

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

DISTRICT: SOLAPUR

REVIEW APPLICATION NO.40 OF 2015

IN

ORIGINAL APPLICATION NO.196 OF 2013

1. Shri Suryakant K. Dhotre,)
R/o. House No.4578, Gatade Plot,)
Pandharpur, Dist. Solapur.)..... **Applicant**

Versus

1. The State of Maharashtra, through)
The Principal Secretary, Water Resources Dept.)
Mantralaya, Mumbai – 400 032.)
2. The State of Maharashtra, through the)
Principal Secretary, Finance Department,)
Mantralaya, Mumbai 32.).....**Respondents**

Shri B. A. Bandiwadekar, the learned Advocate for the Applicants.

Shri A. J. Chougule, the learned Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A. H. JOSHI, CHAIRMAN
SHRI P. N. DIXIT, MEMBER (A)

PER : JUSTICE SHRI A. H. JOSHI, CHAIRMAN

RESERVED ON : 25.10.2018

DELIVERED ON : 01.11.2018

ORDER

1. Heard Shri B. A. Bandiwadekar, the learned Advocate for the Applicant and
Shri A. J. Chougule, the learned Presenting Officer for the Respondents.

Brief facts of the case:-

2. The R. A. has been filed against the judgments given by this Tribunal in O.A. No.196 of 2012 delivered on 13.10.2015. The R.A. makes prayer to step up the pay of the Applicant in the post of Sub-Divisional Engineer Class-I on 14.01.1988 to Rs.2575 and his pay should be stepped up to Rs.2525 in the post of Sub-Divisional Engineer.

3. According to the Applicant, the grounds for review are as under:-

“4. At the outset, the Petitioner wants to point out to the Hon'ble Tribunal the deliberate or otherwise failure on the part of the Respondent to extend to the Petitioner the benefit of the provisions of Rule No.7, Note 4 of the Notification dated 1.10.1988 issued by the Finance Department of the State Government in the M.C.S. [Revised] Pay Rules, 1988 [see page 23]. This provision clearly makes the Petitioner entitled to get the relief sought in the O.A., which the Respondent miserably failed to grant to the Petitioner.

4A. That in fact, the Petitioner was not at all aware for long time the above referred Notification dated 1.10.1988 and therefore, he could not rely upon the same till his O.A. was decided by the Hon'ble Tribunal. Thus the Petitioner wants to rely upon this document which goes to the root of the matter and which could not be produced by the Petitioner earlier, despite his due diligence till the O.A. was heard by the Hon'ble Tribunal. That based on this document, the issue raised by the Petitioner is pure question of law and hence the Petitioner request the Hon'ble Tribunal to entertain the same, failing which the same would lead failure of justice and serious prejudice to the Petitioner.

4B. That the main plank of the case of the Petitioner was based on the issue regarding the hostile and invidious discrimination to which he was subjected to by the Respondent vis-à-vis junior colleague of the Petitioner by name Mr. Sale in the matter of the pay fixation in the post of the Sub Divisional Engineer. That, however, this issue has not been correctly decided which resulted in error of law and fact.

(Quoted from page 3 and 4 of the R.A)

4. The Respondents in their Affidavit-in-Reply have rejected the contention by the Applicant. Relevant portion is as under:-

“4. With reference to para 2 of Review Application, I say and submit that, 'As the applicant had not given the option regarding revised pay scale of 4th Pay Commission within the time of three months from the date 1.10.1988, the notification of 4th Pay Commission was published, his pay was fixed on 1.1.1986 at Rs.2120/- as per rule 6(3) of MCS (Revised Pay) Rules 1988. But the applicant's junior colleague Shri. A.B.Sale had given the option on 27.12.1988 i.e. within the time to fix his pay in revised pay - scale from 1.4.1987 and his pay has fixed at

Rs.2300/- from 1.4.1987 as per his option. The applicant has been promoted to the post of Sub-Divisional Engineer on 10.7.1987 and his junior colleague Shri.A.B.Sale has been promoted to the post of Sub-Divisional Engineer on 14.1.1988. But as Shri A.B.Sale had given an option within the prescribed time limit, his pay appears to be more than that of the applicant on lower post. Naturally his pay was fixed more than that of applicant on promotional post. Therefore, the applicant himself is liable for getting less pay than his junior.

