

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 841 / 1997
/199

Date of Decision: MARCH 1998

Udayashankar Shukla

Petitioner/s

Mr. M. Sudhame

Advocate for the
Petitioner/s

V/s.

U.O.I. & Ors.

Respondent/s

Mr. R.S. Sundaram

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

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

- (1) To be referred to the Reporter or not ? *W*
- (2) Whether it needs to be circulated to
other Benches of the Tribunal ? *W*

Rajendra
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, MUMBAI 400001

O.A.NO. 841/97

DATED : THIS 27th DAY OF MARCH, 1998

CORAM : Hon'ble Shri R.G. Vaidyanatha, V.C.
Hon'ble Shri M.R. Kolhatkar, Member(A)

Shri Udayashankar Shukla
Divisional Security Commissioner
Railway Protection Force
Central Railway
Nagpur Division
NAGPUR
(By Adv. Mr. M. Sudhame)

..Applicant

V/s.

1. Union of India
through the Secretary
Ministry of Railway
Railway Bhavan
New Delhi
2. The Secretary Railway Board
Rail Bhavan
New Delhi
3. The General Manager
Central Railway
C.S.T., Mumbai
4. Financial Advisor and
Chief Accounts Officer
Central Railway CST Mumbai
5. Divisional Railway Manager
Central Railway
Kingsway, Nagpur
(By Adv. Shri R.S. Sundaram)

..Respondents

O R D E R

(Per: R.G.Vaidyanatha, V.C.)

1. This is an application filed by Divisional Security Commissioner in the Railway Protection Force for for protection and fixation of his pay. The learned counsel for the respondents orally opposed the admission of the application and contended that the applicant being a member of Railway Protection Force (R.P.F.) which is an armed force of the Union cannot maintain the present O.A. in this Tribunal, and this Tribunal has no jurisdiction to entertain this application. The learned counsel for the applicant on the other hand contended that the

applicant though is working in R.P.F. he is still a railway servant and therefore he is entitled to approach this Tribunal.

2. We have heard the learned counsel for both sides on the question of admission of the O.A.

3. The applicant is now working as Divisional Security Commissioner in the R.P.F., Central Railway Nagpur. He was appointed as an Assistant Commandant in the R.P.F. in 1998. Earlier he was working in National Insurance Co., for few years. His grievance is that he is entitled to fixation of pay as per Government circular on the basis of his previous service in a Public Sector Undertaking, but now the Railway Board has taken the view that the applicant is not entitled to the benefit of the past service for fixation of pay in the present cadre as per its letter dated 3.2.1997. Being aggrieved by that letter the applicant has approached this Tribunal for quashing that letter and for a declaration that he is entitled to protection of pay on the basis of the previous service with effect from 1.8.1989, and he must be granted arrears of pay from that date.

4. Though the applicant is claiming the benefit of past service for purpose of fixation of pay, the prayer is that his present pay in the R.P.F. must be fixed at a particular scale with effect from 1.8.89. Whatever may be the reason given for claiming higher pay, but what he wants is as an officer in the R.P.F. he is now entitled to a certain scale of pay. That means his grievance is that as an officer of R.P.F. he is now entitled to higher pay in view of his past service in a Public Sector Undertaking. That means he is agitating

his claim for higher pay or fixation of higher pay during his present service as an officer in the R.P.F. Thus the question arose now has a direct relation to his service condition as an officer in the R.P.F. The question is whether such a grievance can be agitated before this Tribunal or not ?

5. It is not and cannot be disputed that R.P.F. is an armed forces of the Union. But the learned counsel for the applicant submitted that applicant is also a railway servant as per S.10 of the Railway Protection Force Act, 1957. There is no dispute on this point. Even if the applicant is a railway servant, but if he is a member of the armed forces of the Union, then the jurisdiction of this Tribunal is barred, as provided in S.2(9) of the Administrative Tribunals Act, 1985. For example this Tribunal has no jurisdiction over officers of the Army, Navy or Air Force. Even those officers of Army, Navy or Air Force are also Government servants, but since they are members of the armed forces this Tribunal has no jurisdiction to decide their service disputes. Similarly even though the applicant is a servant of the Central ^{Govt.} Railway and servant of railways still since he is a member of the R.P.F. which is an armed forces of the Union he cannot agitate any service dispute before this Tribunal. He will have to agitate the matter before the High Court under Article 226 of the Constitution of India or before any other forum according to law.

