

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 374/1997

DATE OF DECISION: 8/10/2001

R.N.Sarkate

Applicant

Shri B.Dattamoorthy

Advocate for
Applicant.

Versus

Union of India and Anr.The General

Respondents.
Advocate for
Respondents.

Shri R.K.Shetty

Coram:

Hon'ble Shri S.L.Jain, Member(J)

Hon'ble Smt. Shanta Shastry, Member(A)

1. To be referred to the Reporter or not? /
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library. ✓

Shanta I

(Smt.Shanta Shastry)
Member(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.374/97
DATED THE 28 DAY OF OCT. 2001

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

R.N.Sarkate,
Training Officer,
Advanced Training Institute,
Sion, Mumbai - 400 022.

... Applicant

By Advocate B.Dattamoorthy

V/s.

1. The Director,
Advanced Training Institute,
Ministry of Labour,
Government of India,
Sion, Mumbai - 400 022.
2. Union of India Through
The Director of Training,
Office of the Director General,
Employment and Training,
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi - 110 001.

... Respondents

By Advocate Shri R.K.Shetty

(ORDER)

Per Smt.Shanta Shastri, Member(A)

The applicant joined service as Vocational Instructor in 1983 in the payscale of 440-750 in the Advanced Training Institute, Mumbai. He belongs to Scheduled Caste community. He was eligible to be considered for appointment to the selection grade in the payscale of Rs.740-880 against the reserved point in October 1985 according to him. He represented in this connection on 31/7/1987 and 23/5/1988. The selection grade was abolished after 1/1/86 as per recommendations of the IVth Pay Commission. vide instructions issued sometime in September 1989 that in case any selection grade post had fallen vacant after the

...2.

applicant had become eligible and before 13/9/86, the applicant can be considered against such vacancy being carried forward. The applicant continued to make further representations in this regard. Later on after exchange of lot of correspondence between the Director of the Advanced Training Institute and the Directorate General of Employment and Training, New Delhi, finally the applicant was granted the selection grade vide Office Order dated 17/7/96 appointing him to the selection grade from 13/8/86 to 1/5/90 in the pre-revised pay scale of Rs.740-35-880. The applicant submits that he gave his option on 17/7/96 to allow him fixation of pay in the pre-revised scale of 740-35-880 and the re-fixation pay in the revised scales provided in the IVth Pay Commission recommendations. In pursuance of this appointment, Office Order was issued on 23/7/96 fixing his pay in the selection grade at the stage of Rs.740 in the scale of Rs.740-35-880 and pay fixation statement under CCS (Revised Pay) Rules 1986 fixing the pay at Rs.1480/- in the Vocational Instructor grade upto 12/8/86 and thereafter at the stage of Rs.2180/- in the selection grade scale of Rs.1640-2900 was issued. The applicant had been promoted from 2/5/90 in the post of Surveyor and thereafter he was further promoted as Training Officer on 12/9/95. Accordingly his pay was fixed at Rs.2375/in the scale of Rs.2000-3200 from 2/5/90 to 31/7/96 and at Rs.2525/from 1/5/96 according to option executed by the applicant. The applicant was aggrieved that inspite of the pay fixation, he had not been paid the arrears inspite of several verbal requests and assurances. Even the due and drawn statement had been received from Regional Director, Apprenticeship Training, Western Region. The applicant

is further aggrieved that he would have become eligible for allotment of Type-IV quarter in the Advanced Training Institute Campus if his pay in the Surveyor's grade would have become Rs.2825/- on 1/8/94 as a result of the retrospective promotion to the selection grade and consequent re-fixation at all subsequent stages. He represented by when the representation didn't yield any result, the applicant came before this Tribunal and the Tribunal vide Interim Order dated 5/6/97 directed the respondents to pay the arrears of pay on the basis of the pay fixation done by them and also to consider allotment of type-IV quarter to the applicant. The applicant submits that the respondents did not comply with this order and to his utter shock, the respondents issued a revised pay fixation statement on 6/6/97 resulting in drop in the emoluments due, to the applicant. The applicant therefore filed a contempt petition against the respondents for dis-regarding the order dated 5/6/97 and making unauthorised changes in the pay fixation orders. The contempt petition 56/97 was discharged on 27/10/97 giving liberty to the applicant to challenge the subsequent order dated 6/6/97. The applicant has therefore challenged the order dated 6/6/97 by way of an amendment to the OA. The applicant has sought directions to the respondents to effect payment of arrears due to him from 13/8/86 within a time frame and to pay interest of 12% per annum on the amounts of the arrears for the period of delay and to quash and set aside the pay fixation order dated 6/6/97 as arbitrary, discriminatory and bad in law and to reserve one quarter of type-IV for allotment to the applicant.

