

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 745/95/199

Date of Decision: 31-07-96

M.G.Nagarkar

Petitioner/s

Mrs.N.V.Masurkar

Advocate for the
Petitioner/s

V/s.

XX U.O.I. & Ors.

Respondent/s

Mr.Pandya for Mr.M.I.Sethna

Advocate for the
Respondent/s

CORAM:

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

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)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MUMBAI

O.A.NO:745/95

Pronounced, this the 31st day of July 1996

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

M.G.Nagarkar,
Type-B-22/2, TAPS Colony,
Post T.A.P.P.
Taluka Palghar,
Dist.Thane,
Pin-401504.

.. Applicant

(By advocate Mrs.N.V.Masurkar)

-versus-

1. Managing Director,
Nuclear Power Corporation Ltd.,
16th Floor, WTC,
Mumbai - 400 005.

2. The Union of India
through
Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
C.S.M.Marg,
Mumbai - 400 039.

3. Director(Station)
Tarapore Atomic Power Station,
Tarapore, Thane.

4. Senior Maintenance Engineer(E)
Nuclear Power Corporation Ltd.,
TAPS, Thane 401 504.

.. Respondents

By Shri R.Pandya for Mr.M.I.Sethna

ORDER

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

The applicant was working in the Ordnance Factory, Chandrapur as Wireman Gr.B. He applied for the post of Tradesman Gr.C in the Tarapur Atomic Power Station. The appointment order is dt. 5-5-1973 at Annexure A-2 which shows that the scale of post is 150-5-175-6-205-EB-7-240 and his initial pay would be Rs.165/- in that scale. According to the applicant one of the reasons why he left the old department and joined Atomic Energy Department(respondents) was that three extra

increments were granted to him at the time of his employment which was an attraction to join Tarapur Atomic Power Station(TAPS). After the applicant ^{the} joined, the recommendations of IIIrd Pay Commission came into force and the pay of the applicant was required to be fixed in the new pay scale of Rs.330-480. In the office order dt. 27-2-1974 the initial pay of the applicant in the revised pay scale was shown as fixed at Rs.354/- which apparently is calculated by adding three increments in the new scale. According to the applicant subsequently this pay fixation was revised and by the impugned order dt.30-5-1975 his pay was refixed at Rs.330/-p.m. The applicant made a representation vide representation dt. 28-8-1985, Annexure A-4 and he was informed that his pay had to be fixed in accordance with Ministry of Finance letter dt. 30-11-1974.

2. It is contended by the applicant that the refixation of pay by ignoring three increments was illegal, that in any case the applicant had a vested right for the refixed pay of Rs.354/-, and that the respondents have not given ^{him a} reasonable opportunity to represent before withdrawing the three increments. The applicant, therefore, prays for refixation of his pay in the revised scale of Rs.330-480 w.e.f. 16-6-1973 and accordingly revise his pay as on 1-1-86 as per the revised pay scale granted by IVth Pay Commission and give him his arrears of wages and other consequential benefits.

3. The applicant has challenged the memorandum dt.30-5-1975 by filing the present O.A. The O.A. has been filed after about 20 years and the applicant has filed an MP No. 522/95 for condonation of delay. It is contended by the applicant that though the cause of action has

arisen on 4-9-1975 the same is continuing and a continuous monetary loss is being caused to him. Moreover he belonged to Scheduled Caste community and had not made further representations to avoid victimisation. In any case the claim for arrears could be restricted to difference in wages for one year prior to the date of filing of the O.A. Under these circumstances he has applied for condonation of delay.

4. Respondents have opposed the O.A. It is contended that on the ground of limitation alone the O.A. deserves to be dismissed. On merits, it is stated that after the pay of the applicant was fixed by grant of 3 increments in the revised scale there was some correspondence with the Ministry of Finance and as per the reply received vide letter dt. 30-11-74, at Annexure R-II, it is stated "It has been decided that in such cases the pay of the officials concerned may be fixed in the revised pay scales under the normal rules or at a stage in the revised scales equal to the rate recommended by the UPSC/Selection Committee in the pre-revised scales D/DP interim reliefs at the rates in force on 1-1-73 or if there is no corresponding stage in the revised scales, at the next lower stage ~~whichever~~ is higher." According to the respondents there was an error in fixation and a reference was made and after receiving clarification ^{as above} the correct pay fixation was done and was intimated to the applicant. It is argued by the respondents that it is not correct to state that advance increments granted to the applicant by the respondents at the time of initial appointment ~~xxxxxx~~ were withdrawn. What had been done was to re-fix the pay after taking into account advance increments in revised pay scale as per normal rules.

