

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1198/96.

Dt. of Decision : 01-02-99.

Fakir Mohan Singh

.. Applicant.

Vs

1. The Union of India,
Rep. by its Secretary,
Min. of Agriculture,
Dept. of Agriculture and
Cooperation, New Delhi.
2. The Director, Central Institute
of Fisheries, Nautical & Engineering
Training, Dewan's Road, Cochin-16.
3. The Dy. Director,
Central Institute of Fisheries,
Nautical and Engineering Training,
Vizag Unit, Beach Road,
Visakhapatnam.

.. Respondents.

Counsel for the applicant : Mr.V.Venkateswara Rao

Counsel for the respondents : Mr.V.Bhimanna, Addl.CGSC.

CORAM:-

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

R

-2-

ORDER

ORAL ORDER (PER HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER(JUDL.))

Heard Mr.V.Venkateswara Rao, learned counsel for the applicant and Mr.V.Bhimanna, learned counsel for the respondents.

2. The applicant herein while working Skipper, a Central Group-B (Non-Gazetted) post under the R-3 submitted his candidature to the UPSC for the post of Instructor in the same department. He was selected and appointed. He joined the post of Instructor in the R-3 on 16-9-91.

3. He submits that the post of Skipper held by him from 20-10-83 to 15-9-91 was a Group-B (non-gazetted) post carrying the scale of pay of Rs.3000-4500/-. The post of Instructor (later redesignated as Senior Instructor) was in the scale of pay of Rs.2200-4000/-. He submits that the post of Skipper is not in the feeder category for promotion to the post of Sr. Instructor in the department. The minimum and maximum of the scale of pay of Instructor in Group-A (Gazetted) are much lower than those attached to the post of Skipper in Group-B (Non-Gazetted).

4. He submits that when he joined duty as Instructor he was drawing the pay of Rs.3750/- p.m. in the post of Skipper. The first respondent by his order No.19-187/91-Fy(Admn) dated 17-12-93 fixed the pay of the applicant at the minimum of the pay in the scale of pay of Rs.2200-4000/- i.e., at Rs.2200/- p.m. w.e.f., 16-9-91. It was further indicated in the order that on successful completion of his probation period, his pay would be fixed at the stage after giving the benefit of completed years of service in the higher scale of Skipper for the purpose of increments in the lower scale of Instructor (Fishing).

R

..3/-

-3-

5. The applicant submitted a representation dated 19-4-94 to the R-2 to protect his last pay drawn by him in the post of Skipper on 16-9-91 while fixing his pay in the post of Instructor (Fishing) in accordance with of 22 (1)(a)(i) of the Fundamental Rules. His representation was not disposed of.

6. Initially, his pay was fixed at the stage of Rs.3800/- by the order No.PF.65/Adm.Vol.II dated 24-8-93 (Annexure-IV). However, the pay was refixed at the stage of Rs.2200/- by the office order No.PF.65/Adm.Vol.II dated 22-6-94 (Annexure-VII) in the scale of pay of Rs.2200-4000/-. However by grant of the increment on completion of probation period in the post of Sr. Instructor (Fishing) his pay was raised to Rs.3000/- p.m. w.e.f., 16-9-93 in the scale of pay of Rs.2200-4000/-.

7. That order was challenged by the applicant in OA.No. 882/94, which was disposed of by the order dated 10-4-96. That OA was disposed of directing R-1 to dispose of the representation of the applicant dated 4-7-94 within a period of 3 months from the date of receipt of a copy of that order. Till such time the representation is disposed of, the interim order of this Tribunal dated 28-7-94 shall be in operation. Liberty was given to the applicant to challenge the finally reply to be given if he is aggrieved by that reply.

8. In pursuance of that directions in the said OA, a final order was passed dated 26-8-96 (Annexure-X) retaining the earlier pay fixation by which the pay of the applicant was fixed at the stage of Rs.3000/- as on 1-9-93, Rs.3100/- as on 1-9-94, Rs.3200/- as on 1-9-95 and next increment due as on 1-9-96 was fixed at the stage of Rs.3300/-.

R

..4/-

9. This OA is filed for setting aside the impugned order No.19-187/91-Fy(Amm) dated 26-8-96 passed by the R-1 and also the Memo No.3-17/94 Accts. dated 27-9-96 whereby he was ordered to refund the excess amount paid to him to the extent of Rs.1,01,757/- and for a consequential relief of fixing his pay w.e.f., 16-9-91 at the stage of Rs.3800/- in the scale of pay of Rs.3000-4500/- with all consequential benefits.

10. The main contention of the applicant is that the post of Skipper and Sr.Instructor are in the same department. The post of Skipper is a Group-B (Non-Gezatted) post. The post of Senior Instructor is a Group-A Gazatted post. Hence, when he was posted to Group-B post he had to discharge higher responsibility. When higher responsibility are to be discharged and he also worked in the same department he was entitled for fixation of pay to Senior Instructor as per the FR 22 (1)(a)(i). He further adds that his pay will have to be fixed granting him one increment in the lower scale and fixing his pay in the higher scale of Sr. Instructor at that stage or in the minimum next available stage. His pay had been correctly fixed earlier at the stage of Rs.3800/- following that rules. Hence, the impugned order reducing his pay fixation to the lower stage and ordering recovery on that basis is unwarranted and uncalled for.

