

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

.....

Original Application No. 495/2001

Jabalpur, this the 11th day of March, 2004

HON'BLE SHRI M.P.SINGH, VICE CHAIRMAN
HON'BLE SHRI MADAN MOHAN, MEMBER (J)

Pannalal Gupta aged 55 years
S/o Shri S.R.Gupta,
Assistant Foreman(Technical)
Per. No. 815019, Tank Shop,
Gun Carriage Factory, Jabalpur.

...Applicant

(By Advocate: None)

-versus-

1. Union of India through
Secretary,
Defence Production,
Ministry of Defence,
New Delhi.
2. The Chairman,
Ordnance Factory Board,
10/A, Shaheed Khudiram Bose Lane,
Kolkata.
3. The General Manager,
Gun Carriage Factory,
Jabalpur (MP).

...Respondents

(By Advocate, Shri S.A.Dharmadhikari)

ORDER (ORAL)

By Shri Madan Mohan, Member (J):

By filing this O.A., the applicant has sought the following reliefs:-

- i) to allow the option of the applicant for switch over of the applicant under the IIIrd / IV pay Central Pay Commission by delcaring the annexure A/9 as wrong and illegal.
- ii) to direct the respondents to fix the pay of the applicant at par with their juniors.
- iii) to direct the respondents to fix the pay scale as given to the juniors of the applicant by allowing the option and also to pay any dues as a result of re-fixation of pay of the applicant.

2. The brief facts of the case are that the applicant

was working as Supervisor Grade 'A' in the year 1973, he

was appointed as such on 15.10.1970. The Third Central Pay Commission report had been published in which the pay scale of Supervisor Gr.'A' was under dispute as such the new pay scale was not effective for this erstwhile Supervisor Gr.'A' grade. The respondents, vide Gun Carriage Factory Jabalpur order dated 24.9.1989, first time intimated the grant of pay scale of Rs. 425-700 notionally to erstwhile Supervisor Gr.'A' and allied categories in Ordnance Factory Organisation w.e.f. 1.1.1973 in pursuance of the compromise judgement of the C.A.T., Jabalpur Bench, New Bombay Bench in OA No. 82/97, TA No. 440/86 and OA No. 495/1986 respectively. ^{therein were} By issuance of this order, the applicants / were eligible for their notional fixation of 1/3 pay in the pay scale of Rs. 425-700/- w.e.f. 1.1.1973 but were not eligible for payment of arrears upto 6.5.1988. However, they were eligible for the arrears w.e.r. 7.5.1988 and the applicants were allowed to give option for choosing to draw in the new pay scale as per CDS(RP) Rules, 1973. It is definitely very hard to find out the correct date of option after delay of 16 years.

2.1 The applicant in mean period of 1973 to 1989 firstly redesignated as Chargeman Gr.II w.e.f. 1.2.1980. Further the Govt. of India had declared the re-fixation of pay scale w.e.f. 1.1.1986 under the Pay Commission's report. Therefore, for the applicant a time task of three options of pay scale came together. The applicant had opted for re-fixation of pay scale under the pay Commission's report after seven days from 7.11.1989. It was intimated by the respondents that the same option had been turned down by the Local Accounts on the plea that the option had been made after the date of 7.11.1989. The applicant submitted that the respondents are basically wrong in terminating the option of the applicant on the plea of delay as because the Ministry of Defence's letter for granting the pay scale of Supervisor Gr.'A' though was issued on 7.8.1989 but is published through Factory order dated

for
24.9.1989, therefore, /option, the period of three months should be counted from the date of publication of the Factory order, which was not done by the Accounts department and the factory authority following the plea of the Accounts had issued a show cause notice to the applicant alongwith others. The applicant alongwith others represented to the concerned authority against the said show cause notice dated 16.8.1991. The local management had sent the case to the Ordnance Factory Board. On hearing the side of the applicant for accepting the option filed by the applicant vide GCF letter dated 19.9.1991, the Ordnance Factory Board vide its order dated 23.12.1991 had intimated that as per the advice of the Chief Controller of Accounts/Fys a proposal for obtaining government sanction had been submitted to the Ministry of Defence, further communication will be followed in due course.

