

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.43/2012

Dated this Wednesday the 28th day of August, 2019.

Coram: Dr.Bhagwan Sahai, Member (Administrative)
Shri R.N. Singh, Member (Judicial).

Madhukar Yadav Sonavane,
Residing at Durgal Building,
15/1, Hanuman Colony,
Bhosari - 411 039
Serving at Ammunition Factory,
Khadki, Pune - 411 003.

.. Applicant.

(By Advocate Shri P.J. Prasadrao).

Versus

1. Union of India, through
the Secretary,
Ministry of Defence,
Department of Defence Production,
South Block,
New Delhi - 110 001.
 2. Director General of
Ordnance Factories,
10 A, SK Bose Road,
Kolkata - 700 001.
 3. Senior General Manager,
Ammunition Factory,
Khadki, Pune - 411 003.
 4. General Manager,
Machine Tool Prototype Factory,
Ambernath - 421 502.
 5. Controller of Accounts
(Factories),
Ammunition Factory,
Khadki, Pune - 411 003.
- .. Respondents.

(By Advocate Shri R.R. Shetty).

Order reserved on : 10.06.2019

Order delivered on : 28.08.2019.

O R D E R**Per : Dr.Bhagwan Sahai, Member (A) .**

Shri Madhukar Yadav Sonavane, working with Ammunition Factory, Khadki, Pune filed this O.A. on 08.12.2011 seeking direction to Respondent No.4 i.e. General Manager, Machine Tool Prototype Factory, Ambarnath to amend his designation as Labourer Semi-Skilled in the pay scale of Rs.2650-4000 in the order dated 27.05.2005 and orders dated 09.08.2006 and 19.06.2006; and to restore his basic pay to Rs.3650/- as he was drawing before his transfer to Respondent No.3.

2. Summarised facts:

2(a) . The applicant has stated that he joined Machine Tool Prototype Factory, Ambarnath as unskilled labour on 21.04.1982. One of the conditions in the order of his appointment was that he is liable to transfer to any Ordnance Factory in India from time to time because of which he is not liable to be reverted to lower rank and pay.

2(b) . He was promoted as Semi Skilled Labour on 08.06.1999 in subsequently revised pay scale of Rs.2650-4000 by order dated 19.07.1999. As per circular dated 21.07.2005 issued by Respondent No.3, Sr. General Manager, Ammunition Factory,

Khadki, Pune, he applied for transfer in public interest to Pune by his letter dated 11.01.2005. He was informed by Respondent No.4 vide letter dated 23.03.2005 that his services were acceptable to Respondent No.3 as unskilled labour without TA/DA, joining time pay, etc and his seniority would be reckoned from the date of his joining. He claims that an erroneous invalid undertaking was obtained from him for transfer on the above conditions. But this was wrong as he was liable for all India transfers as per the appointment order.

2(c). In the transfer order dated 27.05.2005, the respondents transferred him without protection of his pay which was not as per the recruitment conditions mentioned in the circular of 21.07.2005. But without realising the implications of the order, he obeyed the transfer order and joined at Ammunition Factory, Khadki, Pune. Then he was issued the LPC by General Manager, Machine Tool Prototype Factory, Ambernath dated 23.06.2005 with amendment on 09.08.2006 mentioning in it that the applicant had been reverted from the semi-Skilled labour to unskilled labour in his own interest and the pay was refixed at Rs.3200/- from 31.05.2005 in the pay scale of

Rs.2550-3200.

2(d). Thereafter he submitted representations to Respondent No.4 on 26.03.2007 and 11.09.2007 but they were rejected by letter dated 04.01.2008 stating that his pay had been fixed as per Fundamental Rules and he was transferred on compassionate grounds and no further action was required. Since his grievance has not been redressed by the Appellate Authority, he has filed this O.A.

2(e). The applicant has also filed M.A.37/2012, in which details of his appointment, posting and the transfer have been mentioned and has stated that pay fixation is a continuous cause of action and, therefore, the delay should be condoned. He has also tried to rely on the following three caselaws in this regard.

(i). Madras Port Trust Vs. Hymanshu International, AIR 1979 SC 1144;

(ii). P.K. Sinha Vs. Union of India & Ors., 1997(2) SLJ CAT 319; and

(iii). S.R. Bhanrale Vs. Union of India & Others, 1997 (1) SLJ 14.

