

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30-04-2009

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE M.JAICHANDREN

W.P.No.24040 of 2004

L.Jadham

.. Petitioner.

Versus

1.The Union of India, rep. by
The Secretary to Government
Ministry of Industries and Commerce
Department of Industrial Policy
& Promotion, Udyog Bhavan,
New Delhi-II.

2.The Salt Commissioner
Lavan Bhavan, 2A Lavan Marg,
Jhalana Dungari,
Jaipur-302 004.

3.The Registrar,
Central Administrative Tribunal,
Chennai-600 104.

... Respondents.

For Petitioner : Mr.L.Chandra Kumar

For Respondents: Mr.S.M.Deenadayalan (CGSC) (R1 to R3)

PRAYER: Petition filed seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the third respondent's order made in O.A.No.465 of 2003, dated 17.9.2003 and R.A.No.35 of 2003, dated 12.11.2003, to quash the same and consequently direct the 1st and 2nd respondents to fix the Pay of the petitioner at Rs.14,250/- in the Scales of Rs.12000-16500 with effect from 1.1.1996 and to extend all other service benefits thereto.

O R D E R

M.JAICHANDREN, J.

Heard Mr.L.Chandra Kumar, the learned counsel appearing for the petitioner and Mr.S.M.Deenadayalan, the learned Central Government Standing Counsel appearing for the respondents 1 to 3.

2. This writ petition has been filed praying for a writ of certiorarified mandamus to quash the order of the Central Administrative Tribunal, Madras Bench, dated 17.9.2003, made in O.A.No.465 of 2003, and the order, dated 12.11.2003, made in R.A.No.35 of 2003 and to direct the first and the second respondents to fix the pay of the petitioner at Rs.14,250/- in the scale of pay of Rs.12000-16500 with effect from 1.1.1996 and for other service benefits.

3. By the impugned orders made in O.A.No.465 of 2003 and the review application the claim of the petitioner for the grant of one increment, as per the revised pay Rules, had been rejected.

4. It has been stated that the petitioner had been directly recruited as Assistant Salt Commissioner, through the Union Public Service Commission, during the year 1980. He had been promoted as Deputy Salt Commissioner, on 30.9.86, at the initial pay scale of Rs.3000-100-3500-125-5000. Based on the cadre review the post was upgraded, with effect from 21.7.1987 and the scale of pay was revised as Rs.3700-125-4700-150-5000. In view of the cadre review and the consequential upgradation of the post an option had been given for the concerned persons either to remain in the existing scale of pay or to move to the new scale of pay. The petitioner had reached the maximum in the original scale of pay at Rs.5,000/-, on 1.9.1994.

5. It had been further stated that the fifth Central Pay Commission revised scales of pay came into existence, with effect from 1.1.1996. However, contrary to the provisions of the relevant Rules, the petitioner's pay was wrongly fixed at Rs.13,875/-, as on 1.1.1996 and Rs.14,250/-, as on 1.1.1997. Therefore, the petitioner had made a representation, dated 9.1.2001, pointing out the discrepancies. The said representation was rejected by the second respondent by the proceedings, dated 15.3.2001, which was challenged before the Central Administrative Tribunal, Mumbai. By an order, dated 14.9.2001, the original Application was allowed by the Central Administrative Tribunal, Mumbai, directing restoration of the revised scales of pay of Rs.12,000-16500, with effect from 1.1.1996 and for the granting of the other consequential benefits. Thereafter, the order, dated 15.3.2001, had been cancelled by proceedings, dated 21.1.2002.

6. It has been further stated that the petitioner had made a representation, dated 6.2.2002, for the grant of additional increments. However, the said representation had been rejected. Hence, the petitioner had filed the original application in O.A.No.465 of 2003, before the Central Administrative Tribunal, Madras Bench, praying for a direction to fix the pay of the petitioner at Rs.14,250/-, in the scale of Rs.12000-16500, with effect from 1.1.1996 and for other consequential reliefs. The Central Administrative Tribunal, Madras Bench, had rejected the original

application. Thereafter, the revision application filed by the petitioner had also been rejected.

