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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. No. 153/93.

Dt. of Decision : 6-9-94.

Y. Krishna Murthy

.. Applicant.

Vs

1. The Director,
Advanced Training Institute,
Vidyanagar, Hyderabad.
2. The Pay and Accounts Officer,
O/o the Director General of
Employment and Training-II,
Guindy, Madras - 600 032.

.. Respondents.

Counsel for the Applicant : Mr. GURS Vara Prasad

Counsel for the Respondents : Mr. N.V. Ramana, Addl.CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDG.)

O.A.No.153/93

Dt. 8.9.1994

X As per Hon'ble Shri A.V.Haridasan, Member (Judl.) X

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This is the second round litigation between the applicant who is a retired employee and the respondents the Director and the Pay and Accounts Officer of Director General of Employment and Training. The applicant who entered service as Vocational Instructor was granted selection grade in the scale Rs.740-880 w.e.f. 7.8.81 respectively by order dt.6.1.88. As this order was passed after the implementation of the report of the IV Pay Commission, it was made clear that the selection grade was allowed upto 31.12.85. But order dt. 28.1.88 the pay of the applicant in the selection grade post was fixed (Annexure A-4) in the scale Rs.740-35-880 w.e.f. 7.8.81 but he was not given arrears and his pay was not fixed w.e.f. 1.1.86 in a scale corresponding to that. The applicant retired on superannuation on 30.11.88. It appears that one Mr. Ameer Sherif had filed OA.125/90 against the implementation of the grant of selection grade to the applicant and others and because of an interim order passed in the said OA that the payment of arrears of Selection Grade pay was kept in abeyance. As the matter was being delayed, the applicant filed OA.8/92 for a proper fixation of pay and for pensionary benefits. After the OA.125/90 was finally dismissed, OA.8/92 was disposed of directing the respondents to settle the claim of the applicant unlinked from the case of Mr. Ameer Sherif within a period of 3 months. Pursuant to the above direction the 1st respondent has issued the impugned order (A-2) dt. 19.10.92 fixing the pay of the applicant as on 1.1.86 at

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Rs.2,200/- in the scale Rs.1400-2600 and granting a stagnation increment of Rs.100/-. The applicant's pay was thus fixed at Rs.2300/- as on 1.1.86 . The applicant is aggrieved by the fact that while fixing his pay in the revised pay w.e.f. 1.1.86 the respondents took his pay in the scale of Rs.440-750 as if the applicant is an Ordinary Vocational Instructor while infact as on 31.12.85 he held the post of selection grade vocational Instructor drawing a basic pay of Rs.880/- in the scale of Rs.740-880. As the applicant was drawing the pay in the scale Rs.740-880 as on 31.12.85 pursuant to the implementation of the report of the 4th Pay Commission, he was entitled to the replacement scale of Rs.1640-2900 in terms of the instructions issued by the Director General Employment and Training which was according to the applicant, implemented in the case of Sri P.Jayapal, G.M.Ali Khan and B.Dayananda Rao similarly situated like him and the applicant's grievance is that the action on the part of the respondents in treating him differently, amounts to violation of article 14 of the Constitution of India. O.M.No.7 (51)/E.III/86 dt. 14.5.87 (Annexure A-6) of the Government of India, Ministry of Finance, Department of Expenditure stipulates as under:-

"In case where a separate replacement scale corresponding to pre-revised scale of Selection Grade post has been prescribed in the Central Civil Services (Revised Pay) Rules, 1986 and the incumbents of the Selection Grade posts have opted for revised scales with effect from 1.1.86 itself, such incumbents of the Selection Grade posts may be allowed appropriate replacement scales as personal to them".

2. The applicant contents that the instruction has been ignored by the respondents when they fixed his pay in the scale Rs.1400-2600 and that his pay should

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have been fixed in the scale Rs.1640-2900 as he was getting a basic pay of Rs.880/- in the scale Rs.740-880. Therefore, the applicant in this application has prayed for a declaration that the office order dt. 19.10.92 (A-2) is illegal, arbitrary and contrary to the rules and for a direction to the respondents to fix the pay of the applicant in the revised scale of Rs.1640-2900 taking into account his pay of Rs.880/- which he was drawing as on 31.12.85 in the pre-revised scale of Rs.740-35-880 granting him stagnation increment and to direct the respondents to pay the arrears due to the applicant and to refix the pension and pensionary benefits.

2. The respondents in their reply affidavit have contended the applicant who did not continue to hold a selection grade post after 31.12.85 was brought back to his initial scale of Rs.440-750 rightly and that his comparison of his pay with those who continued in the selection grade post beyond 31.12.85 is meaningless. Therefore, according to the respondents the fixation of pay as done by the impugned order Annexure A-2 is perfectly in order. However the respondents did not say anything about the payment of arrears.

