

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 248/95

Date of Decision 38-3-96

C.G.D. Nair

Petitioner

Mr.A.I.Bhatkar

Advocate for the Petitioner.

Versus

Union of India & Ors

Respondent

Mr.V.S.Masurkar

Advocate for the Respondents.

Coram:

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

The Hon'ble Mr.

1. To be referred to the Reporter or not?

2. Whether it needs to be circulated to other ~~other~~
Benches of the Tribunal?

M.R.Kolhatkar
(M.R.KOLHATKAR)

Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MUMBAI

O.A.248/95

Pronounced the 28th day of March 1996

C.G.D.Nair,
G/o.A.I.Bhatkar,
Advocate,
4/13, Mohamed Hussain Chawl,
Opp.Antop Hill Post Office,
Wadala, Bombay - 400 037,
(By advocate Shri A.I.Bhatkar) .. Applicant

-versus-

1. Union of India
through
the Secretary,
Ministry of Defence,
Sena Bhavan,
New Delhi - 110 011.
2. The Chief of the Naval Staff
Naval Headquarters,
DHQ P.O. New Delhi - 110 011.
3. The Flag Officer Commanding-in-
Chief, Headquarters,
Western Naval Command,
Shahid Bhagat Singh Road,
Bombay - 400 001.
4. The Material Superintendent,
Material Organisation,
Naval Store Depot, Ghatkopar,
Bombay - 400 086.
5. The Controller of Defence
Accounts (Navy)
No.1, Cooperage Road,
Bombay - 400 039.

(By counsel Mr.V.S.Masurkar) .. Respondents

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

O R D E R

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

The applicant was appointed as Lower Division Clerk in Navy(Civil) on 10-4-1962. He was promoted as Upper Division Clerk in 1969 and came to be promoted as Office Superintendent Gr.II w.e.f. 10-1-1986 in the old scale of Rs.425-700 which is equivalent to the new scale of Rs.1400-2300. He came to be promoted as Office Superintendent Gr.I in the new scale of Rs.1600-2600. He gave an option upon his promotion as Office Superintendent Gr.I for fixing his pay from the date of drawal of the annual increment in the existing grade in terms of FR 22(C) and his pay came to be fixed accordingly. He gave a fresh option on 9-10-1989 pursuant to the letter of the Ministry of Personnel, Public Grievance & Pension dt. 17-5-1988 and 1-9-1989 for fixing his pay in the revised scale effective from 1-1-1986. The effect of this order was that the amount to be added to pay in the lower post before fixing pay at the next stage in the higher post should not be less than Rs.25/- His fresh option dt. 9-10-89 ~~was~~ not honoured by the Govt. and he therefore approached the Bombay Bench of C.A.T. vide O.M. No. 62/93 which came to be decided on 7-3-1994 and the respondents were directed to fix the pay of the applicant on the basis of his option dt. 9-10-89 and also to pay the financial benefits to the applicant to which he is entitled as a result of fresh option. It is the

contention of the applicant that in terms of this decision, pay fixation orders were issued on 13-6-94 vide Ex.8, page 30. The relevant portion of the pay fixation is as below :

"(i) As per CAT(B) judgment order 10-1-86
dt. 07 Mar 94, on promotion as
O/S Gr.II pay fixed (Notional-
lly) @ Rs.620/- p.m. w.e.f.
10-1-86 in the scale of pay
Rs.425-15-500-EB-15-560-20-700

(ii) Pay re-fixed under CDS(RP) 10-1-86
Rules 1986 @ Rs.1800/- w.e.f.
10-1-86 in the scale of pay
Rs.1400-40-1800-EB-50-2300

(iii) Next increment due on 10-1-87 "

According to the applicant, after the pay fixation as above ~~which was quite~~ in order, when the question of payment of arrears arose, respondent No.2 had approached respondent No.1 for sanctioning charged expenditure of Rs.8572/- being the arrears due and payable to the applicant consequent upon the said fixation. The sanction was received on 21-12-1994 vide page 40 Ex.12.

This sanction was in following terms :

"In pursuance of CAT Bombay judgment dated 07 Mar 94 in O.A.No.62/93 filed by Shri CGD Nair, I am directed to convey the sanction of the President for fixation of pay of Shri CGD Nair, O/S Gr.I on the basis of his option dated 9 Oct 1989 exercised by him as per DOPT OM No.1/2/87 Estt(Pay-I) dt. 9-11-87. The pay fixation would be in terms of CDS (Revised Pay) Rules, 1986.

