
(1993) 01 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 9730 of 1988-G

Capt. Sunny Mathew

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 28-01-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1993) 01 KL CK 0021

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : P. Gopalakrishnan Nair, for the Appellant; M. Pathros Mathai, for the Respondent

Final Decision : Allowed

Judgement

P.A. Mohammed, J.—An ex-army Captain who had been absorbed in a public sector undertaking is the writ Petitioner. The question is with regard to pay-fixation and recovery of excess payment.

2. The writ Petitioner joined the service of Indian Army with effect from 20th October 1975. He had six years service to his credit in the Army. His period of service in the Army ended on 18th November 1981. On 16th May 1984 he was appointed as Junior Security-cum-Liaison Officer in the State Bank of Travancore. Ext. P-1 is the letter of appointment issued by the State Bank of Travancore on 12th May 1984. As per Ext. P-1 the Petitioner is given the basic pay of Rs. 700/- per mensem in the scale of Rs. 700-40-900-50-1100-EB-1200-60-1800 in the Junior Management Grade as applicable to ex-service men employees of the Bank. Subsequently, on the basis of the Government orders the Petitioner's basic pay was fixed at Rs. 950/-, since it did not exceed the basic pay of Rs. 1,300/- as last drawn by him in the army service. In the year 1986 the pay scale of the officers of the State Bank of Travancore was revised. Consequently the Petitioner's basic pay was fixed at Rs. 1,545/- in the revised pay scale. However by Ext. P-4 the State Bank of Travancore; proposed to revise the pay scale in the

case of all Ex-ECOs./SSCOs. Apprehending reduction in the pay-scale, the Petitioner submitted a representation before the Bank. The Petitioner did not receive any reply. However the second Respondent, General Manager of the Bank, without issuing any notice and without even affording an opportunity to file representation, issued Ext. P-5 memorandum fixing the basic pay of the petitioned at Rs. 1,295/-. It was also, proposed to recover, the alleged excess payment in monthly instalments from the salary. It was under that situation the Petitioner came before this Court with the present writ petition.

3. The Ext. P-2 order of the Government of India, inter alia, provides thus:

So far as benefit in fixation of pay is concerned however, the Government have agreed that taking cognizance of the fact that these ECOs/SSCOs have spent a part of their, earlier service in the Army in the time of need, they could be given the benefit of pay fixation on the same terms and conditions as were applicable to those ECOs/SSCOs who were appointed against reserved or unreserved vacancies as the case may be in Group A/Group B post/service.

Ext. P-3 Circular issued by the Bank says that the Government of India have advised the Bank that Ex-ECOs/SSCOs who joined pre-commissioned training or Were commissioned after 10th January 1968 may also be granted advance increments equal to the number of completed years of service rendered by them in the armed forces. Placing reliance on Exts. P-2 and P-3, the Petitioner submits that the Bank has no authority or power to revise basic pay to his disadvantage and to recover the alleged excess payment. The revision of basic pay and the consequent recovery of the alleged excess payment, in other words, would violate his fundamental rights under Articles 14 and 16 of the Constitution.

4. The State Bank of Travancore, on the other hand, submitted that the Government of India subsequently has issued certain guidelines in the matter of pay fixation of ex-ECOs/SSCOs re employed in public sector Banks. The Bank has placed reliance on Exts. R-2(a) and R-2(b). It is submitted that in the case of ex-ECO/SSCOs who joined public sector Banks on or after 1st February 1984, their pay will be fixed in the Bank's revised scale at the minimum of the pay scale and thereafter they will be allowed as many increments as completed year of service they put in service subject to the condition that the total emoluments in the re-employed post do not exceed the total emoluments he was drawing at the time of his release from the armed forces. However the Respondent has not produced any orders superseding Ext. P-2 order of the Government of India. The benefits available to the Petitioner under Exts. P-2 and P-3 cannot be taken away in an unreasonable manner.

