

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5385 OF 2004

Anand Shankar Joshi	...Petitioner
Versus	
The Union of India & Ors.	...Respondents

Mr. J. G. Aradwad (Reddy) i/b. Smt. Suhasini Mutalik for Petitioner.
Mr. A. A. Garge with Mr. D. A. Dube for Respondents – UOI.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

Date of Reserving the Judgment : 30 July 2018
Date of Pronouncing the Judgment: 02 August 2018

JUDGMENT :

- 1] Heard the learned counsel for the parties.

- 2] The challenge in this petition is to the judgments and orders dated 30th March 2000 and 12th June 2002 made by the Central Administrative Tribunal (CAT) dismissing Original Application No. 951 of 1998 and Review Petition No. 34 of 2000 instituted by the petitioner.

- 3] The petitioner, by instituting Original Application No. 951 of 1998 had questioned the order dated 27th July 1995, by which his pay, which had been fixed at Rs.302/- per month was purported to

be re-fixed at Rs.260/- per month relying upon Office Memorandum dated 31st July 1986.

4] Mr. J. G. Aradwad (Reddy), the learned counsel for the petitioner submits that at the stage when Original Application No. 951 of 1998 was argued before the CAT, neither the petitioner nor the respondents had produced for the perusal of the CAT the OM dated 31st July 1986, even though, it was this OM which was the basis for the impugned communication dated 27th July 1995. Mr. Reddy submits that from the perusal of the OM, it is quite clear that the same was to apply in respect of all appointments made on or after 1st July 1986 and not to the appointment of the petitioner, which was admittedly made in the year 1983. Mr. Reddy submits that after the petitioner obtained the copy of the OM dated 31st July 1986, the petitioner did institute a Review Petition before the CAT to point out this fact. However, the CAT, refused to entertain the Review Petition on the ground that failure to submit a relevant document is not a ground for review and that this was not a case of discovery of new and important evidence. Mr. Reddy submits that since the OM dated 31st July 1986 is quite clear, the impugned communication dated 27th July 1995 warrants interference.

5] Mr. Reddy, the learned counsel for the petitioner submits that

in any case, after series of consultation and correspondence, the pay of the petitioner had been fixed at Rs.302/- per month. In case the respondents desired to refuse such pay, then compliance with principles of natural justice and fair play was imperative. Since this was admittedly not done, the impugned communication dated 27th July 1995 warrants interference.

6] Mr. Reddy submits that since the CAT has failed to take into consideration the aforesaid two vital aspects, the impugned judgments and orders warrant interference.

7] Mr. Dube, the learned counsel for the respondents submits that there was no justification on the part of the petitioner in not producing OM dated 31st July 1986 before the CAT at the earliest instance. In any case, Mr. Dube submits that since this was not at all a case of '*hardship*' the petitioner was not entitled to any additional increments, which had inflated his pay at Rs.302/- per month. Mr. Dube submits that by impugned communication dated 27th July 1995, the respondents merely corrected an obvious error and therefore there was no requirement of compliance with principles of natural justice. Mr. Dube supports the reasoning in paragraph 8 of the impugned judgment and order.

8] The rival contentions now fall for our determination.

9] The petitioner was appointed on 9th July 1974 as a Sepoy in the Indian Army. Thereafter with effect from 13th November 1982, the petitioner was promoted as a Lance Naik before his release from the Indian Army after completion of service of over eight years.

10] By order dated 3rd August 1983, the petitioner was appointed to a Civil Post of Store Keeper in the office of the C.A.F.V.D. Kirkee, Pune, against a post which was reserved for ex-serviceman. The post carried pay scale of Rs.260-400 at the time of petitioner's appointment in the year 1983. Accordingly, the petitioner's pay was fixed on the minimum of the basic at Rs.260/- per month though, it was the case of the petitioner that the increments earned by the petitioner whilst in the army could not have been ignored and on such basis, the petitioner's pay ought to have been Rs.302/- per month. The petitioner accordingly addressed representations for re-fixation of his pay at Rs.302/- per month.

11] The petitioner has produced on record series of correspondence between various department of the respondents themselves on the issue of re-fixation of the petitioner's pay. Ultimately, by communications dated 15th October 1993 and 2nd June

1994, the petitioner's pay was re-fixed at Rs.302/- per month and after adjusting the pension equivalent of service and gratuity, the petitioner was ordered to be actually paid Rs.297.32 ps. per month.