This issue with the concurrence of Ministry of Defence(Finance) vide their U.O. No.1204 NA dt. 21 Dec 94."

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Thus the applicant's pay as on 10-1-1986 came to be fixed as Rs.1720/- as against Rs.1800/- which was the pay fixed as per the order dt. 13-6-94 earlier referred to. Applicant had approached the Tribunal for declaration that the pay fixation dt. 13-6-94 (Rs.1800/- p.m. as on 10-1-86) is in accordance with the judgment of the Tribunal and to set aside the subsequent pay fixation in terms of sanction order dt. 21-12-94. Applicant also seeks direction to make payment of arrears of pay and allowances due and payable to the applicant and also to finalise the retirement dues of the applicant in terms of order dt. 13-6-94. According to the applicant the respondents cannot interpret the Govt. orders to the disadvantage of the applicant and thereby ~~do~~ deny the benefits intended to be given to the applicant. Respondents also cannot go against the judgment of the Tribunal in terms of which pay fixation dt. 13-6-94 was done.

2. Respondents have opposed the O.A. According to them the initial pay fixation consequent on judgment of the Tribunal made on 13-6-94 was mistaken and this mistake was brought to the notice of the other respondent by respondent No.1 when the matter was taken up with respondent No.1 for sanction of charged expenditure on account of payment of arrears. The lower pay fixation is due to the operation of rules. In accordance with DOPT OM dated 27-5-88, the Govt. servants who were drawing their increment annually and who opted to switch over to the revised scale of pay from the date of their next increment or subsequent increment failing after 1-1-86

but not later than 31-12-87 shall in respect of the post held by him on 1-1-86, shall also be fixed in accordance with the provisions of Rule 7 of CDS(RP) Rules 1986. Accordingly the applicant's pay was fixed as per his option dt. 31-8-88 from 10 Jan 86 at Rs.600/- for the period from 10-1-86 to 31-11-86 taking into account of special pay which he was getting as on that date and further fixed at Rs.1800/- w.e.f. 1-12-86 in the revised scale with date of next increment 01-12-87. But due to his fresh option dt. 9-10-89 as per Hon.CAT(B) judgment dated 07 Mar 94, his pay ought to be fixed initially as on 1-1-86 in post of UDC and thereafter in the post of O/Supdt. Gr.II w.e.f. 10-1-86 taking into account ~~Rs.70/-~~ the special pay which was drawn ~~by~~ by the applicant in the UDC's grade due to carrying out complex nature of work, as the pay in the revised scale cannot be fixed with reference to pre-revised scale of a post not held on 1-1-86 in accordance with CDS(RP) Rules 1986 and OM dated 15 Dec 86. While doing the said fixation, benefit of one increment in the lower post of Rs.40/- has been given to the applicant which is more than Rs.25/- the minimum benefit granted to Govt. employees vide OM dated 10 Jul 89, during fixation of pay on promotion. So far as the question relating to pay fixation being in violation of the judgment of the Tribunal in O.A. 62/93 is concerned it has been pointed out that C.P.110/94 in the above O.A. was dismissed by the Tribunal on 17-2-95 vide Ex.9 page 36.

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3. I have considered the matter. It is true that the effect of revised pay fixation in terms of option dt. 9-10-89/ is to have a pay fixation which is to the disadvantage of the applicant, but this is by operation of the rules. In terms of Govt. decision dt. 15-12-86 at Ex.R-1, in cases of a Government servant promoted to a higher post on or after 1-1-1986, the pay in the revised scale should be fixed with reference to the lower post under C.C.S.(R.P.) Rules, 1986 and then the pay fixed in the revised scale of the higher post under normal rules. It is not in dispute that the applicant was promoted to the higher post of O.S. Gr.I on 10-1-1986 and prior to that he was U.D.C. Therefore the pay fixation which has been done while conveying the sanction dt. 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 on 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 consequence of the relief if granted. If the consequence turns out to be adverse to the government orders in terms of this relief, cannot be challenged on that ground. It is not open to the applicant to approbate and reprobate.

4. I am, therefore, of the view that the application fails and this Tribunal is not in a position

to grant any relief . It would be ~~fair~~ only fair however, to restrain the respondents from recovery of arrears if any as a result of pay fixation dt. 21-12-94. It is, however, open to the respondents to recalculate the pension of the applicant in terms of revised pay fixation. No arrears on this count may however be recovered. There will be no order as to costs.

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

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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)