11. Both the posts may be in the same department. But the lower post of Skipper may not be in the feeder category for promotion to the higher post. It is evident from the reply of the respondents wherein it is stated that "the post of Skipper is entirely in different cadre and is not in line of promotion to the post of Instructor (Fishing)." It is clearly indicates that the post of Skipper is not a feeder post for promotion to the post of Instructor (Fishing). Hence, the first contention that the

3

applicant was promoted in the same unit is not correct. He was posted as a Sr. Instructor (Fishing) as a direct recruit on the basis of the recommendation of the UPSC. The post of Skipper is not a feeder category in the post of Sr. Instructor (Fishing). Hence, the above contention is rejected.

12. The second contention of the applicant is that even if it is not in the same promotional channel the FR 22 (1)(a)(i) does not prohibit the fixation of pay as stated by him earlier. For this he relies on the words "promoted or appointed" used in the Rule FR22. No doubt the word promotion indicates in the higher post from the feeder category. Whether appointed will mean appointing in any other post which have higher responsibility to enable an employee to get fixation of pay as per that rule. The learned counsel for the ~~respondents~~ ^{applicant respondents} could not explain in this connection. He only submits that the applicant was ~~not~~ a regular appointee to the post of Skipper and he has been regularly appointed only in the lower grade of Skipper and hence he is ~~not~~ ^{not} entitled for fixation of FR 22 (1)(a)(i). This submission of the ~~applicant respondents~~ ^{applicant} cannot be taken at its face value. The applicant is entitled for fixation even if he has been promoted on the basis of the ~~sub~~ suitability-cum-seniority to the post of Skipper provided the higher post of Sr. Instructor was in the line of promotion from the post of Skipper.

13. The word "appointed" in our humble opinion means that the post which is having higher responsibility may be having same scale of pay from which an employee is appointed in the grade. In that case also it would mean the appointment is to the post of higher responsibility in the same channel of promotion. The post of Sr. Instructor and Skipper are not in the same line of promotion. Both are in different channels. Even if the post of Sr. Instructor

32

was to discharge higher responsibility the fixation of pay under FR 22 (1) (a) (i) cannot be given unless the post of Sr. Instructor is in the same line of promotion for the post of Skipper. As it is not, the FR 22 (1) (a) (i) cannot be applied to this case. Hence, this contention is also rejected.

14. The next contention of the applicant is that the applicant ^{has} to pay back an amount of Rs.1,01,757/- as excess amount paid to him due to his ~~incorrect~~ fixation of pay at Rs.3800/-p.m. in the first instance. He requests that the recovery should ^{be} not effected in view of the reported judgement reported in Supreme Court Service Rulings, Vol.12 - 752 (1950-1994) (Shihb Ram Vs. State of Haryana & Others). No rule is quoted in this connection. He is squarely relies on the cited judgement to submit that recovery is unwarranted.

15. We do not propose to express any opinion in this connection. It is a fact that the recovery of an amount over a lakh is a severe burden on the applicant. It is for the department to decide in this connection after examining the citation referred to above.

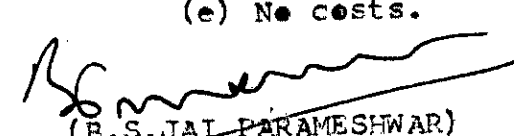
16. (a) In view of what is stated above the challenge to the impugned order dated 26-08-96 is dismissed.

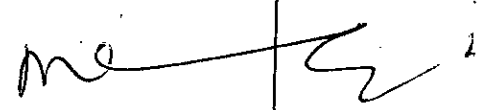
(b) The applicant is at liberty to file a representation for stoppage of recovery informed to him by the impugned letter dated 27-09-96 quoting the relevant citation in this connection.

(c) If such a representation is received the department should dispose of that representation after perusing the Supreme Court Judgement keeping in mind that the recovery of over a lakh of rupees causes severe burden on the applicant.

(d) The interim order prohibiting the respondents from making recovery will continue till his representation as above is disposed of.

(e) No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

1.2.99 Dated : The 01st Feb. 1999.

(Dictated in the open court)

spr

Copy to:

1. HDHND
2. HHRP M(A)
3. HOSJP M(J)
4. D.R. (A)
5. SPARE

8 copies

1st and 2nd Court.

Typed By
Compared by

Checked by
Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR:
VICE - CHAIRMAN

THE HON'BLE H. RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE R. RANGARAJAN ✓ :
MEMBER (A)

THE HON'BLE MR. B.S. JAI PARAMESHWAR: ✓
MEMBER (J)

DATED: 11/2/99

ORDER/JUDGMENT

M.A./R.A/C.P.NO.

IN

D.A.NO : 1198/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

10 FEB 1999

हैदराबाद न्यायपीठ
HYDERABAD BENCH