5. At the argument stage counsel for the applicant relied on M.R.Gupta vs. U.O.I. & Ors, (1995)5 SCC 628 on the point of limitation. This is a wellknown Supreme Court judgment delivered on 21-8-1995. In that case the applicant had joined the service in Railways in 1978. The representation of the applicant for correct fixation was rejected before coming into force of the Administrative Tribunals Act. It is seen from para 4 of the judgment that the appellant had been expressly told by the order dated 12-8-1985 and by another letter dated 7-3-1987 that his pay had been correctly fixed. The Tribunal had held the claim as time barred on the ground that it was raised 11 years after the pay fixation. The Hon'ble Supreme Court held that 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.

6. First of all I wish to observe without going into the question of applicability of M.R.Gupta's ratio that in the facts of the present case where there is an inordinate/unexplained delay by a Govt. employee in approaching the Tribunal, that delay itself is a ground for refusing the relief. It has been so laid down by the Hon'ble Supreme Court in a three Bench decision viz. Bhoop Singh vs. U.O.I., (1992)21 ATC 675, In that case the petitioner was appointed in 1964 and his service terminated after about three years in 1967. ~~It was~~ in 1989, after a lapse of about twenty-two years from the date of termination of his service that the petitioner chose to assail his dismissal. No attempt had been made by the petitioner to explain why he chose to be silent for so long. The Hon'ble

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that

Supreme Court observed if the petitioner's contention is upheld that lapse ~~xxxxx~~ of any length of time is of no consequence in the present case, it would mean that any such police constable can choose to wait even till he attains the age of superannuation and then assail the termination of his service and claim monetary benefits for the entire period on the same ground. That would be a startling proposition. The Hon'ble Supreme Court refused the relief even though Article 14 was invoked. In the instant case there is no such argument.

7. Apart from the general proposition that inordinate and unexplained delay ^{by} itself would be a ground for refusing relief, ~~It~~ could have considered the applicability of M.R.Gupta's judgment for condoning delay if on merits the applicant had a case. The applicant, however, has not been able to show how his revised pay fixation is illegal and in violation of which provisions of rules. The counsel for the applicant relies on S.R.Seth(Dr.) vs. Indian Council of Agricultural Research and others decided by Lucknow Bench of the Tribunal on 15-3-1993 in O.A. No.1169/87 which is extracted in Swamy's Case Law Digest 1994(233). This O.A. relates to pay fixation in terms of FR 22-C. FR 22-C has now been replaced with FR 22 I(a)1 which reads as below:

"Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him..... etc... "

A bare reading would make it clear that this rule is attracted only in the case of promotion ^{or deputation} of an employee from one post in the organisation to another post.

FR 27 merely regulates grant of advance increments if due and is not material. In the instant case, however, the question involved was that of pay fixation of the applicant on his initial appointment in terms of normal rules when the ^{was subsequently} ~~payscale~~ revised with retrospective effect. On a perusal of the Central Civil Services (Revised Pay) Rules, 1973, produced by the respondents, it appears to me that the ~~pay~~ fixation of the applicant had been done in accordance with the normal rules. The reliance on case law relating to FR 22 C(FR 22I(a)(1)) does not therefore help the applicant.

8. Since the applicant has not been able to establish that the pay fixation was wrong, ~~hence his~~ reliance on M.R.Gupta's case also does not help him because M.R.Gupta's case applies only when it is established that ^{there was a} continuing wrong giving rise to a recurring cause of action ~~month~~ by month.

9. In my view, ^{therefore,} the O.A. is devoid of any merits and is ^{accordingly} dismissed with no order as to costs.

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6,FRESCOT RD, 4TH RD,

MUMBAI - 400 001.

REVIEW PETITION NO:106/96 IN O.A.745/95.

DATED THIS 11TH DAY OF DECEMBER, 1996.

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

M.G.Nagarkarn
Tradesman 'F' with
N.F.C.L. on deputation
and residing at present
Type-B-22/2, TAPS Colony, Post
T.A.P.P. Taluka Palghar,
Dist.Thane, Pin - 401504.

... Review Petitioner

v/s.

1. Managing Director,
Nuclear Power Corporation Ltd,
16th Floor, WTC,
Bombay - 400 005.
2. The Union of India,
through Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
Chhatrapati Shivaji Maharaj Marg,
Government of India,
Bombay - 400 009.
3. Director, (Station),
Tarapore Atomic Power Station,
Tarapore, Thane.
4. Senior Maintenance Engineer(E),
Nuclear Power Corporation Ltd,
TAPS, Thane - 401 504.

... Respondents.

