

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 377/95

Transfer Application No.

Date of Decision

19/1/96

Shri V.M.Desai

Petitioner/s

Shri S.R.Atre

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

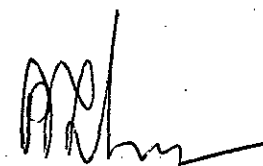
Advocate for
the Respondents

CORAM :

Hon'ble Shri. P.P.Srivastava, Member (A)

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 ?


(P.P.SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

QA.NO. 377/95

Shri V.M.Desai ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri S.R.Atre
Advocate
for the Applicant

Shri V.S.Masurkar
Advocate
for the Respondents

JUDGEMENT

Dated: 19/1/96

(PER: P.P.Srivastava, Member (A))

The applicant was working in the C.P.W.D. and was promoted to the post of Draftsman Gr.I in 1969 and after successful service was superannuated at the age of 58 years on 31.1.1978. The pay scale of Draftsman Gr.I was Rs.425-700. However, by an award from the Board of Arbitration the scale of Draftsman Gr.I were changed from Rs.425-700 to Rs.550-750 in the year 1980. In the same award, it was also directed that the revised scale would be applicable from 1.1.1973 but the actual benefit of payment shall be granted w.e.f. 16.11.1978. Since the applicant had already retired when this arbitration was received, he submitted representation to grant him pensionary benefits on the enhanced pay



which he would have drawn as a result of application of arbitrary award from 1.1.1973. But the respondents have rejected the application of the applicant and therefore the applicant has approached the Tribunal through this OA, and sought the relief that his pay should be fixed in the grade of Rs.550-750 w.e.f. 1.1.1973 which would enable him to get his pay fixed at the stage of Rs.650/- on the date of superannuation, i.e. 31.1.1978. The applicant has also further sought the relief that he should be given all the pensionary benefits w.e.f. 16.11.1978 on the basis of revised pay, i.e. Rs.650/- on the date of his superannuation on 31.1.1978.

2. Counsel for the respondents has argued that the applicant is not entitled to benefit of higher pay for pension purpose as in terms of the Pension Rules the benefit can be given to him if he had actually drawn the pay. Since in the case of the applicant he had retired on 31.1.1978 and in terms of arbitration award the actual benefit was from 16.11.1978, the case of the applicant not covered within the frame work of pension rules.

3. Counsel for the respondents has brought out that ~~Rule 33~~ Rule 33 of CCS Pension Rules, Note 1 provides that any increase in pay (other than the increment referred to in Note 4) which is not actually drawn shall not form part of his emoluments, and, therefore, since the applicant had not actually drawn



the pay in terms of the arbitration award which was applicable only from 16.11.1978 and since the applicant has retired before that, he is not entitled to pensionary benefit in terms of arbitration award.

4. Counsel for the applicant on the other hand argued that the case of the applicant is covered by the judgement which has been pronounced by the Calcutta Bench of this Tribunal in Santosh Ch. Majumdar & Anr. vs. Union of India & Ors., OA.NO. 433/92 decided on 5.3.1993, wherein the Tribunal has examined the question of emoluments in Para 6 of the judgement and has held that "the emoluments which a government servant legitimately would have drawn and the expression "was receiving" as provided in Rule 33 cannot be confined to cases of actual drawal of the emoluments because actual drawal would depend on many other conditions and variables."

5. After considering the arguments of both the counsels, I have come to the conclusion that the case of the applicant is covered by the rules provided for calculating the emoluments for the purpose of pension. Rule 33 envisages various situations wherein the increment which the Government servant would have drawn although not actually drawn shall form part of the emoluments. Since the applicant's pay has been refixed in 1973 in terms of arbitration award, he is required to be given notional increment and actual payment from 16.11.1978.



Since Rule 33 envisages counting of notional increment, the applicant would be entitled to counting of notional increment upto the date of his retirement for the purpose fixation of his pension.

6. As far as the question of limitation is concerned, the case of the applicant is squarely covered by the Supreme Court judgement in M.R.Gupta vs. Union of India & Ors. (1995) 31 ATC 186, wherein the Hon'ble Supreme Court has considered the question^{of} limitation in the cases of pay fixation. In Para 4 the Supreme Court has held as under :-

" Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc., would also be subject.

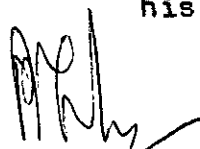


to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."


7. In terms of clear proposition laid down by the Supreme Court, I have no hesitation in holding that the applicant is entitled to fixation in terms of arbitration award. His pay therefore should be fixed in the grade of Rs.550-750 w.e.f. 1.1.1973 and his pay should be worked out notionally on 31.1.1978. His pension should be calculated in terms of pay notionally so fixed but he will be entitled to actual payment only from the date one year before the date he submitted the OA. Since the OA. has been submitted on 13.3.1995, the applicant will be entitled to arrears w.e.f. 13.3.1994.

8. The OA. is, therefore, disposed of with the following directions :-

The applicant's pay should be fixed in the grade of Rs.550-750 in terms of the arbitration award and his notional pay should be worked out on the date of his superannuation, i.e. 31.1.1978 and his Pension should be calculated



on the basis of notional pay which he would have drawn on the date of superannuation. The applicant would, however, be entitled to arrears only w.e.f. 13.3.1994 onwards in terms of his new fixation of pension. All the amounts due as a result of these directions should be paid within a period of four months from the date of receipt of a copy of this order.


(P.P. SRIVASTAVA)
MEMBER (A)

mrj.