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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL-APPLICATION-N0.725-OF-1996

DATE-OF-ORDER:- 5 AUGUST, -1997

BETWEEN:

J.SURESH BABU

.. APPLICANT

AND

1. Union of India, represented by its Secretary, Ministry of Defence, South Block, New Delhi,
2. The Director General, Research & Development, Ministry of Defence, Research & Development Organisation, 'B' Wing, Sena Bhawan, DHQ, PO, New Delhi 110 011,
3. The Director, Defence Metallurgical Research Lab, Ministry of Defence, PO: Kanchanbagh, Hyderabad 500 058.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.V.VENKATESWARA RAO

COUNSEL FOR THE RESPONDENTS: Mr.NV RAGHAVA REDDY, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

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

ORDER

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Shri N.V.Raghava Reddy for the respondents. Shri V.Venkateswara Rao, the learned counsel for the applicant was heard already, earlier. Hence after hearing Shri Raghava Reddy, the O.A. was reserved for judgement on 31.7.97.

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2. The applicant in this O.A. was appointed as Canteen Supervisor by R-3 in terms of Office Order No.E/8/CANTEEN dated 24.8.1984 (Annexure A-VI to the OA) in the scale of pay of Rs.260-400. The applicant submits that he should be given the scale of pay of Rs.330-480/330-560 and should have been fixed on that basis in the scale of pay of Rs.1200-1800 in the replacement scale of 4th Pay Commission instead of Rs.950-1500. The applicant submitted a representation for granting him the scale of Rs.330-480/560 right from the date of his appointment and the replacement scale of Rs.1200-1800 on the introduction of the 4th Pay Commission scales of pay. That representation was disposed of by the impugned order No.RD/Pers-10/Griev/26102/JSB dated 30.3.95 (Annexure A-XI at page 39 to the OA) issued by R-2 and that reply was conveyed to him by R-3 by letter No.P/MISC/JSB(CS) dated 14.6.95 (Annexure A-XII at page 41 to the OA).

3. This OA is filed for a declaration that he is entitled for fixation of his pay and allowances in the pay scale of Rs.330-480/560/1200-1800/2040 from the date of his appointment as Canteen Supervisor in the Canteen of DMRL, Hyderabad with consequential benefits of arrears and that the H.Qs' letter No.ADMIN/2219/RD-32 dated 23.9.82, 31.10.1983 (Annexure A-1 at page 13 to the OA) is illegal, arbitrary and unconstitutional insofar as that letter prescribes the new pay scale of Rs.260-400 in the place of the pay scale of Rs.130-300 to the Supervisor Gr.III and for setting aside the letter NO.RD/Pers-10/Griev/26102/JSB dated 30.3.95 (Annexure A-XI at page 39 to the OA) issued by R-2 and communicated by R-3 vide Memo dated 14.6.95

Dr *J*

(Annexure A-XII to the OA).

4. The main contentions of the applicant though not precisely expressed in the affidavit can be summarised as follows:-

(i) The post of Canteen Supervisor was earlier paid in the scale of pay of Rs.130-300 earlier to the introduction of the 3rd Pay Commission scales of pay. After the introduction of the 3rd Pay Commission scales of pay, it was revised to Rs.330-480/560. That scale of pay was replaced by Rs.1200-1800 from 1.1.86 on the introduction of the 4th Pay Commission scales of pay. His predecessor Shri P.Ravi Kumar in the post of Canteen Supervisor was in the pay scale of Rs.330-560 and hence when he (applicant) was appointed he should have been given that scale of pay, namely, Rs.330-560 replacing that scale by the scale of pay of Rs.1200-1800 with effect from 1.1.1986. His fixation of pay in the scale of pay of Rs.260-400 by the order dated 24.8.84 is itself irregular and arbitrary and hence he should have been placed properly in the appropriate scale of pay initially itself.

(ii) The employees of the Canteen including the Canteen Supervisor are governed by the Factories' Act and hence the holders of the equivalent posts of Managers are to be granted the pay scale of Rs.330-560 as that scale was given in the departmental canteens such as DRDL, Defence establishments, DLRL etc.

(iii) The prescription of the pay scales of the Canteen as given in HQs letter dated 31.3.83 (Annexure AI) insofar it prescribes the new pay scales of Rs.260-400 for the pay scale of Rs.130-300 to the Supervisor Gr.III is arbitrary and it should be in higher scale.

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(iv) In canteens which serve for more than 100 employees, the scale of pay should be equated to the Gr.I Supervisor. As the staff strength of DMRL is more than 100 employees, the Supervisor of the canteen should be given the scale of pay of Canteen Supervisor Gr.I i.e., Rs.330-560. This is in accordance with the Appendix "A" to CPRO 109 of 65 (Annexure A-2 to the OA).

