

(21)

**Central Administrative Tribunal
Principal Bench**

OA No. 266/2001

New Delhi, this the 8th day of June, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. V.K. Agnihotri, Member (A)

1. Shri Bhagat Singh Bhatia,
s/o late Shri Ishar Singh
Age 60 years, Ex Sr. Draftsman (Gr.I),
Office of the Land & Development Officer,
Ministry of Urban Development,
Govt. of India,
Nirman Bhawan.
New Delhi.

2. Shri Anand Prakash Sood,
s/o Shri Jagjit Rai Sood,
Aged 50 years, Sr. Draftsman (Gr.II),
Office of the Land & Development Officer,
Ministry of Urban Development,
Govt. of India,
Nirman Bhawan. New Delhi.

...Applicants

(By Advocate: Shri M.L. Chawla)

-Versus-

Union of India through:

1. Secretary to the Govt. of India,
Ministry of Urban Development,
Govt. of India,
Nirman Bhawan,
New Delhi.
2. The Director (Housing),
National Building Organization (NBO),
Ministry of Urban Development,
Govt. of India,
Nirman Bhawan, New Delhi.
3. The Land & Development Officer,
Office of the Land & Development Officer,
Ministry of Urban Development,
Govt. of India,
Nirman Bhawan,
New Delhi.

...Respondents

(By Advocate: Mrs. Promila Safaya)



O R D E R

By Mr. V.K. Agnihotri, Member (A):

The applicants had originally sought a direction to the respondents to re-fix their pay as Draftsman notionally w.e.f. 22.08.1973 and with actual benefits w.e.f. 16.11.1978, as had been ordered by this Tribunal in the case of **Dinkar Rao Kawday & Anr. vs. Union of India & Anr.** in OA No. 2020/1994, with all consequential benefits. The order of this Tribunal in this OA was pronounced on 06.02.2002. Thereafter the matter having been taken to the Hon'ble Delhi High court in WP (C) No. 903-904/2004, the case was remanded to the Tribunal for reconsideration in the light of the order of this Tribunal in the case of **Smt. Urmil Sharma vs. Union of India & Anr.**, OA No. 2233/2000 dated 05.09.2002, with the following direction:

"...the matter shall now be reconsidered by the Tribunal as to whether or not the petitioners are entitled to the benefit of the revised pay fixation notionally from 22nd August, 1973 and actually from 16th November, 1978 as granted to their CPWD counterparts, who incidentally belong to the same Department/Ministry...In case the Tribunal answers the aforesaid issue in favour of the petitioners, in that event it shall also be decided as to whether or not the petitioners would be entitled to any consequential benefits and if so, for which period."

2. The applicants, originally the employees of National Building Organization, Ministry of Works, Housing and Supply, were subsequently transferred to the office of Land & Development Officer (L&DO), Ministry of Urban



Development and have since retired after reaching the position of Senior Draftsman.

3. The brief facts of the case are that consequent upon agitation by CPWD Draftsmen for higher pay scales, the dispute was referred to a Board of Arbitration set up by the Ministry of Labour which gave the Award on 26.06.1980, as a result of which, revised pay scales were sanctioned to the Draftsmen of the CPWD notionally from 22.08.1973 and with actual benefits from 16.11.1978. Thereafter, other Draftsmen from different Ministries/Offices of the Government of India approached the Central Administrative Tribunal, Principal Bench, New Delhi separately for similar benefits, which were allowed in some cases. In the meantime, the Ministry of Finance (Department of Expenditure) issued OM No. F.5(59)-E.III/82 dated 13.3.1984 (Annexure A-5) extending the benefits of the Award to Draftsmen working in all Government of India offices as was done in the case of Draftsmen of CPWD, based on the recommendations of a Committee of the National Council, Joint Consultative Machinery. But this benefit was extended notionally w.e.f. 13.5.1982 and actually w.e.f. 1.11.1983.

4. As far as the applicants are concerned, they too were given the benefits in terms of OM of the Ministry of Finance dated 13.3.1984 (supra), vide NBO order dated 14.10.1986, which was, however, subsequently withdrawn on 27.03.1990. The applicants thereupon filed OA No. 15/1994, which was decided in their favour on 24.10.1994 and the



respondents were directed to restore the pay scales given to them prior to the issue of impugned order dated 27.3.1990 along with consequential benefits and any recoveries already made were ordered to be refunded.