6. Learned counsel for the applicant invited our attention to two authorities, bearing on this point. The Full Bench of our Tribunal had occasion to consider a point like this in (1993)25 ATC (FB) 177 (SATYENDRA NARAYAN PANDEY Vs. UNION OF INDIA & ORS). There the applicant belonged to the R.P.F. The Full Bench held

that a Member of the armed forces like the applicant cannot agitate any dispute regarding recruitment or service condition before this Court in view of S.2(a) of the Administrative Tribunals Act, 1985. Then the Full Bench examined the applicant's case and found that the applicant was not agitating any of the service conditions in the R.P.F. but in that case on the basis of competitive examination the applicant was appointed as a Group A Officer and allotted to R.P.F. But the applicant came to know that some candidates who had lower rank than him had been allotted to Indian Revenue Services. Therefore, he approached this Tribunal that he should be allotted to Indian Revenue Services. Therefore the Full Bench observed that the applicant was not agitating any dispute relating to service in the R.P.F. but he wanted his appointment in the Indian Revenue Services as per the ranking in the examination and hence the Tribunal has jurisdiction to consider this case. Therefore this decision has no bearing on the point under consideration in the present case.

7. The other case relied on is a decision of the Division Bench of this Tribunal in the case of ALKA NANDA DASH Vs. UNION OF INDIA & ORS. (1996) 34 ATC 322. That was a case where a member of the armed forces of the Union like the Central Industrial Security Force has approached this Tribunal for claiming pay parity with similar Group A officers of Central Industrial Security Force. The Division Bench referred to the Full Bench decision cited earlier and clearly mentioned that a member of the armed forces cannot maintain an application before the Tribunal for enforcement of any conditions of service as a member of the forces. But then the Division Bench observed since the applicant in the case was

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claiming parity of pay scale with some other services the application is maintainable. But on question of law even the Division Bench observed that a member of the armed forces cannot agitate his service dispute before this Tribunal.

8. Therefore, it is clear that ^{if} the point raised pertains to any dispute of a member of the armed forces then the application cannot be entertained by this Tribunal in view of S.2(a) of the Act.

9. In the present case the applicant wants to claim his present pay in the armed forces ~~(at)~~ a particular rate or a particular scale. That means he is agitating his service condition viz., to get a particular pay or a particular fixation of pay in his service as a member of the armed forces which he cannot do before this Tribunal in view of the bar under section 2(a) of the Administrative Tribunals Act, 1985. The reason for claiming a particular fixation of pay is wholly irrelevant to decide the question of jurisdiction. The applicant may be asking higher pay in view of his past service in a Public Sector Undertaking, but the relief he wants is his present pay in the armed forces to be fixed at a particular scale. That means he wants some relief regarding his service condition viz., about fixation of pay being a member of armed forces of the Union. Therefore, our considered view is that the present application under which the officer of the armed forces is seeking to agitate one of his service conditions viz., fixation of pay before this Tribunal is not maintainable in view of the statutory bar under section 2(a) of the Administrative Tribunals Act, 1985. Hence we hold that the preliminary objection taken by the learned counsel for the respondents that the applica-

for

tion is not maintainable in this Tribunal is sound and has to be accepted.

10. In the result the application is rejected at the admission stage as not maintainable in this Tribunal without prejudice to the rights of the applicant to agitate his rights before the High Court or before any other legal forum according to law. In the circumstances of the case there would be no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

R.G. Vaidyanatha
2.3.98
(R.G. Vaidyanatha)
Vice Chairman

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