7. The main contention of the learned counsel for the petitioner in the present writ petition is that the Central Administrative Tribunal, Madras Bench, had wrongly rejected the prayer of the petitioner without noting the proviso to Rule 7(1) (A) of the Central Civil Service (Revised Pay) Rules, 1997, according to which the petitioner is eligible for the grant of increment as prayed for in the original application. The petitioner ought to have been granted six increments instead of five, as on 1.1.1996. According to the third proviso to Rule 7(1)(A) of the Central Civil Services (Revised Pay) Rules, 1997, for every three increments in the 'existing scale' of pay the employee concerned is entitled to one increment in the revised scale of pay. The Existing Scale has been defined in Rule 3 (2) of the Rules. Thus, even the personal scale applicable to the applicant is deemed to be the existing scale of pay and therefore, by virtue of the option exercised by the applicant he was entitled to remain in the scale of Rs.3000-5000 and thus, it was the 'existing scale' of pay of the applicant. In the said scale of pay there were 17 stages and the applicant had reached the maximum of the scale on 1.9.1994. Therefore, the applicant was entitled to the grant of five increments under the third proviso to Rule 7(1)(A) of the Central Civil Services (Revised Pay) Rules, 1997. Additionally, the petitioner was also entitled to one increment under the third proviso to Rule 8 and hence, he was entitled for the grant of all the six increments in the revised scale of pay and he was entitled to have his pay fixed at Rs.14,250/- in the scale of Rs.12000-16500, with effect from 1.1.1996.

8. The Central Administrative Tribunal, by its order, dated 17.9.2003, made in O.A.No.465 of 2003, had found that the post of Deputy Salt Commissioner had been upgraded, with effect from 21.7.1987 and the petitioner had been placed in the pay scale of Rs.3700-5000. As per Rule 3 of The Central Civil Services (Revised Pay) Rules, 1997, the words 'existing scale' have been defined as 'present scale applicable to the post held by the Government servant'. Thus, it was clear that the post of Deputy Salt Commissioner, prior to 1.1.1996, was in the pay scale of Rs.3700-5000. Merely because the petitioner had opted to remain in the pay scale of Rs.3,000-5000, prior to its upgradation, it could not be said that he was in the pay scale of Rs.3,000-5000. The words 'post held' in Rule 3 of The Central Civil Services (Revised Pay) Rules, 1997, is the determining factor. Admittedly, the petitioner held the post of Deputy salt Commissioner in the pay scale of Rs.3700-5000. At best, the pay scale of Rs.3000-5000 could be regarded as the 'personal scale' held by the petitioner. As long as the post of Deputy Salt Commissioner remains in the pay scale of Rs.3700-5000, having only 11 stages and not 17 stages in the pay scale of Rs.3000-5000, the petitioner would be entitled only to three increments in terms of the third proviso under Rule 7 of the Central Civil Services

(Revised Pay) Rules, 1997. Thus, the increments in the pay scale of Rs.12000-16500 is of Rs.375. The said amount of Rs.375 had been multiplied by 3 and after adding one more increment in terms of Rule 8 of the said Rules, the basic pay of the petitioner, as on 1.1.1996, had been fixed at Rs.13,500/-. The petitioner had been allowed the additional increment of Rs.375/- on account of the fact that he was drawing the maximum of Rs.5,000/- in the pre-revised pay scale for more than one year. As such it could be said that he was granted the benefit of one stagnation increment to which he was entitled to. Thus, there is no irregularity or illegality in the fixation of the pay scale of the petitioner and the granting of the increments due to him.

9. In the counter affidavit filed on behalf of the second respondent, the claims made by the petitioner had been denied. It has been stated that the pay fixation in respect of the applicant has been made in accordance with the relevant provisions of the Central Civil Services (Revised Pay) Rules, 1997. The maximum benefit of increments as admissible under the said Rules has been allowed to the petitioner. Thus, the petitioner is not entitled for any additional increments, as claimed by him. The petitioner had been promoted to the post of Deputy Salt Commissioner in the pay scale of Rs.1300/- to Rs.1700/-, with effect from 30.9.1986. Consequent upon the recommendations of the fourth Pay Commission, the pay scale was revised from Rs.3000 to 5000, with effect from 1.1.1986. The post of Deputy Salt Commissioner was upgraded to the scale of Rs.3700/- to Rs.5000/-, with effect from 21.7.1987, based on the Indian Salt Services Cadre Review. However, the petitioner had retained the old pay scale of Rs.3,000/- to Rs.5,000/- by exercising the option under F.R-23. The fifth Central Pay Commission had granted the pay scale of Rs.12000/- to Rs.16,500/-, to the pre-revised scale of Rs.3700/- to Rs.5000/- and Rs.10000/- to Rs.15200/- to the pre-revised scale of Rs.3000/- to Rs.5000/-. The petitioner had opted to retain his old pay of Rs.3,000/- to Rs.5000/- at the time of revision of the pay scale of Deputy Salt Commissioner. According to Rule 5 of The Central Civil Services (Revised Pay) Rules, 1997, he was allowed to draw the corresponding scale of pay of Rs.10000/- to Rs.15200/- to the pre-revised scale of Rs.3,000/- to Rs.5000/-. The petitioner had challenged the same by way of an original application before the Central Administrative Tribunal, Mumbai, in O.A.No.256 of 2001. The Tribunal had restored the pay scale of Rs.12000/- to Rs.16500/- and thus, the petitioner's pay had been fixed according to second proviso under Rule 7(1)(A) and the third proviso under Rule 8 of the The Central Civil Services (Revised Pay) Rules, 1997. The maximum benefit of bunching has also been allowed ensuring that the petitioner got the maximum benefits due to him.