12] After about one year, by communication dated 27th July 1995, the respondents, relying upon OM dated 31st July 1986, reduced the petitioner's pay from Rs.302/- per month to Rs.260/- per month. Admittedly, there was no compliance with principles of natural justice before issuing the communication dated 27th July 1995 reducing the petitioner's pay. At least *prima facie*, we are of the opinion that the communication dated 27th July 1995 which reduced the petitioner's pay from Rs.302/- per month to Rs.260/- per month did visit the petitioner with civil consequences and therefore, such action, should have been preceded by compliance with principles of natural justice and fair play. However, we do not propose to rest our decision on the basis of non compliance with principles of natural justice and fair play, since, according to us, the OM dated 31st July 1986, which is the basis for communication dated 27th July 1995 itself states that the same will apply to all appointments made on or after 1st July 1986.

13] As noted earlier, the impugned communication dated 27th July 1995 makes reference to OM dated 31st July 1986 and states that

the reduction in the petitioner's salary is in pursuance of OM dated 31st July 1986. It is true that the petitioner did not, before the impugned judgment and order dated 30th March 2000 was made by the CAT, produced the actual OM dated 31st July 1986 before the CAT. However, even the respondents, who had based their action on OM dated 31st July 1986 did not produce the same before the CAT. In the Review Petition, the petitioner did produce OM dated 31st July 1986 before the CAT, however, the CAT, refused to review its judgment and order dated 30th March 2000, on the plea that since OM dated 31st July 1986 was very much in existence when the CAT made its judgment and order dated 30th March 2000, this cannot be said to be, a case of '*discovery of new and important evidence*' which is a precondition for exercise of review jurisdiction.

14] Even if we were to agree with the CAT, that this was not a case of '*discovery of new and important evidence*', considering the fact that the respondents justify their action on the basis of OM dated 31st July 1986, it will not be possible for us to ignore OM dated 31st July 1986 or to consider whether OM dated 31st July 1986 can at all apply to the case of the petitioner, who was admittedly appointed as Store Keeper on 3rd August 1983

15] The OM dated 31st July 1986 reads as follows :

“Fixation of pay on re-employment of pensioners.-- At present the orders relating to fixation of pay of re-employed pensioners are scattered in a number of office memoranda issued from time to time. The question of consolidation of the existing orders in a simple body of orders and the rationalisation and simplification of the procedure governing the initial fixation of pay has been under consideration of the Government from time to time. The President is now pleased to decide that in supersession of all the previous orders on the subject, the initial fixation of pay and other benefits on re-employment of ex-servicemen pensioners as also civilian pensioners will be governed by the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 as detailed in the Annexure. With reference to all the appointments made on or after the 1st July, 1986 the pay of the re-employed pensioners may be fixed as per the enclosed orders.

2. *In their application to the employees serving in the Indian Audit and Accounts Department these orders issued in consultation with the Comptroller and Auditor General of India.*

[G.I.M.P. Pub. G. & Penr. (Deptt. Of P. & Trg.) O.M. No. 3/1/85-Estt.(P-III), dated July 31, 1986].”

[Emphasis supplied]

16] From the aforesaid emphasized portion, it is very clear that OM dated 31st July 1986 and the principles for pay fixation of re-employed pensioners stated therein are to apply to all the appointments *made on or after the 1st July, 1986*. Admittedly, the petitioner was not appointed after 1st July 1986 but rather, he was appointed on 3rd August 1983. Accordingly, there was no justification on the part of the respondents to apply OM dated 31st July 1986 to the case of the petitioner and on such basis reduce the petitioner's pay from Rs.302/- per month to Rs.260/- per month and that too,

without even minimum compliance with principles of natural justice and fair play.

17] The CAT, in the peculiar facts and circumstances of the present case, need not have dismissed the Review Petition instituted by the petitioner by taking a very technical view of the matter in relation to exercise of its review jurisdiction. The petitioner by, instituting the review petition and placing on record the text of OM dated 31st July 1986, has in fact, pointed out an error, which could be regarded as an error apparent on the face of record. The petitioner, the respondents as well as the CAT proceeded in the matter in the first instance, without examining OM dated 31st July 1986, which was the most important document in the entire matter. At a later stage, when the petitioner, placed OM dated 31st July 1986 on record, the same, could have always been considered by the CAT.

18] For all the aforesaid reasons, we set aside the impugned judgments and orders dated 30th March 2000 and 12th June 2002 made by the CAT. We also set aside the impugned communication dated 27th July 1995 and restore the petitioner's pay fixation at Rs.302/- per month as indicated in communications dated 15th October 1993 and 2nd June 1994 along with all consequential benefits.

19] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

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