{ ORDER BY CIRCULATION }

1. This is an RP filed by the original applicant seeking a review of my order dated 31/7/96. The main ground for prayer is that the judgement contains an error apparent on the face of the record in relation to definition of emoluments as given in section 3(2) CCS revised pay rules 1986.

section-3 relates the definition.

section-3(2) says that existing scale in

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relation to a Government servant means the present scale applicable to the post held by the Government servant for, as the case may be, personal scale applicable to him) as on the 1st day of January, 1986 whether in a substantive or officiating capacity.

2. In para-4 of the judgement, reasons for fixation of the pay of the applicant in terms of Ministry of Finance letter dated 30/11/74 were referred to and the same were upheld. It is not clear how the definition of emoluments ~~existing~~ scale under Rule-3(2) can help the applicant.

3. The rest of the contentions in the RP appear to challenge the correctness of the judgement. Such grounds of challenge are not relat^{able} to rules under order 47 of CPC^{and} are not relevant in an RP.

4. I am of the view therefore, that the RP has no merit and I dismiss the same by circulation as is provided in rules.

abp.

M R Kolhatkar

(M. R. KOLHATKAR)
MEMBER(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

REVEIW PETITION NO. OF 1996

IN

ORIGINAL APPLICATION NO. 745 OF 1996

MR. M. G. NAGARKAR ... APPLICANT

V/s.

UNION OF INDIA & ORS. ... RESPONDENTS

REVEIW PETITION FOR REVEIWIN THE JUDGEMENT AND
ORDER DATED 31ST JULY , 1996.

1. The Petitioner is filing this Review
Petition for reviewing the Judgement and Order
dated 31.7.1996 passed in the above matter wherein
error of law is committed on the face of it. I
say that the matter filed for challenging order
dated 30th May 1975 by which the Petitioner's
initial pay was refixed on his appointment i.e.
on 16.6.1973 in the revised Salary the grade of
T/Man Grade-C at Rs.330/- P.M. in Pay Scale of
Rs.330-8-370-10-400-EB-10-480 with effect from the
forenoon of June 16th 1973 and further deleting
Petitioner's name from the Office Order No.60/74
issued and No.TAPS/ADM/1486/7893 dated 27/2/74.
The Applicant /Petitioner has challenged the said
Order on grounds including the grounds that by
the said Order the 3 Advance Increments were

withdrawn illegally and without authority of law as Government has itself sanctioned 3 Advance increments and ^{paid them} ~~payment~~ after his appointment and ~~for~~ even one year after Third Pay Commission's Recommendation ~~came into force~~. And that subsequent action of re-fixing Applicant's pay by Order dated 30.5.1975 ^{is} illegal and liable to be quashed and set aside and Applicant pay on his date of appointment would be Rs.354/- and accordingly ^{ly} he is entitled to further service benefits including admissible benefits on that basis in the revised pay scale.

2. The Applicant states that, the arguments of the Respondents are quoted in para(4) of the Judgement wherein it is stated that advance increments granted to the applicant by the Respondents at the time of initial appointment were withdrawn but what has been done was that pay was re-fixed after taking into account advance increments in revised pay scale as per normal rules.

3. In Para 7 of the Order it is stated by the Tribunal that, it could have considered the applicability of M.R. Gupta's Judgement for condoning delay ~~if~~ on merits, the applicant had a case and further held that Applicant however, has not been able to show how his revised pay fixation is illegal and in violation of which rules and further held that on perusal of the Central Civil Services (Revised Pay) Rules 1973 produced by the Respondents

It appears that pay fixation of the Applicant has been done in accordance with normal rules.

4. Applicant states that at the time of hearing of the Application on 18.7.1996 ^{the CCS (Revised)} ~~not the same~~ ^{Pay Rules 1973 were not} ~~were~~ produced by the Respondents on that date but were subsequently given to the Tribunal where the matter was reserved for Judgement. Applicant was not able to trace C.C.S. (Revised) Pay Rules 1973. However now the Applicant has been able to procure the copy of the same recently. If the definition ^{is seen which,} ~~of~~ existing emoluments as given U/s. 3(2) (b) ~~defined~~ as under :-

Existing Emoluments includes, :-

- a) The basic pay as on the 1st day of January, 1973 of a Government Servant in the existing scale. (the ~~advance~~ increment; if any on account of stagnation at the maximum of the existing scale being excluded).
- b) Special pay (other than non-practising allowance), if any, drawn in addition to pay in the existing scale.

5. If the said definition is interpreted correctly in the Applicant's case that existing Pay Scale as on 1.1.1973 for Applicant would be Rs.330-480.