5. Consequent upon restructuring of the NBO, the applicants were transferred to the office of the L&DO on 12.10.1992. In 1994 S/Shri Dinkar Rao Kawday and Surinder Sharma, both Draftsmen in the office of L&DO, filed OA No. 2020/1994 *inter alia* praying for grant of revised pay scales notionally w.e.f. 20.08.1973 and with actual benefits from 16.11.1978 as had been granted to applicants in OA No. 608/1990 (dated 10.04.1992), which was allowed by the Tribunal vide its order dated 25.3.1996. Pursuant to this order, the applicants sought re-fixation of pay retrospectively on the same lines in their OA No. 134/1998. However, the Tribunal in its order dated 15.10.1999 did not agree to extend the benefits to them of revised scale notionally w.e.f. 22.08.1973 and actually w.e.f. 16.11.1978, since in their view, the OA suffered from laches. It was, however, decided that the applicants are entitled to the restoration of the revised pay scales w.e.f. 27.3.1990 (the earlier date of withdrawal of the benefit by the respondents), with all consequential benefits.

6. Not satisfied with the order in the said OA No. 134/1998, the present OA 266/2001 was filed. In the order of this Tribunal in OA No.266/2001 dated 6.2.2002, the application was declared as barred and non-maintainable



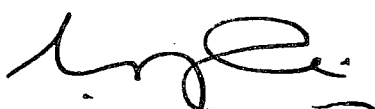
as per the doctrine of *res judicata*. The matter was then agitated in the Hon'ble High Court of Delhi (vide CW No. 903-04/2004) and is now before us for consideration on remand.

7. The case of the applicants is based on the following arguments:-

(i) In order dated 15.10.1999 in OA No. 134/1998, after rejecting the request of the applicants to extend the benefits of revised scales notionally from 22.08.1973 and with actual benefits from 16.11.1978, the Tribunal gave certain directions in Para Nos. 15 & 16 of the order, which needed clarification. However, MA No. 2932/2000, which was filed with this intention, was dismissed *ex parte* with the observation that the applicants sought to re-argue the case by way of this clarification.

(ii) The applicants cannot be denied the benefits of the decision of the Tribunal in the matter of ***Dinkar Rao Kawday & Anr. vs. Union of India & Anr.*** in OA 2020/1994 dated 25.03.1996, as it would amount to hostile discrimination and, therefore, violative of Articles 14 & 16 of the Constitution of India.

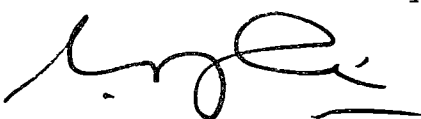
(iii) The request of the applicants in OA No. 134/1998 was denied on grounds of latches. However, the Hon'ble Supreme Court in ***K.C.***



Sharma & Ors. vs. Union of India & Ors.

(Constitution Bench), 1998 (1) AISLJ 54 held that condonation of delay by the Tribunal in a matter of pension, where the appellants had sought relief in the same terms as was granted by the Full Bench of the Tribunal, was not correct.

- (iv) In the same cadre there cannot be two different dates of allowing the pay scale to the same category of persons. It amounts to creating a class within the class of cadre of Draftsman performing the same and similar duties, which is impermissible.
- (v) In their order dated 15.10.1999 in OA No. 134/1998, the Tribunal had categorically mentioned that the benefit of OA No. 2020/1994 decided on 25.03.1996 could not be extended to the applicants because of the latches. However, they failed to appreciate that in terms of the various guidelines provided under the Administrative Tribunals Act and rules framed thereunder, the applicants were required to wait for one year and six months from the date of their first representation after receiving the copy of the judgment (dated 25.03.1996) for redressal of their grievances. It has been further emphasized that in any grievance pertaining to pay scale,



pension etc., the applicants get a fresh cause on every pay day since it gives recurring cause of action.