6. With reference to para 4 of Review Application, I say and submit that, the applicant was promoted to the post of Sub Divisional Engineer on 10.07.1987. According to rule 5, Explanation (1) of the Government Notification dated 01.10.1988, an employee is permitted to give an option to maintain his present pay scale only in respect of one existing pay scale. The applicant has been promoted to the Sub Divisional Engineer, prior to dated of his next increment in the cadre of Assistant Engineer Grade-II and after 01.01.1986, as such as per foot note 4 of the rule no.7 of the Notification dated 01.10.1988, the applicant was expected to submit his option regarding his pay fixation in revised pay scale within 3 months as per the rule 60) of MCS (Revised Pay) Rules, 1988. There is a provision in rule 6(4) that if the intimation regarding option is not received within the time mentioned in sub rule (1), the Government servant shall be deemed to have elected to be governed by the revised scale of pay with effect from the 1st day of January, 1986. Applicant had not given the option regarding pay fixation in revised pay scale within time. Hence his revised pay has fixed on 1.1.1986 as per above provision.

7. With reference to para 4A of Review Application, I say and submit that, the applicant was well aware of the Notification dated 01.10.1988 and has made reference of this Notification in his Original Application.

8. With reference to para 4B of Review Application, I say and submit that, the applicant has been promoted to the post of Sub-Divisional Engineer on 10.7.1987 and his junior colleague Shri.A.B.Sale has been promoted to the post of Sub-Divisional Engineer on 14.1.1988. But as Shri.A.B.Sale had given an option within the prescribed time limit, his pay appears to be more than that of the applicant on lower post. Naturally his pay was fixed more than that of applicant on promotional post. Therefore, the applicant himself is liable for getting less pay than his junior.

(Quoted from page 36 to 38 of the Affidavit)

5. In Rejoinder filed by the Applicant, the Applicant has stated as under :-

“2. That in the circumstances stated above, the same has resulted in disparity in the revised pay of the Petitioner who is the senior colleague of Mr. Sale and therefore, in order to remove such pay disparity, that the aforesaid Rules 7 and 8 is there in the field. That in view of this, it hardly matters as to whether the Petitioner failed to give his option in time or gave wrong option in time. Thus the

net result whereof according to the Petitioner is that the pay of the Petitioner as on 1.4.1987 in the cadre of Assistant Engineer (Grade-II) was accordingly fixed at Rs.2,300/-".

(Quoted from page 41 & 42 of the Rejoinder)

6. The same has been refuted by the Respondents in Sur-Rejoinder as under:-

"2. With reference to para 1 of Rejoinder, I say that as per Notification dated 01.10.1988, notifying pay rules after implementation of IVth Pay Commission, Government servants were required to give option regarding pay fixation in revised pay scale within 3 months. This is as per rule 6(1) of the Maharashtra Civil Services (Revised Pay) Rules, 1988. If a person had not given his option, under Rule 6(4) he was deemed to have opted for revised pay scales from 01.01.1986. The applicant did not give his option and his pay was fixed in the revised pay scale from 01.01.1986. Shri Sale, on the other hand had given his option. As per his option to remain in the old pre revised scale till he get increment in the pay scale higher to the pay scale in which he was placed. Clarification regarding implementation of pay revision issued vide Government Circular dated 21.05.1989 of Finance Department. By the Circular permission has been given to re-exercise the option with reference to the revised scales of pay for fixation of pay in promotional post. Concerned employees should re-exercise such options upto 31.08.1989 as per Circular dated 06.07.1989. The applicant gave his revised option of 30.08.1989 as per circular dated 06.07.1989 and exercised option to get his pay fix in the revised pay scale from 01.04.1987. By considering his option, his pay was correctly fixed at Rs.2300/- on 01.04.1987. The pay of the applicant was fixed as per option given by him and he has no case to claim the pay fixed as per his junior Shri Sale. A copy of O s Li 3 Government Circular dated 06.07.1989 is annexed herewith and marked as Exhibit-R-1.J.