3. Contentions of the parties:

In the O.A., rejoinder, written notes of arguments submitted by his counsel on 22.10.2018

and during the final hearing on 10.06.2019, the applicant contends that -

3(a). incorporation of his reversion in the transfer order dated 27.05.2005 was erroneous as reversion is not permissible without punishment as part of disciplinary proceedings. The LPC issued to him on 23.06.2005 with amendment on 09.08.2006 reducing his pay scale and grade is contrary to rules which has resulted in lower payment to him. This reversion was without sanction of Competent Authority and he was liable for transfer to any Ordnance Factory in the country. He was not a surplus staff with the Machine Tool Prototype Factory, Ambernath and, therefore, his pay scale and grade could not be reduced;

3(b). sufficient vacancies of semi-Skilled labourers were available with Respondent No.3. Provisions of FR 15(a) and 15 22 1(iii)(A) are not applicable in his case. By the time of his transfer from the Machine Tool Prototype Factory, Ambernath to the Ordnance Factory, Khadki, Pune in 2005, he had completed 23 years of his service and he could not have been reverted even based on the mutual consent between him and the employer; and

3(c). reversion of the applicant on transfer is contrary to Article 311(2) read with Articles 13,

14 and 16 of the Constitution as he is an ST category candidate. Therefore, refixation of his pay at Rs.3200/- per month with effect 27.05.2005 on his transfer was wrong and actually it should have been fixed at Rs.3650/- in pay scale of Rs.2650-4000 i.e. the pay which he was drawing before his transfer. Therefore, the O.A. should be allowed;

In the reply to the O.A. and the sur-rejoinder and written notes of arguments as well as during hearing 10.06.2019, the respondents contend that -

3(d). the applicant had applied on 11.01.2005 (page 22) to General Manager, the Ammunition Factory, Khadki, Pune to accept his transfer due to indifferent health of his wife and other domestic reasons. As per the response received from Respondent No.3, Respondent No.4 had informed the applicant vide letter dated 23.03.2005 that his service was acceptable to Respondent No.3 only on his reversion to the post of unskilled Labourer and he was accordingly directed to submit his willingness;

3(e). on its receipt, the applicant vide his application dated 30.03.2005 submitted his willingness in writing for transfer to the

Ammunition Factory, Khadki on reversion as unskilled labourer (Exhibit R-5). Accordingly he was reverted from the post of semi-skilled labourer in the pay scale of Rs.2650-4000 to unskilled labourer in the pay scale of Rs.2550-3200 (pre-revised) and was transferred to the Ammunition Factory, Khadki, Pune vide order dated 27.05.2005;

3(f). the present O.A. was filed on 08.12.2011 challenging his transfer order dated 27.05.2005 and the LPC issued to him on 23.06.2005. This O.A. has been filed after lapse of 7 years and it is barred by limitation and hence is liable to be dismissed on this ground;

3(g). in fact the Respondents No.3 and 4 had considered his request on humanitarian grounds and on his own request for and acceptance of transfer on reversion on compassionate grounds, he was transferred to the Ammunition Factory, Khadki, Pune as unskilled labour and his pay was refixed at the highest level of the basic pay of unskilled labourer. Therefore, the applicant in the O.A. cannot contend that downgrading of his grade and pay scale was not valid;

3(h). as per FR 22(I)(3)(a), a Government servant appointed or transferred to a lower post

at his own request under Rule 15(a), the maximum of the time-scale pay which is less than the pay drawn by him in the higher post shall draw at the maximum as his initial pay and therefore, refixation of his pay at Rs.3200/- was correct as per the rules;

3(i). in this O.A. the applicant has tried to mislead the Tribunal as even after about 30 years of service he has now claimed that he had not submitted his willingness for transfer on reversion. Because of his transfer on reversion as per his own request, there was no requirement of issuing of show cause notice for refixing his pay;

3(j). the applicant was also granted the benefit of ACP from 11.10.2005 as per DOPT Clarification No.39 dated 18.07.2001 and thereby his basic pay was refixed at Rs.3370/- in the higher pay scale of Rs.2650-4000. He has also been granted MACP-II from 01.09.2008 and MACP-III from 2013. The caselaws cited by the applicant are based on the different facts, which are not applicable to him. Therefore, the O.A. is without merit and should be dismissed;

3(k). in response to the M.A. filed for condonation of delay, the respondents have

submitted that actual cause of action, if at all, to the applicant arose in 2005 and, therefore, filing of the present O.A. after more than 7 years is barred by limitation and in the application for condonation of the delay, no valid reason has been given by him. Hence on this ground itself the O.A. should be dismissed.

4. Analysis and conclusions:

We have perused the O.A. its annexes, rejoinder of the applicant as well as reply and sur-rejoinder of the respondents. We have also considered M.A.37/2012 i.e. the application for condonation of delay filed by the applicant and response of the respondents to it. We have also considered the submissions of counsel for the parties on 10.06.2019. After consideration of all these, our conclusions are as follows:

4(a). In his application for condonation of delay, the applicant has simply mentioned that the pay fixation is a continuous cause of action and, therefore, the delay is required to be condoned.

In caselaw Madras Port Trust Vs. Hymanshu International decided on 03.01.1979 (by Single Bench of the Apex Court), the plea of limitation was not accepted because the claim of the applicant was found to be just and well founded.

In P.K. Sinha Vs. Union of India & Ors. decided by a Single Member of the Patna Bench of this Tribunal, fixation of pay had been wrongly done in case of the applicant and, therefore, the application was allowed.