3. I have gone through the pleadings and the documents on record with meticulous care. It is not disputed by the respondents that the applicant was granted selection grade w.e.f. 7.8.81. The order of grant of selection grade to the applicant was issued only on 6.1.88, at a time when on acceptance of the recommendation

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of the 4th Pay Commission the selection grades in Group 'C' and 'D' stood abolished w.e.f. 31.12.85. That was the only reason why the applicant was not granted selection grade beyond 31.12.85. It is admitted by the respondents that in the case of S/Sri P.Jayapal, G.M.Ali Khan and B.Dayananda Rao their pay was fixed taking into account the pay which they were drawing as selection grade of Vocational Instructor. The grievance of the applicant is, that while the respondents have reckoned the pay in the selection grade in the case of the above 3 persons when fixing their pay in the revised scale have discriminated the applicant's in reckoning his pay in the scale Rs.440-750/-. Sri N.V.Ramana Standing Counsel for the respondents tried to justify the action on the ground that after 31.12.85 the applicant did not hold a selection grade post where as the above said 3 persons did. The very fact that the selection grade in Group 'C' and 'D' have been abolished w.e.f. 31.12.85 would make it clear that after 31.12.85 S/Sri P.Jayapal, G.M.Ali Khan or B.Dayananda Rao could not have held the selection grade post after that. Hence the action of the respondents in not extending the same benefit which they had given to the 3 persons named above is clearly arbitrary and discriminatory. Further the averment in the application that the pay of Sri P.Jayapal, G.M.Ali Khan and B.Dayananda Rao was fixed reckoning their pay in the selection grade post basing on the instructions issued by the Director General Employment and Training is not disputed by the respondents. The same instructions is applicable in the case of the applicant also. Further in the O.M. Dt. 14.5.87 of the Ministry of Finance, Department of Expenditure No.7(51)/E.III/86 addressed to all Ministries and Departments of Government. It has been provided as follows:-

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"In cases where a separate replacement scale corresponding to pre-revised scale of Selection Grade post has been prescribed in the Central Civil Services (Revised Pay) Rules, 1986 and the incumbents of the Selection Grade posts have opted for revised scales with effect from 1.1.86 itself, such incumbents of the Selection Grade posts may be allowed appropriate replacement scales as personal to them. In case, the incumbents of the Selection Grade post do not opt for revised scales with effect from 1.1.86, they may also be allowed to carry the pre-revised scales of pay of the selection grade posts as personal to them beyond 1.1.86".

4. There is no case for the respondents that the applicant has not opted for the revised pay scales w.e.f. 1.1.86. As the applicant has opted the revised pay scales and as the respondents have also fixed the pay of the applicant in the revised pay scales. The O.M. of the Ministry of Finance, Department of Expenditure dt. 14.5.87 should have been followed by the respondents in fixing the pay of the applicant w.e.f. 1.1.86. The contention of the respondents that beyond 31.12.85 the applicant did not hold a selection grade post and therefore his pay was to be fixed on the basis of the scale of ordinary grade Vocational Instructor is untenable for the simple reason that no body could have held the selection grade post after 31.12.85. Therefore, the contention raised by the respondents that the applicant is differently situated from Sri P.Jayapal, G.M.Ali Khan and B.Dayananda Rao has absolutely no force at all.

5. In view of what is stated above I am of the considered view that the applicant is entitled to the reliefs prayed for. In the result the application is disposed of with the following declarations and directions.

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- (a) The impugned order ~~at~~ 19.10.92 (A-2) is set aside.
- (b) The respondents are directed to refix the pay of the applicant w.e.f. 1.1.86 taking his pay at Rs.880/- in the scale Rs.740-880 in the replacement scale of Rs.1640-2900 granting him the stagnation increment as per rules.
- (c) The respondents are also directed to refix the pension and pensionary benefits consequent to the refixation of the pay as directed in clause-a above.
- (d) The arrears of pay and allowances and of pension and other benefits consequent upon the refixation as in b & c above should be paid to the applicant within 4 months from the date of communication of this order.

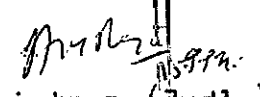
The parties shall bear their own costs.



(A.V. HARIDASAN)
Member (Judd.)

Dated: 6th September, 1994

(Dictated in Open Court)



Dy. Registrar (Judl.)

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Copy to:-

1. The Director, Advanced Training Institute, Vidyanagar, Hyd.
2. The Pay and Accounts Officer, O/O Director General of Employment and Training-II, Guindy, Madras-032.
3. One copy to Sri. G.V.R.S. Vara Prasad, advocate, 113/3RT, Vijayanagar colony, Hyd-457.
4. One copy to Sri. N.V. Ramana, Addl. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-

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OA-153/93

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Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HARIDASAN : MEMBER(J)

AND

THE HON'BLE MR.A.B.GORTHY : MEMBER(A)

Dated: 6/9/94

ORDER/JUDGMENT.

M.A./R.P/C.P/No.

in
D.A.NO. 153/93
T.A.NO. _____ (W.P.NO. _____)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn.

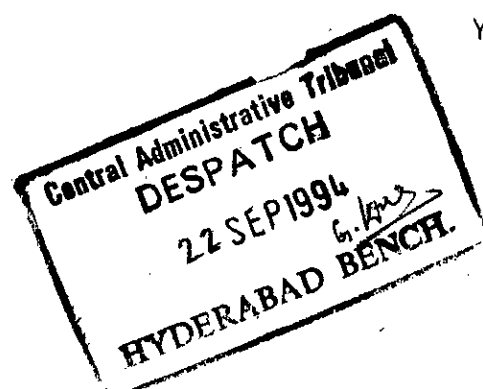
Dismissed for Default.

Rejected/Ordered.

No order as to costs.

No spare copy

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