

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 354 / 98

DATE OF DECISION 9-5-3

DILIP KUMAR SINGH

APPLICANT (s)

SHRI A. ADHLKARI

Advocate for the Applicant (s)

VERSUS

U.O.I. and Others

RESPONDENTS

SHRI S. P. SINHA

Advocate for the Respondents

CORAM :

Hon'ble Shri R.K. Upadhyaya -- Administrative Member
Hon'ble Shri J.K. Kaushik -- Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgments ? - YES / NO
2. To be referred to the Reporter or not ? YES / NO
3. Whether it needs to be circulated to the Principal Bench of the Tribunal ? YES / NO

J.K. Kaushik
(J.K. Kaushik)
Judicial Member

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 354 of 1998

Jablapur, this the 9th day of May 2003.

Hon'ble Mr. R.K. Upadhyaya - Administrative Member
Hon'ble Mr. J.K. Kaushik - Judicial Member

Dilip Kumar Singh, aged about 37 years,
S/o Late Chittaranjan Singh,
Senior Divisional Operations Manager,
Central Railway, Jabalpur.

(By Advocate - Shri A. Adhikari)

APPLICANT

VERSUS

1. Union of India through the Secretary,
Ministry of Railways
New Delhi.
2. The Secretary
Department of Personnel and Training
New Delhi.
3. Railway Board through Secretary
Rail Bhawan,
New Delhi.
4. General Manager,
Central Railway,
Chattrapati Shivaji Terminus,
Mumbai.
5. Divisional Railway Manager (P)
Office of Divisional Railway Manager,
Opposite High Court.
Jabalpur.

RESPONDENTS

(By Advocate - Shri S.P. Sinha)

ORDER

By J.K. Kaushik - Judicial Member :-

Shri Dilip Kumar Singh has filed this Original
Application for seeking the following reliefs.


(i) Hon'ble Tribunal may be pleased to declare the cut-off date of 1.8.89 as being void, illegal and discriminatory and quash the impugned order dated 7.8.89 (Annexure A-1) to that extent, by issuance of an appropriate writ order or direction.

(ii) The Hon'ble Court may be pleased to quash the impugned order dated 28.4.98 (Annexure A-11) as being illegal and arbitrary based on no material, on issuance of an appropriate writ, order or direction.

(iii) The Hon'ble Court may be pleased to direct the respondents to grant pay protection to the applicant in the interest of justice.

(iv) The Hon'ble court may be pleased to direct the respondents to pay interest at the rate of 24 percent on the arrears to be paid to the applicant.

(v) Any other relief deemed fit in the facts and circumstances of the case may also be passed.

(vi) Costs of the petition may kindly be saddled on the respondents.

2. Factual score of this case, necessary for adjudication of the controversy involved, is that the applicant served in the Bharat Cooking Coal Ltd, a subsidiary of Coal India Ltd. He was fixed in the E3 Scale of Rs. 3700-140-150-5900 on the post of 1st Class Asstt. Colliery Manager, at Bhagaband. Thereafter he appeared in the Civil Service Examination conducted by UPSC and was selected as a group officer for Indian Railway Traffic Service. He joined the Indian Railway Traffic Service with effect from 15.2.88 on basic pay of Rs. 2000/- Subsequently he was promoted and became senior Divisional Manager in group A JA grade headquarter at Jabalpur.

3. The respondent No. 2 issued an office memorandum dated 7.8.89 for protection of pay of persons working in public Sector who are recommended for appointment by UPSC

in the Government. As per that said office memorandum the order were to take effect from the first of the month in which the said OM was issued thereby with effect from 1.8.89. It has been further averred that the cut-off date is totally arbitrary and it is violative of Article 14 of the Constitution of India as it would result in treating unequals. The applicant submitted representation to the Chief Personnel Officer on dated 29.4.94. Requesting for his protection of his pay, as per the Office memorandum dated 7.8.89 supra. He also submitted his last pay certificate but the matter was kept pending and decision was protracted. It was only on 28.4.98 the case of the applicant was turned down and came to be rejected on the pretext that the office memorandum dated 7.8.89 cannot be applied/his case since the same is effective only after date of its issue.

4. The salient grounds on which the applicant has challenged the action of respondents are that basic purpose of the O.M dated 7.8.89 is to give benefits to a special category of Government servants. The cut off date / only meant of pay fixation and grant of actual financial benefits. If the interpretation given by the respondent department is taken as correct then the juniors who have appointed after 1.8.89 will draw higher pay and the seniors who joined before 1.8.89 will get lower pay such interpretation would run contrary to the equality clause as enshrined in Article 14 of the Constitution of India. The cut-off date is arbitrary and to that extent the O.M. in question deserves to be quashed.

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5. Return has filed on behalf of the respondents and it has been submitted that benefit ~~it~~ is only given with prospective effect from the date of issue of O.M as the implementation with back date would create practical problems. Nextly an objection as set out in the reply is that the Original Application of the applicant is hit by the law of limitation which cannot be extended merely on the basis of reply by which the representation of the applicant has been decided. It is not disputed that the applicant is given pay fixation in the scale of 2200-4000 on appointment in Railway but he is to be given fixation of pay only at the minimum of the scale. Office memorandum specifically envisages and prescribe that it shall be applicable only from the first date of the month in which the same has been issued. Further, Govt. has power to fix a cut off date in its executive power and the same is always to be prospective. Thus, the applicant is not entitled to the protection of pay and the Original Application deserves to be dismissed.

6. A rejoinder to the reply has been filed wherein the legal position has been discussed in detail. It has been submitted that the Bharat Cooking coal limited is a Government of India undertaking and strict proof is pay certificate already submitted as Annexure A-3. The interpretation given by respondents has no nexus with the ~~MM~~ object sought to be achieved. A further reply filed on behalf of the respondents in reply to the rejoinder and generally contraverted the averment of the rejoinder.

8. We have heard the learned counsel for the parties and have bestowed our earnest consideration to the pleadings and records of this case. The learned counsel for the

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parties have reiterated ~~its~~ their pleadings. As far as aspect of the factual ~~mix~~ / matter is concerned parties are not in variance and there is no quarrel in regard to the same. The learned counsel for the applicant has invited our attention to the basic object of the office memorandum and has submitted that its object was to attract the talents from various sources. Since the talented people were not coming and there was scarcity of such individuals, it was considered expedient to grant certain benefits in the shape of pay protection and ~~from~~ this decision was taken vide OM dated 7.8.89. However the order has been said to ^{be} effective from first of the month in which it has been issued. He has submitted that as a matter of fact the applicant ought to have ^{given} ~~been~~ the due benefits ~~given~~ from the prospective date. In any case the cut-off date also has no nexus with the object sought to be achieved. There is no intelligible differentia for such a classification which is most unreasonable and tantamount to make a class amongst same class thus the cut-off date does not come true to the twin test of equality. The learned counsel for the applicant has also invited our attention to decision of the various courts and we shall examine them at a latter stage in this order

8. On the contrary, the learned counsel for the respondents has strenuously opposed the contentions raised on behalf of the applicant and has placed strong reliance on the full Bench judgement of Tribunal dated 7th Jan. 2003 which was passed in OA No. 659/93 Basant

2 Kumar another Vs. Union of India and others. He also

contended that as per the general principle of law the decision of the court of law, are to be applied from retrospective date, & are not akin to the legislation which is prospective until it is otherwise specified or directed. In the present case the OM dated 7.8.89 is the nature legislation and there is no direction that it should be applied from a retrospective date. He has also submitted that otherwise also it is difficult to apply the said OM from a retrospective date since it will give rise to unwarranted complications.

9. We have carried out a close analysis of the judgement being relied upon by the parties/ have also given considerable thoughts to the arguments led. Before proceeding further in the matter we consider it expedient to extract the relevant portion of OM dated 7.8.89 as below :-

The question as to how pay protection can be given in the case of candidates required from public section undertaking etc has been engaging the attention of the Government for sometime. The matter has been carefully considered and the President is pleased to decide that in respect of candidates working in Public Sector undertakings, Universities, Semi-Government Institutions or Autonomous Bodies, who are appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly their initial pay may be fixed at a stage in the scale of pay attached to the post so that the pay and A.D.A as admissible in the Government will protect the pay plus D.A. already being drawn by them in their parent organisations. In the event of such a stage not being available in the post to which they have recruited, their pay may be fixed at a stage just below in the scale of the post to which they have been recruited so as to ensure a minimum loss to the candidates. The pay fixed under-take formulation will not exceed the maximum of the scale of the post to which they have been recruited. The pay fixation is to be made by the employees Ministries Department after verification of all the relevant documents to be produced by the candidates who were employed in such organisation.

The objective of the aforesaid OM is self explanatory and does not require any elaboration,

10. Now advertizing the various authorities as under:-

(a) B.K. Panigrahi Vs. Union of India another Swamy
digest CAT Patna Bench-

In this case also the applicant joined prior to the cut-off date of the OM dated 7.889 and was denied the protection of pay. The Original Application was allowed of the benefits of the OM and the respondents were directed to give benefits from 1.8.87 after due fixation of pay. Against the said judgement an SLP was filed ⁱⁿ the Supreme Court and the same came to be dismissed (Annexure IA-1 and Annexure IA-II).

(b) Amit Jain Vs. U.O.I-in this case also the applicant was receiving higher emolument in previous employment and joined in the new organisation prior to issuance of OM dated 7.6.89. It was held that OM does not say that it would be applied only to new entrants who joined service after the cut-off date but effect of OM would be from prospective date for due benefits.

(c) On the other hand the case of Basant Kumar supra cited on behalf of the respondents was regarding the payment of benefits of running allowance which are allowed from 1.1.83 and as per the circular dated 25.11.92. The individuals were entitled for pensionary benefits.

11. From the perusal of the aforesaid analysis we find that the case which have been relied upon by the learned

 counsel for the applicant, the issue relating to the

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this controversy involved in/case is fully covered and has been settled by the Supreme Court. These judgements squarely cover the controversy on all fours and the issue does not remain *res integra*. As regard the case which has been cited and relied upon the learned counsel for the respondents. The same is distinguishable on facts and related to a different controversy. Thus we are not persuaded with the contentions of learned counsel of respondents.

12. It may be worth to observe that the applicant has not approached this Tribunal well within time and he has approached this Tribunal after period of about 9 years. In ordinary course law of limitation would have justified throwing of this application overboard on the point of limitation itself, however it is a matter relating to the pay fixation which given a continuous cause of action as has been settled by the Supreme Court in a leading case of M.R. Gupta & Another Vs. Union of India reported AIR 1996 SC 669 but we are required to put certain restrictions on the ground of actual relief.

13. In view of what has been ~~said~~ discussed above, we find force in the Original application and the same is ~~disallowed~~ partly allowed. The impugned order dated 28.4.98 (Annexure A-11) is hereby quashed. The applicant shall be entitled to the pay protection in pursuance with OM dated 7.6.89 (Annexure A-1) and shall be allowed all consequential benefits. But the actual arrears on the ground of his pay protection shall be payable for the period from one year prior to filing of this

Original Application (i.e. with effect from 4.5.97)

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and without any interest. This order shall be complied within a period of 3 months from the date of receipt of a copy of this order. Costs made easy.

SKM
(J.K. Kaushik)
Judicial Member

R.K. Upadhyaya
(R.K. Upadhyaya)
Administrative Member

SKM

पृष्ठांकन सं. ओ/न्या..... जललपुर, ति.....
परिविधि लाले दिनांक.....
(1) सर्वाधा, जललपुर, तापा १०, जललपुर
(2) लाले दिनांक, तापा १०, जललपुर
(3) प्राप्ति दिनांक, तापा १०, जललपुर
(4) वापसात, दिनांक, जललपुर कार्यालय
सूचना एवं आवश्यक कार्यालय के द्वारा
A. Adhikari, Adm. SP Singh, Adm.

SKM
उपराज्यपाल
12/5/03

*Issued
on 13/5/03
BD*