4. With reference to para 3 of Rejoinder, I say and submit that, in this case, in the lower post the junior person was in receipt of higher pay than the senior person because he had given an option regarding revised pay scale within time and accordingly his pay was fixed as per his option and it is more than that of the Applicant. Hence, condition no 3 mentioned in the G.R. dated 06.11.1984 is not fulfilled in this case. Had the applicant given option in the prescribed time limit, the present circumstances as alleged by the applicant of getting less pay than junior would not have arisen. Since Shri Sale, junior to applicant had given option in time he got more pay. Therefore, the applicant himself is liable for getting less pay than his junior.

(Quoted from page 42 & 43 of the Sur-Rejoinder)

Findings and Discussions:-

7. During the hearing, the Applicant drew our attention to Notificatin of the Finance Department, dated 01.10.1988, Rule 7, Note 4, page 26 of the R.A. Note 4 reads as under:-

“टीप ४ - पोटनियम (१) अन्वये वेतन निश्चित करताना, जो शासकीय कर्मचारी १ जानेवारी १९८६ च्या लगतपूर्वी, त्याच संवर्गातील आपल्या कनिष्ठ शासकीय कर्मचा-यापेक्षा विद्यमान श्रेणीत जास्त वेतन घेत होता त्याचे वेतन सुधारित श्रेणीत अशा कनिष्ठ कर्मचा-याच्या वेतनटप्प्यापेक्षा खालच्या टप्प्यावर निश्चित होत असेल तर त्या बाबतीत त्याचे वेतन सुधारित श्रेणीमध्ये कनिष्ठ कर्मचा-याच्या वेतनटप्प्यापर्यंत वाढवण्यात येईल.”

(Quoted from page 26 of the R.A.)

8. The relevant para in the judgment given by Tribunal in para (7) reads as under :-

“7. Rule 7(1)(A) is regarding fixation of pay in the IVth Pay Commission Pay Scale to those who had given option t get pay fixed from 1.1.1986. The Applicant had not given any option, and was deemed to have opted for revised pay scale from 1.1.1986. However, his pay was later fixed as per his revised option dated 30.08.1989. The Applicant had not explained how application of this rule would have resulted in his getting his pay fixed at a higher stage in the revised pay scale. Point no.8 of the accompaniment of circular dated 29.5.1989 is regarding option given after 1.1.1986 but before 31.12.1987. Again the Applicant had not explained implication of not considering this provision. The Applicant has merely referred to various provisions of Rules or G.R.s in his affidavit in rejoinder, without bothering to explain as to how under those provisions, his pay could have been fixed at a higher level. Conclusion is inescapable that the Applicant is unable to point out any violation of any provision of law or rules in the pay fixation in his case. He is merely harping that his pay was fixed at a stage lower than his junior. The Respondents have explained how this happened due to wrong option (Deemed option) given by the Applicant himself. The Applicant failed to correct his mistake even when re-exercising his option. The Respondents have explained in great detail as to how the pay of the Applicant and Shri Sale was fixed. The Applicant had not been able to point out any mistake in the same. The impugned order appears to be based on correct interpretation of pay fixation rules and the Applicant has completely failed to challenge the same effectively. “

(Quoted from page 19 of the O.A.)

9. The Applicant has averred in the R.A. as a ground for review as follows:-

“4. At the outset, the Petitioner wants to point out to the Hon'ble Tribunal the deliberate or otherwise failure on the part of the Respondent to extend to the Petitioner the benefit of the provisions of Rule No.7, Note 4 of the Notification dated 1.10.1988 issued by the Finance Department of the State Government in the M.C.S. [Revised] Pay Rules, 1988 [see page 23]. This provision clearly makes the Petitioner entitled to get the relief sought in the O.A., which the Respondent miserably failed to grant to the Petitioner.

