that this non-practising allowance was being paid at the rate of Rs.450/- for the pay range below Rs.3000/- up to 11.5.1990, when the same was revised to Rs.600/- w.e.f. 11.5.1990 in terms of Memorandum No.1(30)-IC/86 dt. 11.5.1990 from the Ministry of Finance (at page 27). There appeared, however, some doubt as to whether the applicant was entitled to non-practising allowance and therefore Respondent No.3 had obtained an undertaking from the applicant in following terms:

"I, Dr.S.D.Bhosale, Farm Supervisor, Central

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Poultry Breeding Farm, (Govt. of India), Aarey Milk Colony, Bombay - 400 065 give an undertaking that in case of non-admissibility of NON-PRACTISING ALLOWANCE, I will repay entire amount drawn vide enclosed bill along with penal interest."

2. So far as the applicant No.2 Dr. N.D.Bande is concerned, he joined Respondent No.3 in terms of offer of appointment dt. 10.1.1991 which is at Ex. 'B'. This offer of appointment states that the scale of pay of the posts (Farm Supervisor) is Rs.1600-2600 plus Non-Practising Allowance of Rs.600/-. It is also not in dispute that the offer of appointment has been issued in response to applicant No.2's application to the Advertisement which appeared in Tarun Bharat on 31.12.1988 and this advertisement also mentions that if a candidate is a Veterinarian he will get Non-practising Allowance.

3. However, this non-practising allowance was in danger of being dis-continued in terms of the clarification dt. 1.12.1994 from the Government of India, Ministry of Agriculture, Department of Animal Husbandry and Dairying (at Ex. 'A') which states that non-practising allowance would be admissible to posts in the scale of pay of Rs.2000-3500 and above and a Government O.M. dt. 6.2.1993 in this regard is enclosed. This O.M. dt. 2.2.1993 not only lays down the pay scale to which non-practising allowance is attached, but also lays down that the Officer must also hold a post for which degree in Veterinary Science is exclusive qualification, but this condition has been relaxed in specified cases.

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4. The applicants have challenged apprehended dis-continuance of non-practising allowance and also obtained interim relief after filing the application on 25.1.1995 by an order dt. 27.1.1995, but the basic challenge is to the O.M. dt. 12.2.1993 and the O.M. dt. 1.12.1994.

5. So far as the applicant No.1 is concerned, no letter of offer of appointment has been produced. So far as the applicant No.2 is concerned the letter of offer of appointment dt. 10.1.1991 is produced as mentioned by us. The applicant No.2 therefore bases his claim on the principle of promissory estoppel, this principle is applicable if the applicant can show that he has suffered detriment as a result of reliance on promise of the authority.

6. The applicants further state that in the case of Government of Maharashtra, no Non-Practising Allowance is allowed, but the Officers are allowed to practise. In this connection, M.P.S.C. advertisement dt. 1.9.1993 inviting applications for the post of Livestock Development Officer in Dairy Development Department has been filed.

7. The respondents have contended that the application is pre-mature because the applicants had not made any representation on coming to know of the Memorandum dt. 1.12.1994 and rushed to the Tribunal. According to the Respondents, reliance on advertisement of M.P.S.C. is not of any avail because the applicants are approaching this Tribunal as Central Government employees, Central Govt. ^a has got separate entity and it can

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frame its own rules and regulations for its employees. The respondents have contended that NPA was allowed to the applicants as per IVth Pay Commission recommendations w.e.f. 1.1.1986 which were implemented in the year 1988 and arrears thereof were allowed vide Ministry's letter dt. 7.1.1988 which did not ^{the} have clarification of lower limits of pay scales of the Circular No.1(30)-IC/86 dt. 9.9.1988 issued by Ministry of Finance, therefore the NPA was conditionally paid to them subject to clarification by the Competent Authority and this clarification was received on 12.2.1993.

8. I am of the view that the reliance by the applicants on the advertisement of the M.P.S.C. is of no avail. The fact that the applicants possess degree in Veterinary Science and that they did substantial work of Supervisory technical nature is also of not of any significance. What is material is that according to O.M. of the Ministry of Finance dt. 19.9.1988, it is only the posts in the scale of Rs.2000-3500 which as is well known is a Gazetted post to which NPA is attached. It is not in dispute that the applicants are holding non-gazetted posts of Farm Supervisors in the scale of Rs.1600-2660. Rules relating to Pay and Allowances of the Central Government employees are of a statutory nature and they apply to all the employees of the Central Government across the country uniformly. Merely because NPA was being given by a unit of the Department of Animal Husbandry and Dairying under mis-apprehension of

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the correct position of the Rules does not entitle the applicants to claim NPA as a matter of right. It has been pointed out by the Counsel for the Respondents that offer of appointment issued to Respondent No.2 on 10.1.1991 also contains a clause that other conditions of service would be governed by the relevant rules and orders issued from time to time. It is true that in this context a plain reading would show that the other conditions of service would refer to conditions other than conditions relating to pay scale and NPA. It is settled law that the Government can change pay scales and allowances from time to time although an employee may enter service with a particular pay scale and with a particular allowance at a given point of time. His acceptance of offer of appointment does not entitle him for all times to come to protection in terms and conditions of service including pay scales. In my view, therefore, the principle of promissory estoppel which in any case cannot be invoked in case of applicant No.1, doctrine of promissory estoppel has no applicability to applicant No.2 also in whose case it has been invoked.

9. At the same time, it would ^{not} be open to the respondents to recover arrears of NPA paid to them earlier relying on the undertaking obtained from the employee in the past. I am therefore, of the view that the O.A. fails, so far as the prayer for quashing O.M. dt. 1.12.1994 and 12.2.1993 is concerned, but the applicants are entitled to a direction not to

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recover arrears of NPA which might have been paid to them in the past. The O.A. is disposed of in these terms with no orders as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.