(v) The Apex Court judgement in MMR Khan's case had held that the Canteen employees in a statutory/non-statutory canteen should be treated equally and in that view, the Canteen Supervisor of DMRL has to be given the scale of pay as demanded by him.

5. In view of the above contentions, the applicant submits that the letter of R-2 dated 30.3.95 (Annexure A-XI to the OA) which was sent to him by R-3 in his letter dated 14.6.95 (Annexure A-XII) are liable to be set-aside.

6. In the reply, the respondents submit that the applicant was appointed as a Canteen Supervisor in the scale of pay of Rs.260-400 with effect from 6.9.84 and he had never drawn pay or ⁱⁿ any way concerned with the consolidated pay scale of Rs.130-300 applicable to Canteen Supervisors prior to 22.10.80. Prior to 22.10.80, the employees of the canteen were not treated as Govt. employees. They were brought on Govt. service with effect from 22.10.80 only. Shri P.Ravi Kumar who was the Canteen Supervisor earlier was given the consolidated pay scale of Rs.130-300 earlier to 22.10.80 and when he was treated as a Govt. employee, he was given the scale of pay of Rs.260-400 and his pay was initially fixed at Rs.334/- per month in

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the scale of pay of Rs.260-400 with effect from 22.10.80. Later his pay was revised to Rs.374/- per month in the scale of pay of Rs.260-400, adding adhoc increase of Rs.40/- granted to him with effect from 1.4.80 as part of basic pay in the consolidated scale of pay of Rs.130-300. Thus both the applicant and Mr.P.Ravi Kumar have been drawing the pay in the same pay scale of Rs.260-400 (Pre-revised) and Rs.950-1500 (Revised).

7. As regards the judgement of the Supreme Court in Khan's case, the respondents submit that the above judgement is applicable only to the Railway Department and is in no way connected to the canteen of DRDO.

8. The consolidated pay scale of Rs.130-300 paid ~~earlier~~ ^{earlier} to the canteen employees being brought on Govt. service cannot be compared to the Govt. employees drawing in the scale of pay of Rs.130-300 in terms of scales of pay of the 2nd Pay Commission. Hence, placing of the Canteen Supervisor in the scale of pay of Rs.260-400 is not violative of the Articles 14 and 16 of the Constitution of India. No discrimination is shown in this case.

9. The applicant when he was posted in the scale of pay of Rs.260-400 was a Govt. employee and he was entitled for allowances. Thus, the applicant was guaranteed of his position with boost to his salary and security.

10. The OM. dated 24.11.86 of DoP&T is applicable to non-statutory canteens under the Director of Canteens and not to DRDO which is governed by separate orders issued by the Ministry of Defence. Hence, the applicant who is

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working in DMRL cannot ask for the status of a Supervisor in a Type 'A' canteen as per the OM dated 24.11.86 referred to above. The applicant and others in the canteen were placed in the appropriate pay scales as per the Ministry of Defence letter dated 21.9.82 and the Canteen Supervisor was placed in the pay scale of Rs.260-400 accordingly. Hence there is no ~~anonymity~~ ^{anomaly} in the fixation of scale of pay.

11. In view of what is stated above, the O.A. lacks merit and is to be dismissed, submit the respondents.

12. It is a fact that the employees of the canteen of the DMRL were not Govt. employees earlier to 22.10.80. When they were brought under the Govt. service, they were fixed in the scales of pay as deemed fit by the DMRL. If the applicant is not willing to join as Canteen Supervisor in the scale of pay of Rs.260-400 as per his appointment letter dated 24.8.84 (Annexure A-VI), he should have protested at that time itself and should not have joined the service till the pay scale was altered to his liking. But without any murmur, he took up the assignment. Hence, he cannot protest now after a lapse of a long period. But, if he requests for higher scale of pay, the same can be considered if there is necessity due to work load. But no definite direction can be given in this connection in regard to grant of higher scale as it involves work study and ~~and responsibilities~~ of the duties of the Canteen Supervisor which should be left to the Department to examine. If the Department feels that the higher scale is not called for on the basis of the work load, the Tribunal cannot take any contrary decision as the Tribunal has got no expertise to fix the scales of

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pay of the Govt. employees.

13. His predecessor Shri P.Ravi Kumar was paid in the pay scale of Rs.130-300 (consolidated) which was later revised to the scale of pay of Rs.330-560 (consolidated). When he was brought under Govt. service, he was fixed in the pay scale of Rs.260-400 and his pay was fixed at Rs.374/- taking into account the ad hoc increase in the consolidated pay scale paid to him earlier to 22.10.80. There is no proof produced by the applicant to state otherwise. Hence, the statement of the respondents has to be relied upon. The applicant when appointed was fixed in the pay scale of Rs.260-400 same as that of Shri P.Ravi Kumar. Hence the applicant can have no complaint in regard to his pay fixation as his case was dealt similar to Shri P.Ravi Kumar. When the pay scales of 4th Pay Commission were introduced, the applicant was fixed in the replacement pay scale of Rs.950-1500 and hence he cannot say that he was fixed wrongly in the 4th Pay Commission scale of pay. As there was no reason to fix him in the scale of pay of Rs.330-560, probably on the basis of the work load, the ^{now} applicant cannot demand the pay scale of Rs.1200-1800 with effect from 1.1.1986 which is not the replacement scale for Rs.260-400.