2.2 Applicant made several requests to the local management to pursue the matter. The applicant looking into the delay of the decision of Ministry of Defence directly represented to the Deputy Secretary (Vig) on 11.12.1998. In response to that the respondents vide letter dated 2.4.1999 intimated that the applicant's representation dated 11.12.1998 had been duly examined and it is not found to be a fit case for obtaining government sanction by the Ordnance Factory Board. The applicant was surprised to see the contents of the letter as previously the same Ordnance Factory Board intimated that the case was sent for sanction of the Ministry of Defence as long as in the year 1991, further it was confirmed that the same is under consideration of the Ministry of Defence vide its letter dated 25.7.1994. It clearly established that the matter was not at all sent for sanction to the Ministry of Defence. The applicant was put into loss of several years on the ground that the case is under consideration of the Ministry of Defence.

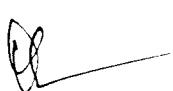


2.3 The applicant made representation against the said order but till date no response has been received by the applicant. As a result, the applicant though much senior to S/Shri A.K. Kochhar and C.K. Nath, but had been fixed less on 1.5.1986 at Rs. 2050/- whereas the pay of these two persons were fixed at Rs. 2150/-. The respondents did not at all consider this fact that the applicant's case is also genuine on the ground that being senior he should not get less pay than his juniors.

3. Since this is an old matter of the year 2001 and none is present on behalf of the applicant, we are disposing of this O.A. by invoking the provisions of Rule 15 of the CAF (Procedure) Rules, 1987. We have heard the learned counsel for the respondents and perused the pleadings very carefully.

4. Learned counsel for the respondents argued that the applicant did not send his option within due time, therefore, he is not entitled for the relief sought. He further argued that as the applicant exercised his option on 1.12.1989 and his pay fixation was forwarded to the Audit Authorities, the said authorities rightly rejected the above pay fixation proposal on the ground that the officer had opted to come to the revised pay scale through an option certificate which is beyond the last date of exercising the option according to the Government order.

5. After hearing the learned counsel for the respondents and perusing the record we find that the issue involved in this case is whether the applicant, who has submitted his option on 1.12.1989 for fixation of his pay in terms of circular issued by the Factory Order dated 24.9.1989 (Annexure A/1), is entitled to get his pay re-fixed as per his option. The respondents have contended that the option should have been furnished before the expiry of three months period from the



date of issue of Ministry of Defence letter dated 7.8.1989. The applicant has submitted in the OA that the above letter of Ministry of Defence was circulated by the Gun Carriage Factory vide its order dated 24.9.1989. Therefore, the three months period should be counted from 24.9.1989. As there was delay of only few days, the said delay should be condoned in his case as because of his option not being accepted he is suffering recurring monetary loss through out his service career. Even after retirement, this will affect his retiral benefits. Learned counsel for the respondents has stated that as the claim of the applicant was rejected in the year 1989 itself, the same is highly belated and the O.A. should be rejected on this ground alone.

6. We find that the respondents circulated the letter dated 7.8.1989 vide its order dated 24.9.1989. In accordance with letter dated 7.8.1989, the respondents have sought options from the individual concerned for fixation of their pay w.e.f. 1.1.1986 i.e. prior to more than 3 years from the date of that letter. The purpose of taking option is to see that the individual concerned, whose pay is being fixed should not suffer monetary loss because of the fixation of his pay. The Hon'ble Supreme Court in the case of M.R. Gupta vs. Union of India & Others, reported in A.T.C. (31) 1995 Pg.186, has held that as far as question of fixation of pay is concerned, the same is a recurring cause of action and therefore the question of limitation does not arise. In the instant case the applicant has opted on 1.12.1989, and because of somewhat delayed option, he had not taken any undue benefit from the respondents. Therefore, in view of this, we are of the considered view that the respondents should have condoned the short delay of few days on their own and fixed the pay as per the option of the applicant given on 1.12.1989. As this has not been done by the respondents, the applicant is suffering recurring monetary loss.



7. In the facts and circumstances of the case we allow the O.A. and direct the respondents to fix the pay of the applicant on notional basis as per his option dated 1.12.1989 within a period of three months from the date of receipt of a copy of this order. However, the applicant will not be entitled to arrears of pay prior to one year of the filing of this O.A. i.e. 17.07.2001. No costs.


(MADAN MOHAN)
MEMBER (J)

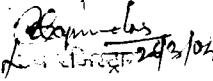

(M.P.SINGH)
VICE CHAIRMAN

/na/

प्राप्तिकारी के लिए निम्नलिखित विकल्पों में से कोनसा विकल्प अपनी स्थिति के अनुरूप है।

- (1) विकल्प 1, 2, 3, 4
- (2) विकल्प 2, 3, 4
- (3) विकल्प 3, 4
- (4) विकल्प 1, 2, 3, 4

K. Dutta, Adm
S A Dharwadkar


कामिल
26/3/04


M.P. Singh
26/3/04