2. The respondents in their written statement have submitted that before implementing the order dated 17/7/96, a complaint was received from one Shri Shankar Battacharya, the President of All India Central Staff Association of DGET, ATI, Dasnagar, Howrah representing that the applicant had influenced the administration to issue the order dated 17/7/96. It needed amendment and rectification. The applicant had already opted for revised payscale as per CCS (Revised Pay) Rules 1986 from 1/1/86 and therefore he should not have been given the pre-revised pay scale of Rs.740-880 from 13/8/86. The respondents sought clarification from the Director, Advance Training Institute, Dasnagar, Howrah. He in turn sent all the relevant papers of the similar cases wherein fresh office order fixing their pay according to the revised payscale was issued in supersession of the old order as per the instructions from the Government of India, Ministry of Labour vide their letter dated 22/10/92 and 2/4/93. The letters stated that the question of allowing the applicant pre-revised payscale of Rs.740-880 in the post of Vocational Instructor (SG) and then refixing his pay in the revised pay scale of Rs.1640-2900 was not permitted and the question of allowing an option for fixing of pay in the revised scale of the post of Vocational Instructor (SG) did not arise as the appointment to the selection grade was after 1/1/86. It was further instructed that over payments made on account of wrong fixation of pay in the case of concerned individuals may be recovered after the orders refixing the pay were issued and in these circumstances, it was pointed out that the Office Order issued fixing the applicant's selection grade pay in the pre-revised pay scale of

Rs.740-35-880 was incorrect. Further, there was an audit in this Institute by the Controller of Accounts, Ministry of Labour, New Delhi from 19/5/97 to 25/7/97. The audit reviewed the pay fixation cases of the staff of this Institute and advised reviewing cases of the pay fixation of the staff of the Institute. The audit also advised that the fixation of pay on appointment on selection grade in the case of applicant was irregular. The applicant had given his option in the form of option given in the second schedule as per Rule 6(I) of the CCS (Revised Pay) Rules. He had exercised this option to elect for the revised scale of pay w.e.f. 1/1/86 with reference to his post of Vocational Instructor which he was holding as on 1/1/1986. According to para 2(b)(i) of the OM dated 14/5/87, in cases where separate replacement scale corresponding to selection grade has been prescribed and where selection grade has been allowed on or after 1/1/86 but before 13/9/86 and if a Government servant holding such selection grade post on 12/9/86 has opted for revised payscale w.e.f. 1/1/86 with reference to the post he was holding on 1/1/86, the initial pay of such employee shall be fixed in the revised scale as on 1/1/86 under the CCS (Revised Pay) Rules 1986 and thereafter with effect from the date on which he was appointed to the selection post his pay in the replacement scale corresponding to pre-revised selection grade scale may be fixed in accordance with provisions of para (vii) of the OM dated 10/1/1977. It provides for fixation of pay in the revised scale corresponding to selection grade directly and not to fix pay in the pre-revised selection grade scale and then fixing in the revised scale. Hence, the pay fixation of the applicant at

Rs.740/- in the pre revised scale is not correct and is a mistake. The audit report also gave a model calculation of the pay fixation and advised to revise the Office Order dated 23/7/96 whereby the applicant's pay was fixed and to issue a fresh order. Accordingly, a corrigendum was issued to the original office order on 6/6/97. His pay was fixed in the ordinary grade of Vocational Instructor as on 1/1/1986 and in the selection grade as on 13/8/1986 with the date of next increment being 1/8/1987. The respondents submit that no doubt there was a direction by the CAT to pay the arrears to the applicant and therefore arrangements were being made to pay the arrears but the pay fixation had to be revised in the light of the audit objection. But the arrears will be confined to only period from 13/8/1986 to 1/5/90. After his promotion to the post of Surveyor and Training Officer, he will not get any arrears of pay because his pay as Training Officer was correctly fixed and the applicant is drawing his salary accordingly. In the light of this the applicant is not entitled to allotment of type-IV accommodation as his pay has been fixed at Rs.2525/- as on 1/5/96., and as he has not reached the pay of Rs.2800/- for being eligible for type-IV quarter. The respondents have only tried to rectify the mistake which had been made. The respondents have also further submitted in their sur-rejoinder that an amount of Rs.8,425/has already been paid on 17/7/87 towards the arrears to the applicant in compliance with the order of the Tribunal dated 5/6/97.

3. The respondents therefore submit that they were justified in their action in issuing pay fixation order dated 6/6/97.

...7.

h

4. We have heard the learned counsel for both the parties and have given careful consideration to the pleadings. The issue is whether the applicant's pay should have been fixed in the pre-revised payscale of selection grade i.e. Rs.740-880 and then in the replacement scale as recommended by the IVth Pay Commission or the applicant's pay should have been fixed first as Vocational Instruction from 1/1/86 and then in the corresponding revised selection grade scale from 13/8/86, the date from which the applicant was granted the selection grade. We have perused the relevant orders of the Government as well as the CCS (Revised Pay) Rules. According to the OM dated 14/5/87 by which the selection grade was abolished for Group 'C' and 'D' posts, it was decided as follows in regard to the appointments made in the selection grade in the pre-revised scale in Group 'C' and 'D' between 1/1/86 and 12/9/96.

2(b)(i) In cases where a separate replacement scale corresponding to Selection Grade post has been prescribed under Central Civil Services (Revised Pay) Rules, 1986 and where Selection Grade has been allowed in terms of this Ministry's O.M. No.7(21)-E.III(4)/74 dated 10/1/77 on or after 1/1/86 and before 13/9/86 and if a Government servant holding such Selection Grade post as on 12/9/86 has opted for revised scale of pay with effect from 1/1/1986 the initial pay of such an employee may first be fixed in the revised scale as on 1/1/86 under Central civil Services (Revised Pay) Rules, 1986, and thereafter with effect from the date on which he was appointed to the Selection Grade post his pay in the revised replacement scale corresponding to pre-revised Selection Grade scale may be fixed in accordance with the provisions of this Ministry's OM No.7(21)-E.III(4)/74 dated 10/1/77 and such incumbents of Selection Grade posts will carry the the revised replacement scale as personal to them. In cases where such incumbents of Selection Grade posts do not exercise their option for switching over to the revised scale with effect from 1/1/86, such employees may be

...8.

h

allowed to carry the pre-revised Selection Grade Scales of pay as personal to them from the date of their appointment to such Selection Grade made not later than 12/9/86.

5. It clearly states in the cases such as that of the applicant who were granted selection grade between 1/1/86 to 13/9/86, the pay is first to be fixed in the revised scale as on 1/1/86 with reference to the post held by the employee as on 1/1/86 and thereafter pay in the revised replacement scale corresponding to the pre revised selection grade scale may be fixed in accordance with the provision of the Ministry's OM dated 10/1/77. The respondents have produced the option given by the applicant for the revised pay scales as per the CCS (Revised Pay) Rules 1986. In view of this para 2(b)(i) of the OM dated 14/5/87 is clearly applicable in the applicant's case. The applicant has argued that he had given another option after he recieved the orders of selection grade on 17/7/96 and therefore his pay was initially rightly fixed in the pre revised selection grade in the scale of Rs.740-880. However, considering the audit objection and Correct interpretation communicated by the Ministry of Labour, we have to hold that the applicant having given his option for the revised pay scales from 1/1/86 with reference to the post of Vocational Instructor, he cannot now give another option. Also had he been promoted to the selection grade prior to 1/1/86, it would have been justified to fix his pay in the pre-revised scale of selection grade. The applicant has been granted the selection grade from 13/8/86 and therefore also one has to go by the option given by him as on 1/1/86.

...9.



6. In our considered view, the respondents action in refixing the applicant's pay is in order and cannot be faulted with. A mistake once it has come to notice has to be rectified. Moreover, this is not the case of the applicant only, in the case of other similarly placed employees such as the applicant, the same method of the pay fixation has been adopted. In the result, the OA fails and is dismissed. No costs.

Shanta F
(SMT.SHANTA SHASTRY)
MEMBER(A)

S.L. Jain
(S.L.JAIN)
MEMBER(J)

abp