5. The Petitioner asserts that Ext. P-2 order is still in force and he is entitled to "legitimate expectation" of following the consistent past practice in fixing the pay scale. If any departure was sought to be made in the existing system on the basis of new guidelines or policy in fixation of pay scale, the authority concerned should have afforded reasonable opportunity to the aggrieved persons to make

representations. This is embodied in the doctrine of "legitimate expectation". It imposes a duty on public authority to act fairly even in, cases where the parties have no legal right in private law to receive such treatment. The aggrieved person is entitled to judicial review if he can show that the decision of the public authority affected him of some benefit which he has been permitted to enjoy. The Supreme Court has recently explained the doctrine of "legitimate expectation" in *Navjyoti Co-operative Housing Society etc. Vs. Union of India and Others*, and there it has been observed:

It may be indicated here that the doctrine of "legitimate expectation" imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such "legitimate expectation". Within the conspectus of fair dealing in case of legitimate expectation, the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in.

6. The learned Counsel for the Petitioner strongly contended that Ext. P-5 order is the one which has civil consequences and it affected him adversely. He further adds that he did not get an opportunity of being heard before passing the said-order. The Full Bench of this Court in *Appukuttan Nair v. State of Kerala* 1969 KLT 96 (F.B.) while dealing with the question of discontinuance of advanced increment held thus:

There seems to be little doubt that as a result of the increment granted the pay of the Petitioners have been enhanced, that they received the enhanced pay for some time though not for a considerable length of time and that by virtue of the order discontinuing the advance increment (Ext. P-4) the pay that they had been received got reduced, by an increment under the respective time scales of pay. In such circumstances there can be little doubt that Ext. P-4 order is one which has civil consequences. Such an order against a Government employee cannot be passed without affording an opportunity to the persons who will be affected by the order. There is no gainsaying the fact that there are important circumstances which have to be carefully considered after affording an opportunity to those affected to state all their contentions. Principles of natural justice demand that this is the minimum that should be done. The principles of natural justice transcends all other considerations.

7. Time and again the Supreme Court said that where right of a person is adversely and prejudicially affected by an order by an authority in a proceeding, such person is entitled to pre-decisional notice irrespective of whether the proceeding is judicial, quasi-judicial or administrative in nature. A pre-decisional notice is a requirement in the realm of "audi alteram partem" principle. It also takes in a post-decisional notice. Both are the salient features in the observance of principles of natural justice.

8. The Supreme Court in *I.J. Rao, Asstt. Collector of Customs and Another Vs. Bibhuti Bhushan Bagh and Another*, has observed that right of a person being

prejudiced or placed in jeopardy envisages some damage or injury or hardship to that right and becomes necessary to inquire into the nature of such damage or injury or hardship apprehended by such person. In that case it was found that pre-decisional notice is a requirement in the observance of principles of natural justice.

In Charan Lal Sahu Vs. Union of India, the Supreme Court observed thus:

It is true that not giving notice was not proper because principles of natural justice are fundamental in the constitutional set up of this country. No man or man's right should be affected without an opportunity to ventilate his views. We are also conscious that justice is a psychological yearning, in which men seek acceptance of their view point by having an, opportunity of vindication of their viewpoint before the forum or the authority enjoined or obliged to take a decision affecting their right.

9. In view of the above decisions, it is well-settled that when the rights of a person are going to be affected by a decision by an authority concerned, a pre-decisional notice is a requirement in observance of the principles of natural justice. As far as this case is concerned, it is an admitted fact that the Petitioner had not been granted an opportunity of a pre-decisional hearing in go far as the fixation of pay and consequent deduction of alleged excess payment, foot even an opportunity to make representation against proposed action as contemplated in Ext. P-5 was given. Ext. P-5 is therefore to be declared invalid. The result is that all consequent proceedings for deduction of the alleged excess payment are set aside.

10. Before I conclude, I make it clear that Ext. P-5 has been declared invalid on the ground that there is violation of the principles of natural justice. However, this will not preclude the second Respondent from initiating action afresh. In the event of taking fresh action what is required is that, an effective opportunity of being heard shall be made available to the Petitioner. The Original Petition is allowed as above. No costs.