14. The respondents in their reply had stated that the consolidated pay scale of Rs.130-300/330-560 earlier to 22.10.80 was fixed in the scale of pay of Rs.260-400 when they were treated as Govt. employees with effect from 22.10.80. The fixation of this scale of Rs.260-400 was done as per the requirement at that time. Just because the Canteen Supervisor is governed by the Factories' Act, it

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does not mean that he should be fixed at the time of his appointment in the scale of pay of Rs.330-560 even if the Canteen Supervisors of other establishments are paid in that scale. As stated earlier, the Department is empowered to fix an appropriate scale of pay depending upon the various governing factors for fixation of scale of pay, one of which may be the work load. There is no violation of any constitutional rights of the applicant if he is fixed in a lower scale which is not equivalent to the scale of pay of Canteen Supervisors in the other establishments.

15. It is not clear why the applicant is challenging the letter dated 31.10.83 (Annexure A-I) when by that letter, the scale of pay of Rs.130-300 was revised as Rs.260-400 with effect from 22.10.80. As discussed earlier, the reason for fixing the consolidated pay scale of Rs.130-300 in the scale of pay of Rs.260-400 with effect from 22.10.80 has been fully explained by the respondents. ~~We~~ do not find any reason to disagree with the reasoning offered by the respondents in their reply. Hence challenge to the letter dated 31.10.83 is untenable.

16. When the applicant submits that the scale of pay of the Canteen Supervisor which caters to the need of more than 100 employees of the organisation, that Supervisor should be termed as Canteen Supervisor Gr.I and his scale of pay should be fixed accordingly as per Appendix "A" to CPRO 109 of 65, there should be full explanation to this submission. Neither in the OA affidavit nor in the rejoinder, the reason for the above submission has been clearly explained. The above said annexure is only for guidance. It no way compels the DMRL authorities to fully

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adhere to the instructions. The canteens are provided as a welfare measure. The expenditure of the Canteen is subsidised. If the expenditure is heavy, then the cost of the eatables may also have to be increased. That does not mean that the employees of the canteen are to be paid low. A balance has to be struck and that balance has to be judiciously decided by the authorities. The above decision is an intricate one. It varies from time to time depending upon various factors. Hence no ready made formula can be applied. If the respondents fixed the scale of pay of the Canteen Supervisor as Rs.260-400 and that scale is not strictly in conformity with Appendix 'A' to CPRO 109 of 65, the Canteen employees cannot raise any objection to that. Hence we are of the opinion that this contention cannot also be upheld.

17. Khan's case had arisen in regard to the non-statutory canteens of the Railway ~~employees~~ ^{employees of the Administration} who were not earlier treated as Railway servants. In that case, the dispute was resolved by the Apex Court. Hence that decision cannot be a governing decision in other non-statutory canteens also. It depends upon the conditions existing in the DMRL canteen. Khan's case is not a pre-runner in this case.

18. In view of the above discussion, we are of the opinion that this OA is liable only to be dismissed. But the dismissal of this OA will not stand in the way of the respondents to alter the present pay scales of the Canteen Supervisor and other employees of the Canteen if there is a necessity.

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19. In the result, this OA is dismissed subject to the observations made in the penultimate para of this judgement.

20. No order as to costs.

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

R.RANGARAJAN
(R.RANGARAJAN)
MEMBER (ADMN.)

DATED: - - - 5th August, 1997

vsn

D.R.(S)

Copy to :-

- *1. The Secretary Ministry of Defence, UOI South Block, New Delhi.
2. The Director General, Research & Development, Min. of Defence, Research & Development Organisation, 'B' Wing, Cen Bhavla, DHO PO? New Delhi -1
3. The Director, Defence metallurgical Research Lab, Ministry of Defence, PO, Kanchanbagh Hyderabad.
4. One Copy to Mr. V. Venkateswara Rao. Advocate, CAT, Hyd.
5. One Copy to Mr. N. V. Raghava Reddy ADD1, CGSC, CAT, Hyd.
6. One Copy to The D.R. (A).
7. One Duplicate Copy.

Upr.

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11/8/97

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R.R. GUARDIAN : M. (J.)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR
(M) (J)

Dated: 5-8-97

ORDER/CHARGEMENT

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

in

C.A. NO.

725/96

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

