

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 372 of 2003

(Awards) this the 8<sup>th</sup> day of December, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Judicial Member

Sukhvirsh Kumar Sharma, Machinist  
(HS G.I), Vehicle Factory, Jabalpur,  
Ticket No. LMS-I/096/03008, S/o. late  
R.L. Sharma, R/o. Pila Bungla, Near  
Mohini Ranjhi, Jabalpur (MP). ... Applicant

(By Advocate - Shri V. Tripathi)

V e r s u s

1. Union of India, Ministry of Defence, New Delhi.
2. Chairman/Director General Ordnance Factory Board, 10-A, Shahid S.K. Bose Marg, Kolkata.
3. General Manager, Vehicle Factory, Jabalpur. ... Respondents

(By Advocate - Shri P. Shankaran)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has claimed the following main reliefs :

"(ii) set aside the order dated 1.8.2002 Annexure A-5 whereby the intervening period has been treated as dies non and no back wages are granted for the same,

(iii) command the respondents to give effect to the order dated 1.8.2002 from the date of original punishment i.e. 11.6.94. The respondents be further directed to give benefit of modified punishment i.e. reduction in pay to the minimum of the scale of HS Gr. I in the pay scale of Rs. 4500-7000/- and w.e.f. 11.6.1994, the old corresponding scale,

(iv) set aside the order dated 1.8.2002 Annexure A-5 and 12.12.2002 Annexure A-6 to the extent indicated above,

7 (iv-A) set aside the order dated 5.8.2003 Annexure A-10. Accordingly, command the respondents to provide all consequential benefits to all consequential benefits to the applicant as if the impugned order dated 5.8.2003 is never passed and consequently, command the respondents to fix the pay of the applicant in the pay scale of Rs. 4500-7000/- from the date of original punishment i.e. 11.6.1994 with all consequential benefits."

2. The brief facts of the case are that the applicant was served with a charge sheet dated 16<sup>th</sup> April 1993 which was followed by a departmental enquiry and the applicant was inflicted with a penalty of compulsory retirement by order dated 11.6.94. He preferred a detailed appeal which was rejected vide order dated 16<sup>th</sup> Aug. 1995. Then he filed OA No.759/95. The Tribunal remitted the matter back to the appellate authority by quashing the appellate order imposing the punishment of compulsory retirement. The Tribunal directed the appellate authority to pass a fresh order. Subsequently vide order dated 10.7.02 (Annexure A4), the punishment of compulsory retirement was moderated by imposing punishment of reduction of pay to the minimum of the pay scale for a period of three years with cumulative effect with the stipulation that the intervening period between the date of compulsory retirement and the date of reinstatement shall be treated as dies non and no back wages shall be payable for the period in question. The applicant was reinstated in service by order dated 1.8.02 (Annexure A5). The applicant brought to the notice of the appellate authority that the action taken against him without following the mandate of FR 54-A and without giving him any opportunity was bad in law but by order dated 12.12.02 (Annexure A6) his appeal was rejected and by order dated 15.5.03 (Annexure A7) the applicant was directed to inform the quantum of pension and other benefits which he received during the period he was undergoing the punishment of compulsory retirement. It appears that the respondents are now intending to recover the amount of pension and other benefits during

the intervening period i.e. from 11.6.94 to 31.7.2002. The appellate authority modified the punishment, the doctrine of relation back will come into play and the subsequent punishment of reduction in pay will relate back to the date of original punishment. Accordingly from 11.6.94 the applicant shall be treated to be undergoing the punishment of reduction in pay to the minimum with cumulative effect in the pay scale of 4500-7000. The respondents have committed an error in not modifying the punishment from the date of original punishment. The respondents have erroneously fixed the pay of the applicant in the pay scale of 4000-6000 which is bad in law. Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that initially the applicant was imposed a penalty of compulsory retirement. This order was upheld by the appellate authority. He filed an OA and by the directions of the Tribunal, the appellate authority modified the order of compulsory retirement to reduction in pay but it was also mentioned in a subsequent order dated 10<sup>th</sup> July 2002 that the intervening period between compulsory retirement and reinstatement should be treated as dies non and no back wages shall be payable for the period in question. While the order of compulsory retirement was quashed and a fresh order of reduction in pay was passed by the appellate authority hence it should have been given effect to from the date of original punishment. Apart from this, there is no punishment of reduction of pay on the applicant hence the applicant should have been given pay scale of Rs.4500-700 while the respondents have fixed 4000-6000 which is apparently not justified and further argued that no procedure was followed



by the respondents according to the mandate of FR 54A. The applicant filed a representation which was also rejected arbitrarily. The applicant is entitled for the reliefs claimed. The learned counsel for the applicant has claimed mainly two reliefs. Firstly he has contended that the applicant was reinstated in service after the appellate authority had modified the order of the disciplinary authority. According to him, the pay scale of the post of HS Gr.I is Rs.4500-7000 whereas the applicant was reinstated in service in the pay scale of 4000-6000. In support of his claim, he has relied upon the pay slips Annexure A8 & A9. Hence the applicant is entitled for the reliefs claimed.

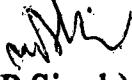
4. In reply, learned counsel for the respondents argued that the pay scale of HS Gr.I is Rs.4000-6000. In support of this claim, he has relied upon an order dated 20<sup>th</sup> July, 2003 (Annexure R1). This order was issued by the OFB after restructuring the cadre. Since the order dated 20<sup>th</sup> July 2003 was issued by the OFB (Annexure R1) specifically mentioning that HS Gr.I will be placed after restructuring in the pay scale of 4000-6000. Learned counsel for the respondents further contended that this relief cannot be granted to the applicant as the applicant has been rightly placed in the pay scale of Rs.4000-6000. As regards the second relief of the applicant, the learned counsel for the respondents argued that about the intervening period the respondents have dealt with the matter rightly and passed the order according to rules after considering all the facts and contentions of the applicants. They have not committed any irregularity or illegality in passing such orders.



5. After hearing the learned counsel for both parties and careful perusal of the records, we find that the learned counsel of the applicant has submitted that the applicant is entitled to the pay and allowances for the intervening period between the date of compulsory retirement and reinstatement and he also submitted that the respondents did not follow the mandatory procedure laid down in FR 54 (A). We have perused FR 54 (A) which supports the aforesaid arguments advanced on behalf of the applicant. The respondents have not issued any notice nor given any opportunity of show cause before passing the order regarding the intervening period. Hence notice is required before passing any order, which has not been done in the present case. As regards the pay scale of the applicant, the applicant has claimed a pay scale of Rs.4500-7000 while according to the order dated 20<sup>th</sup> July 2003 Annexure R1, this order was issued by the OFB after restructuring the pay scale of 4000-6000. Considering the arguments of both parties, we are of the opinion that the respondents have rightly placed the applicant in the pay scale of Rs.4000-6000.

6. Considering all the facts and circumstances of the case, we are of the opinion that the OA deserves to be partly allowed. Accordingly, the respondents are directed to issue notice and to follow the procedure regarding the intervening period, following rule 54 (A) (i) & (ii) <sup>2(i) and (ii)</sup> within a period of four months from the date of receipt of a copy of this order.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman