

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JABALPUR BENCH
CIRCUIT AT INDORE

Date of Decision : 4.9.2003

O.A. No. 816/1998.

Pravesh Kumar Kulshreshtha, S/o Shri Girraj Kishore
Kulshreshtha, aged 38 years, Scientific Assistant, Indore
R/o C-27/1, CAT Colony, Sukhniwas, Indore 452013.

... Applicant.

v e r s u s

1. Union of India through Secretary, Department of Atomic Energy, New Delhi.
2. Indian Rare Earth Limited (Government of India Undertaking),
P II Court, VI Floor, 111, Maharshi, Karve Road,
Mumbai 400 020.
3. Rare Material Project, Ratnashally Complex, PO No.1,
Hunsur Road, PO Yelwal, Mysore 571 130.
4. Centre for Advanced Technology, represented by its
Director, Sukhniwas, PO CAT, Indore 452 013.

... Respondents.

Shri D. M. Kulkarni counsel for the applicant.
Shri Sajid Akhtar, Proxy counsel for
Shri B. Dasilva counsel for the respondents.

CORAM

Hon'ble Mr. V. K. Majotra, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :

(per Hon'ble Mr. J. K. Kaushik)

The applicant, Shri Pravesh Kumar Kulshreshtha, has
filed this Original Application under Section 19 of the
Administrative Tribunals Act, 1985, and has made the following
prayers :-

"9.1 It be declared that the applicant is entitled
to count the period of service from 12.9.83 to 28.2.86
for all service matter and pensionary benefits.



9.2 The respondent 1 be directed to determine the applicant's salary and perks after refixation of his salary taking into account his service from 12.9.83 to 28.2.86 and give him proper placement in the gradation list and consider his promotion.

9.3 ANY other relief as deemed proper be awarded and cost of the application be granted."

2. The factual profile of the case necessary for adjudication of the controversy involved ~~is~~ at a very narrow compass. The main case of the applicant is that there was certain gap in his service inasmuch as he was faced with termination from the post of Scientific Assistant in the same department. Subsequently he was again appointed. Initially he worked on ~~a~~ worked charge basis and the period of one spell of the working on ad hoc basis was counted but the period on which he worked ~~on~~ work-charged basis was not counted for the pensionary/^{other} benefits. During the pendency of this case an order dated 15.10.1999 has been passed and he has been given a notional fixation after reckoning the period of work charged service but with actual arrear from 27.10.1998 i.e. the date on which the OA has been filed. The facts are not at all in dispute.

3. The only question which boils down for consideration in this case is as regards to the dates from which the actual arrears are to be paid to the applicant on account of refixation of the pay. Learned counsel for the applicant has submitted that the actual arrear should be paid to the applicant from the very date i.e. from 1983 when the difference in the pay has arisen. He has also prayed in the alternative that the applicant may be paid actual arrears for the period 3 years prior to the filing of the Original Application.

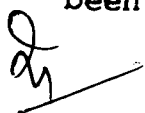


4. On the contrary,

learned counsel for the respondents has strangely opposed the submissions made on behalf of the applicant, and has submitted that in view of the judgement of the Hon'ble Supreme Court in the case of State of Haryana and Others vs. O. P. Gupta AIR 1996 SC 2936, the applicant cannot be paid the arrears, since the case of the applicant was settled subsequently to the filing of the very OA.


5. The Learned Counsel for the respondents was confronted with a question from this Tribunal as to once the applicant cleared the conditions for counting of his previous service only on 3.11.1999, why the arrears have been paid from the date of filing of the OA. No satisfactory reply was forthcoming. It was from the side of the Learned Counsel for the applicant who has submitted that the applicant has deposited the dues which were received by him in the previous spell of his working along with interest and the case of Shri O. P. Gupta (Supra) has no application to the present case and the respondents cannot change their stand every now and then.


6. We have given considerable thought to the main question involved in this case and since the payment of arrears is involved on account of certain pay fixation from a much earlier date, that is, 1983 and there is a lot of delay in filing of this OA, fixation of the pay, being a continuous cause of action, the delay as such could not defeat the case of the applicant but the delay necessarily attracts certain restrictions on payment of actual arrears on account of revised pay fixation. On that count, the issue has been already settled by the Hon'ble Supreme Court in the



case of M. R. Gupta vs. U.O.I. & Ors., AIR 1996 SC 669, thus the same does not remain res integra. Their Lordships have unequivocally held that the pay fixation gives rise to continuous cause of action and in case there is a delay while granting relief, the actual arrears on that count would be restricted to one year prior to filing of the OA. We have not been shown any contrary law on this point, and thus we find there is justification for granting the actual arrears from a date one year prior to filing of the OA.

7. In the premises, the OA is partly allowed. The applicant shall be entitled to the actual arrears on account of revised pay fixation vide order dated 15.10.1999 at Annexure R-2 w.e.f. 27.10.1997 i.e. one year prior to filing of the instant application and the same shall be paid to the applicant within a period of 3 months from the date of receipt of a copy of this order. No order as to Costs.


(J. K. KAUSHIK)
MEMBER (J)

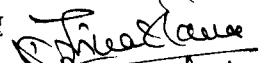

(V. K. MAJOTRA)
MEMBER (A)

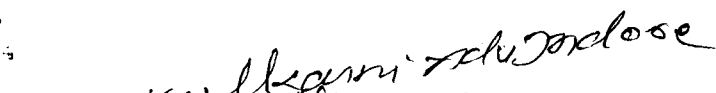
पृष्ठंकन सं ओ/व्या.....जयलपुर, दि.....

प्रतिलिपि अर्जो शिना:-

- (1) सचिव, उच्च न्यायालय दार एलजीकुशन, जयलपुर
- (2) अध्यक्ष श्री/श्रीमती/कु.....के कार्यालय
- (3) प्रवर्गी श्री/श्रीमती/कु.....के कार्यालय
- (4) जे.एस.सी.ए. जयलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु


जयलपुर 16/9/03


M. K. Kulkarni
B. Chakraborty


17/9/03