4A. That in fact, the Petitioner was not at all aware for long time the above referred Notification dated 1.10.1988 and therefore, he could not rely upon the same till his O.A. was decided by the Hon'ble Tribunal. Thus the Petitioner wants to rely upon this document which goes to the root of the matter and which could not be produced by the Petitioner earlier, despite his due diligence till the O.A. was heard by the Hon'ble Tribunal. That based on this document, the issue raised by the Petitioner is pure question of law and hence the Petitioner request the Hon'ble Tribunal to entertain the same, failing which the same would lead failure of justice and serious prejudice to the Petitioner.

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(Quoted from page 3 and 4 of the R.A)

10. Question to be considered in an application is as to whether an error apparent on the face of record has occurred.

11. Applicant's claim is plain and simple namely, had note no.4 below Rule 7 of Maharashtra Civil Services (Revised Pay) Rules, 1988 been seen in correct perspective, undue importance which came to be attached to applicant's failure to exercise option would not have mattered either way.

12. This Tribunal has perused the copy of the Rule which is on record of R.A. at page 23. These rules are titled as :-

“Maharashtra Civil Services (Revised Pay) Rules, 1988”

These rules have been framed under Article 309 of the Constitution of India. Rule 7 pertains to fixation of pay in the revised pay. Note 4 below Rule 7 1(a) reads as under:-

“टीप ४ - पोटनियम (१) अन्वये वेतन निश्चित करताना, जो शासकीय कर्मचारी १ जानेवारी १९८६ च्या लगतपूर्वी, त्याच संवर्गातील आपल्या कनिष्ठ शासकीय कर्मचा-यापेक्षा विद्यमान श्रेणीत जास्त वेतन घेत होता त्याचे वेतन सुधारित श्रेणीत अशा कनिष्ठ कर्मचा-याच्या वेतनटप्प्यापेक्षा खालच्या टप्प्यावर निश्चित होत असेल तर त्या बाबतीत त्याचे वेतन सुधारित श्रेणीमध्ये कनिष्ठ कर्मचा-याच्या वेतनटप्प्यापर्यंत वाढवण्यात येईल.”

(Quoted from page 26 of the R.A.)

13. On plain reading of scheme of the rule what emerges is that it is device of protection thereby laying down that an employee who is senior in rank in a particular cadre shall not draw pay lesser than a pay of his junior and mechanism thereof is by raising his basic pay up to the pay of junior employee. The note below clause ‘c’ of Rule 7 is to be viewed and it operates as a non-obstante clause and has an overriding effect.

14. In the judgment sought to be reviewed, this Tribunal had referred to in its judgment as some G.R.s etc. However, footnote no.4 given below Rule 7 (a) to (c) which has an effect of non-obstante clause is not adverted to as to its function and object.

15. This Tribunal to note that what the Applicant is claiming is the benefit openly conferred upon a senior employee by mandatory rule framed under Article 309 of the Constitution of India.

16. Even if, the applicant would have exercised option and yet his pay would have been lesser than his junior, he was entitled for protection of note 4 quoted in foregoing para no.12.

17. Note 4 has anticipated an eventuality where despite selection of any date for increment, a senior employee may receive salary which may be lesser than pay of his junior in same cadre.

18. Therefore, the view of this Tribunal taken while deciding O.A. that the Applicant has to suffer on account of failure to give option, is in error apparent on the face due to failure to read, refer to and apply Note 4 incorporated in Rule 7 of Maharashtra Civil Services (Revised Pay) Rules, 1988.

19. In the result, the judgment and order passed by this Tribunal in O.A.No.196 of 2013 deserves to be reviewed and recalled.

20. Hence, Review Application is allowed. The Judgment and order passed in O.A.No.196 of 2013 be recalled and O.A. 196 of 2013 is allowed in terms of prayer clause 9(a) which reads as follows:-

“9(a) : By a suitable order / direction, this Hon’ble Tribunal may be pleased to allow the R.A. and consequently allow the O.A. and thus to grant the reliefs to the Petitioner as per the paras 9(a) of the O.A.”

19. In these facts and circumstances of the case to direct the parties to bear own cost.

**Sd/-
(P.N. DIXIT)
MEMBER (A)**

**Sd/-
(A. H. JOSHI, J.)
CHAIRMAN**