~~As~~ appointment order of applicant is dated 5.5.1973 and on that day he was given the pay by adding 3 advance increments in the pay. The said position can not change because the 3rd pay commissions' report^{was} through given effect to from 1.1.1973 by notification dated 13.11.1973.

6. The applicant says that question of applying revised pay rule does not arise in case of applicant as Applicant's appointment was subsequent to coming into effect the CCS (Revised Pay) Rules 1973. And therefoer doing fixation of applicant's payⁱⁿ the revised pay rules have no effect. Only change is that his pay scale gets substituted for that of Rs.150-5-175-6 205-GB-7-240 to 330-8-370-10-400-EB-10-480 the Revised Scale which came into effect from 1.1.1973.

7. Had the Applicant would have been appointed prior to 1.1.1973 on the old scale the question of fixing pay scale as per revised pay rules have assumed importance.

8. Applicant states that this is the great error of law committed by the Trinunal while deciding the Applicant's case by stating that it appears the Revised Pay Rules are properly applied to the Applicant's case which^{has} as applicant^A joined the service after 1.1.1973 he is entitled to the benefit

of same terms and conditions of appointment as applied at the time of appointment letter on 5.5.73 and he is not subject to refixation ~~his~~ new scale as from 1.1.1973, ^{as} ~~hence~~ the old scale Rs. ~~450-330~~ ^{as} ceased to exist and can not be taken ^{as} his Pay Scale, For the purpose of refixation as his case would be similar to those who are appointed on the date of Notification of Revised Pay Rules or thereafter.

9. Applicant states that he received copy of Judgement and order dated 31/7/1996 from his Advocate on 14/08/1996. Further CCS (Revised) Pay Scale 1973 could be availed of by the Applicant recently, one week back and accordingly there is delay of $1\frac{1}{2}$ month in filing this Review Petition which applicant submits be condoned in the interest of justice.

10. I say that no harm, prejudice or injury would be caused to Respondents, if the Review Petition is allowed as apperant error of law has seem, to be committed in this matter.

11. ^{Circumstances.} In view of aforesaid Applicant prays that this Review Petition taken out by him be allowed with cost and order dated 11.7.1996 be set aside because there is a mistake and error apparent on the face of the Order and accordingly Applicant prays that :-

a) that delay if any in taking out Review Petition be condoned ;

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

M. P. NO. OF 1996

IN

REVIEW PETITION NO. OF 1996

IN

ORIGINAL APPLICATION NO.745 OF 1996

M. G. NAGARKAR ... PETITIONER

V/s.

UNION OF INDIA ... RESPONDENTS

MISCELLANEOUS PETITION FOR CONDEMN-
ING THE DELAY IN FILING REVIEW
APPLICATION

1. The petitioner states that he has filed review petition for the purpose of reviewing the Judgement and order dated 31.7.96 in the above matter. where a serious error of law has kept in. I say that copy of Judgement was made available to me somewhere on 14.8.96.

2. After going through the Judgement I contacted my Advocate to get the copy of C.C.S. (Revised) Pay Rules 1973, my Advocate informed me that the copy of CCS (Revised) Pay Rules was not available with her inspite of searching it diligently. However she told me that the copy of said rules though referred to by the Respondents were tendered subsequent to hearing of the matter on the next date. She has requested the

respondents to give her a copy. A copy whereof ~~thus~~ ^{is} obtained from other side ⁱⁿ the process it took some more time. I have thereafter immediately approached my Advocate to present my Reveiw Application.

3. My Advocate was facing some personal problems about her illness and illness in the family and therefore also matter remained out of sight and due to oversight ~~the said~~ ^{the} Advocate ~~file~~ Review Petition ^{remained} ~~to be filed in time~~ Affidavit of my Advocate is hereto annexed and marked Exhibit "1" hereto.

Ex. "1"

4. In the aforesaid circumstances it is prayed that delay of $1\frac{1}{2}$ months in taking out Reveiw Petition be condoned in the interest of justice.


The Petitioner therefore prays :

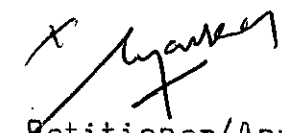
- a) Delay in taking out Review Petition be condoned ;
- b) Such further and other reliefs be granted as nature and circumstances of case may permit ;
- c) Cost of the M. P. be provided for ;

V E R I F I C A T I O N

I, M. G. NAGARKAR , Applicant abovenamed do hereby state on solemn affirmation that whatever

is stated hereinabove is true and correct to my best of knowledge and I have not suppressed any facts from this Hon'ble Tribunal.


(SMT. N. V. MASURKAR)
Advocate for Petitioner.


Petitioner/Applicant.