10. In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as for the respondents and on a perusal of the records available, we are of the considered view that the petitioner has not shown sufficient cause or reason for

this Court to interfere with the order passed by the Central Administrative Tribunal, made in O.A.No.465 of 2003 and the subsequent order, dated 12.11.2003, passed in the revision application.

11. The Tribunal had given sufficient reasons for arriving at its conclusions. It has been found that the pay fixation of the petitioner and the increments granted to him were in accordance with the provisions of the Central Civil Services (Revised Pay) Rules, 1997. The words 'post held' in Rule 3 of the said Rules would only mean the post of Deputy Salt Commissioner held by the petitioner at the relevant point of time. However, it is not in dispute that the said post was placed in the pay scale of Rs.3700- 5000. Merely because the petitioner had opted to remain in the then existing pay scale of Rs.3000-5000/-, which was applicable prior to the date of the upgradation of the said post, it cannot be stated that the said scale was applicable to the post of Deputy Salt Commissioner. At best, the pay scale of Rs.3000-5000 could be regarded only as the 'personal scale' of pay held by the petitioner. Thus, it is seen that the Central Administrative Tribunal, Madras Bench, had rightly applied the provisions of the Central Civil Services (Revised Pay) Rules, 1997, and rejected the claim made by the petitioner. Therefore, we see no scope to interfere with the said findings of the Tribunal. Accordingly, the writ petition stands dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

csh

To

1.The Secretary to Government of India,
Ministry of Industries and Commerce
Department of Industrial Policy
& Promotion, Udyog Bhavan,
New Delhi-II.

2.The Salt Commissioner
Lavan Bhavan, 2A Lavan Marg,
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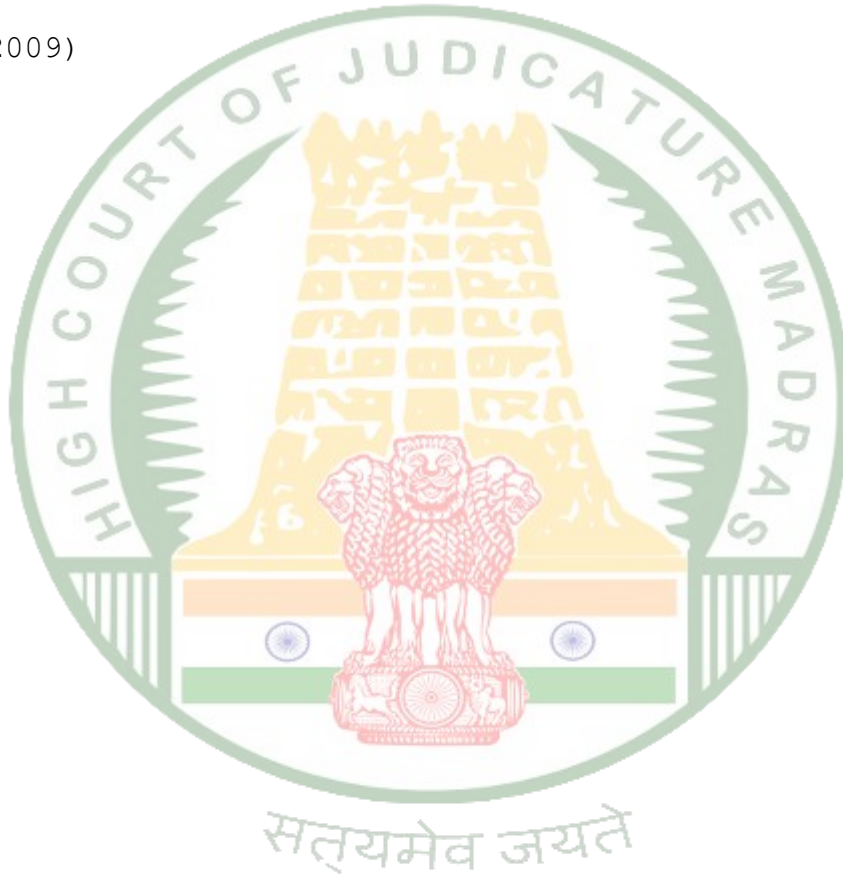
3.The Registrar,
Central Administrative Tribunal,
Chennai-600 104

1 cc To Mr.L.Chandrakumar, Advocate, SR.19824

1 cc To Mr.S.M.Deenadayalan, Advocate, SR.19888

W.P.No.24040 of 2004

KSK (CO)
SRA (27/5/2009)



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