

WP.CT 437 of 2012

Radhe Shyam Chawala
vs
Union of India & Ors.

Mr. Chittapriya Ghosh
Ms. Priyanka Saha
Ms. Moitrayee Chatterjee
..... For the Petitioner.

Mr. Chandreyi Alam (Gupta)
..... For the Respondents/UoI.

The present writ petition has been preferred challenging an order dated 9th February, 2012 passed in the original application (hereinafter referred to as OA), being OA 1242 of 2011.

Records reveal that the OA was preferred by the petitioner primarily praying for re-fixation of his pay scale in the revised scale of Rs. 2000-60-2300-EB-75-3200 as on 1st July, 1992 with date of next increment and for disbursement of all consequential benefits relating to his pension together with arrear salary upon setting aside the memo dated 31st October, 2011 issued by the respondent no. 5 pursuant to the order dated 10th February, 2011 passed by the learned Tribunal in the earlier OA preferred by the petitioner being OA 478 of 2007 challenging *inter alia* an order dated 10th March, 2005 passed by the respondent no. 3 observing *inter alia* that '*the pay @ Rs. 7500/- w.e.f. 01.01.96 has already been fixed under the*

provisions of FR-221(a) (i) on his personal promotion in the grade of Super B/S Gde-I. Revision of his pay under RPR-97 has also been carried out in the same scale. In terms of CGDA New Delhi letter No. AT/II/2451/(PC/6/96) dated 16 Sep 96, no further pay fixation is permissible on promotion identical scale’.

By the order dated 10th February, 2011 passed in the earlier OA, the learned Tribunal relegated the matter for further consideration before the authorities with a direction to verify from the service book of the petitioner, the pay as fixed at the time the petitioner was promoted in the grade of Rs. 2000-3200 and to ascertain as to whether the fixation of pay had taken into account the element of one notional increment in the lower scale of pay. It was further observed that had such fixation been effected, no question would arise of invoking the provisions of Fundamental Rule (hereinafter referred to as FR) 22 C at the time when the petitioner was promoted as Barrack Staff Officer (hereinafter referred to as BSO) with effect from 2nd February, 1992.

Pursuant to the said order the respondent no. 5 issued a memo dated 31st October, 2011 observing *inter alia* upon re-examination of service book/pay fixation, it had been ascertained that *‘the pay fixation was carried out by taking into account the element of one notional increment in the lower scale of pay and bringing up the pay at the next higher stage’.*

Drawing our attention to paragraph 3 (f) (i) of the memo dated 31st October, 2011, Mr. Ghosh, learned advocate appearing for the petitioner submits that the petitioner's basic pay as on 1st July, 1992 ought to have been fixed as Rs. 2180/- in place and stead of Rs. 2150/- upon adding the increment earned by the petitioner on the basis of the basic pay of Rs. 2180/- as on 1st May, 1992 for the period of 1st May, 1992 till 30th June, 1992.

He further argues that while scrutinizing the contents of the memo dated 31st October, 2011 the learned Tribunal erred in law in not considering the observations made in the order dated 10th February, 2011 passed in the earlier OA 478 of 2007 while relegating the issue of pay fixation of the petitioner for re-consideration of the competent authority.

According to Mr. Ghosh, the petitioner's pay fixed at Rs. 2180/- with effect from 1st May, 1992 under FR-22 (I)(a) (2) being next above fitment stage, the observation as to the basic pay in the existing scale of Rs. 2150/- was erroneous and the notional increment should not have been only Rs. 50/-.

He contends that the petitioner was promoted as BSO with effect from 2nd February, 1999. The post of BSO carried higher duties and responsibilities and that as such he could not have been denied the benefit of pay under FR-22-C and the consequential benefits to such fixation. Such arguments, as advanced, were glossed over the by the

learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

Ms. Alam, learned advocate appearing for the respondents denies and disputes the contention of the petitioner and submits that the pay fixation of the petitioner was addressed on the basis of the observations made by the learned Tribunal in the earlier OA and the memo dated 31st October, 2011 was duly scrutinized by the learned Tribunal in the subsequent OA and the order impugned does not suffer from any error of law warranting interference of this Court.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

The learned Tribunal in its order dated 9th February, 2012 passed in OA 1242 of 2011 did not find any infirmity in the memo dated 31st October, 2011 since while issuing the same the competent authority took into account the element of one notional increment as observed in the earlier order of the learned Tribunal dated 10th February, 2011 passed in OA 478 of 2007.

In the said order dated 9th February, 2012 the learned Tribunal further arrived at a finding that the respondents rightly took note of the fact that the petitioner's pay was fixed @ 2300/- with effect from 1st July, 1992, as observed by the petitioner himself in his representation dated 13th March, 2004 and accordingly observed that the recording under paragraph 3 (d) of the

memo dated 31st October, 2011 stands duly corroborated. In the said conspectus, the learned Tribunal observed that the petitioner was granted the benefits of non-functional selection grade in terms of the option exercised by the petitioner.

A patent error is an error which is self-evident, i.e., which can be perceived and demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

In view thereof, no interference is called for in the present writ petition and the same is accordingly dismissed.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Supratim Bhattacharya, J.) (Tapabrata Chakraborty, J.)