In case of S.R. Bhanrale Vs. Union of India & Others decided by a Division Bench of the Apex Court on 19.07.1996, the relief was allowed in that case because payment to the applicant had been wrongfully withheld. However, as contended by the respondents, the facts of those cases are not identical to the present case. In this case revised pay fixation had been done by the respondents on specific request of the applicant for his transfer on reversion.

As per the facts of the case, the actual cause of action for the applicant arose from his transfer order dated 27.05.2005, which was followed by the last pay certificate issued to him dated 23.06.2005, with amendment to it on 09.08.2006. However, he has filed this O.A. only on 08.12.2011. There is thus clearly a delay of more than 5 years in filing of the O.A. and the applicant ought to have satisfactorily justified as to why he was unable to file this O.A. in time. Thus the present O.A. suffers from delay and

laches and is beyond the period of limitation. Unfortunately, his representation also cannot help in this regard.

On this issue, as per the Supreme Court view in **B. Madhuri Goud Vs. B. Damodar Reddy, 24(2012) 12 SCC 693**, the concept of liberal approach while handling the application for condonation of delay has to encapsulate the conception of reasonableness and it cannot be allowed as a totally unfettered free play where there is inordinate delay, the doctrine of prejudice is attracted and it warrants strict approach whereas the delay of short duration or few days calls for a liberal delineation. The applicant has to justify the delay of every day which prevented him from filing of the O.A. in time.

Considering the facts of the case and the above caselaw, the application for condonation of delay having no satisfactory grounds is, therefore, rejected.

4(b). The main issue involved in the O.A. is redesignation of the applicant on his own request as unskilled labour on his transfer from the Machine Tool Prototype Factory, Ambernath to Ammunition Factory, Khadki, Pune vide order dated

27.05.2005 and fixation of his pay at maximum in the lower pay scale. As the facts submitted by the respondents clearly bring out, the applicant himself had sought transfer from the Machine Tool Prototype Factory, Ambernath to the Ammunition Factory, Khadki, Pune vide his request dated 11.01.2005 to help him to tide over his family problems and when his case was processed, the Respondent No.3 had communicated acceptance of the applicant only on the lower post of unskilled labour which amounted to reversion from the earlier post of semi-skilled labourer. However, because of his own need for family related issues, the applicant himself had submitted his willingness and acceptance to be transferred to the Ammunition Factory, Khadki on reversion as unskilled labour vide letter dated 30.03.2005.

4(c). Based on it, his request for transfer was processed by the respondents on compassionate grounds and his transfer order was issued on 27.05.2005. The LPC issued by Respondent No.4 on 23.06.2005 clearly mentioned the fact that he had been reverted to the post of unskilled labourer on his own request in his own interest and thereby his pay was fixed at Rs.3200/- per month, which was the maximum of the pay scale applicable to the

post of unskilled labourer. Once himself having specifically requested for and willingly accepted the transfer on reversion in March, 2005, the applicant cannot deny it now and as an afterthought seek relief on the plea of no reversion without disciplinary action. It is dishonesty on his part. It is strange that now the applicant has indulged in this litigation against the very respondents who helped him on compassionate grounds when he was in need. He is bound by his own request and acceptance of the terms of his transfer.

4(d). In view of the above explained factual position of seeking of transfer by the applicant on his own volition when he needed it and willingly accepted to be transferred on reversion, his contentions in the O.A. that on transfer to the Ammunition Factory, Khadki his existing grade as semi-skilled labour should be protected is totally contrary to his own submissions in his application dated 29.03.2005, in which he submitted his willingness to proceed to Ammunition Factory, Khadki on reversion as unskilled labour. Therefore, issuance of his transfer order dated 27.05.2005 by the respondent No.4 and the LPC dated 23.06.2005 with amendment on 09.08.2006 seem

justified. In fact on his own request, the respondents considered his difficulty and need, and on humanitarian and compassionate grounds transferred him on reversion. It was not a transfer done by the respondents on their own for official requirement. Had it been so, then the situation would have been different. As explained by the respondents, on his transfer on his own request, under the relevant stipulations under FR 22, his pay was fixed at the maximum of the basic pay of the post of unskilled labourer i.e. Rs.3200/-. This was correct.

4(e). The facts of the case also reveal that in the O.A. the applicant has tried to suppress the facts of his own request and willingness to be transferred from the Machine Tool Prototype Factory, Ambernath to the Ammunition Factory, Khadki, Pune on reversion and this is deliberate attempt to mislead the Tribunal. When he was in need, the applicant willingly wanted to be transferred on reversion and now after many years, as an afterthought and by being crafty and exploitative, he takes a plea that his transfer on reversion was not as per the rules. This kind of stand of the applicant is not acceptable. This is totally dishonest on his part, because of which

the O.A. Lacks merit and deserves to be dismissed with cost. However, we are restraining from imposing cost on the applicant.

4(f). As discussed above, the O.A. is devoid of merits and deserves dismissal.

5. Decision:

The O.A. is dismissed because of unjustified long delay and on merits.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

H.

JN
29/8/17

