

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/01048/2014

Date of order : 8.9.2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

BIRENDRA PRADEEP KERKETTA

VS

UNION OF INDIA (MINES)

For the applicant : Mr.B.R.Das, counsel

For the respondents : Ms.M.Bhattacharya, counsel

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. The applicant is aggrieved by an order dated 18.10.11 whereby his prayer for pay protection has been rejected in the following manner :

“Please refer to your letter No. A-19011/90/2011- Estt dated 25.5.2011 on the subject cited above enclosing therewith an application submitted by Shri B.P.Kerketta, ACOM. In this connection, the content of Letter No. CMA/520/JET(M)/Per/27184-86 dated 26.9.1989 received from central Coalfields Ltd., Ranchi is reproduced below :

‘Neither the application of Shri B.P.Kerketta, for the post of Asstt. Mining Engineer was forwarded nor he was given ‘No Objection Certificate’ for appearing in the UPSC examination. He had also appeared in the UPSC examination violating the terms & conditions of the bond as well as rules of the Company and had acquired appointment in this department without the knowledge of CCL, Ranchi.’

Under the above circumstances, he is not entitled for protection of his Basic Pay and Pay Scale whatever he was drawing in CCL, Ranchi.

The officer concerned may be informed accordingly.

This issues after consultation with the Competent Authority.”

3. The facts of the case in a nutshell is that the applicant while serving under Central Coal Fields Ltd., Ranchi while serving as Jr. JET (Mining) and Jr. Mining Engineer from 11.8.86 to 20.11.89 in the pay scale of Rs.1030-1130 revised to Rs.2500-5150 w.e.f. 1.1.87, applied for the post of Assistant Mining Engineer against an ST vacancy in the Indian Bureau of Mines through UPSC

in response to its advertisement dated 15.10.88. The application was not routed through proper channel due to want of sufficient time. The applicant was selected and he duly informed the Central Coal Fields Ltd. After which he was released by the authorities to join Indian Bureau of Mines, vide office order dated 20.11.89 as contained in Annexure A/1. The applicant after joining the new department sought for pay protection in terms of FR 22 DOPT OM dated 7.8.89. His prayer was rejected with the impugned order which has been challenged in the present OA.

4. The applicant has relied upon the DOPT OM dated 7.8.89 infra in support of his claim, extracted hereinbelow for clarity with supplied emphasis:

"Protection of pay is admissible for candidates recruited from Central Autonomous Bodies/Public Sector Undertakings. - As per extant rules/orders, pay protection is granted to candidates who are appointed by the method of recruitment by selection through the Union Public Service Commission, if such candidates are in Government service. No such pay protection is granted to candidates working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies, when they are so appointed in Government. As a result of this, it has not been possible for Government to draw upon the talent that is available in non-Government organizations.

The question as to how pay protection can be given in the case of candidates recruited from Public Sector Undertakings etc., has been engaging the attention of the Government for sometime. The matter has been carefully considered and it has been decided 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 DA, as admissible in the Government will protect the pay plus DA, already being drawn by them in their parent organization. In the event of such a stage not being available in the post to which they have been 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 this 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 employing Ministries/Departments after verification of all the relevant documents to be produced by the candidates who were employed in such organizations.

These orders take effect from the first of the month in which this office memorandum is issued i.e. 1st August, 1989."

5. The respondents have justified the rejection stating that in terms of DP & AR OM dated 1.1.79 the applicant was bound to inform his erstwhile department before applying against the post in question.

6. I have heard Id. Counsels for the parties and perused the materials on record.

7. I have given my anxious consideration to the facts and materials. It is noticed that the OM dated 1.1.79, relied upon by the respondents, does not put any express bar in case of direct application to the Commission, it rather supports direct application and provides that the incumbent should immediately inform the HOO/Dept. giving details to communicate his permission to the Commission directly. It also says that in case no communication is received from Head of Office it shall be presumed by the Commission that there is no objection on the part of the employing department to the candidature of the Govt. employees in question to be considered by the Commission. Thus obtaining prior permission from the HOO/HOD is not sine qua non to processing of application or grant of pay protection in the new department. It is further noticed that the DOPT OM dated 7.8.89 also puts no fetters on the new department to consider and grant pay protection in cases where appointments have been sought for without being routed through a proper channel (HOO/HOD).

8. Here I seek to be guided by two maxims -

- i) **UNIUS EST EXCLUSION ALTERIUS** - meaning whatever has not been included has by implication been excluded; and
- ii) **EXPRESSUM FACIT CESSARE TACITUM** - when there is no express mention of certain things then anything not mentioned is excluded - The conclusion though harsh is inevitable. Thus where no express bar is included the action of the respondents to read something in which is not there in the instructions would be highly improper and illegal.

9. In such view of the matter and in absence of any express bar in getting the pay protected in the new department, the OA is disposed of with a direction upon the respondent authorities to consider the claim of the applicant in the light of DOPT OM dated 7.8.89 and pass appropriate orders within three

months from the date of communication of this order in regard to the claim of the applicant.

10. The OA is accordingly disposed of. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (A)

in