(vi) The learned counsel for the applicants has brought to our notice the case of **Smt. Urmil Sharma vs. Union of India & Anr.** (supra), a reference to which has been made in the decision of the Hon'ble High Court of Delhi too in their order dated 24.03.2006 in WP (C) NO. 903-904/2004 (supra). In this case relief was provided to the applicants on the basis of the decision of the Tribunal in OA No. 2020/1994 (supra).

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(vii) The learned counsel for the applicants has also brought to our notice the decision of the Tribunal in **K.B. Sehgal & Ors. vs. Union of India & Anr.**, OA No. 2514/2002 dated 15.04.2002, in which similar relief was provided to 66 persons who are working as Draftsman in the Ministry of Surface Transport.

8. The case of the respondents is based on the following grounds:-

(i) The present application is barred by principles of *res judicata* as the relief prayed for by the applicants in the present OA has already been rejected vide judgment dated



15.10.1999 in OA No. 134/1998. While dismissing the application, the Tribunal had made the following observations:

"14. The applicants have sought the application of the revised scales w.e.f. 22.8.1973 and 16.11.1978 as has been extended in the case of Dinkar Rao Kawday and another in OA No. 2020/94 vide decision dated 25.3.1996 of this Tribunal. It is to be noted that the applicants accepted the revised scales w.e.f. 13.5.1982 notionally and actually from 1.11.1983. They did not agitate the matter in the court at the relevant time. Again they did not seek any redressal through this Tribunal even when their counterparts, similarly placed, got the benefit vide decision dated 10.4.1992 of this Tribunal in OA No. 608/90. Further when this Tribunal decided on 25.3.1996 to extend the benefits of revised pay scales in the case of Dinkar Rao Kawday & Anr. in OA No. 2020/94 the applicants failed to approach the Tribunal within one year. They have filed the present OA in January 1998. Their OA suffers from latches. We cannot, therefore, agree to extend the benefit to them of revised scales from 22.8.1973 and 16.11.1978. We cannot also agree to grant them arrears of revised pay scales w.e.f. 27.3.1990 for the same reason. The Hon'ble Supreme Court have overruled granting of arrears in such cases in their judgment in the case of M.R. Gupta vs. Union of India (supra)."

This judgment attained finality, as the applicants never preferred any appeal against it. The applicants then filed MA No. 2932/2000 in OA 134/1998 seeking the same benefit, which too was dismissed vide Tribunal's order dated 29.11.2000 with the following observations:

"The clarification sought for is that the applicants are entitled for the revised scale of Draftsman w.e.f. 1973



notionally and w.e.f. 16.11.1978, actually. In our view the applicants seek to re-argue the case by way of this clarification. The question of granting the revised scale from 1973 notionally and actual benefits from 1978 have already been considered by us in the order, but was not allowed. We do not find any merit in this MA and the MA is, therefore, dismissed."

(ii) OA No. 2020/1994 is applicable to the applicants in that OA alone and was implemented in respect of those applicants only. It was not a judgment *in rem* but a judgment *in personam*.

(iii) The higher pay scale was given to the Draftsmen of CPWD notionally from 22.08.1973 and with actual benefits from 16.11.1978 on the basis of an Arbitration Award. The pay scale of Draftsmen in other Departments was revised notionally from 13.05.1982 and actually from 1.11.1983 as per orders dated 13.03.1984 issued by the Department of Expenditure. As per law, the benefit of an Award given in an Arbitration cannot automatically be applied to persons similarly placed as the original beneficiaries unless the order flowing from it specifically mentions extension of the benefit to similarly placed persons in other Government offices.

(iv) As pointed out in para 14 of the order of this Tribunal in OA No. 134/1998 dated 15.10.1999,



(36)

the applicants accepted the revised scale notionally w.e.f. 13.05.1982 and actually w.e.f. 1.11.1983. They did not agitate the matter at the relevant time.

9. We have heard the learned counsel for the parties and perused the material on record.

10. In terms of the remand order of the Hon'ble High Court of Delhi in WP(C) No. 903-904/2004 dated 24.03.2006, we are required to examine the following specific issue:

Whether or not the petitioners are entitled to the benefit of the revised pay fixation notionally from 22.08.1973 and actually from 16.11.1978, in view of the decision rendered by the Tribunal in OA No. 2233/2000 disposed of on 05.09.2002 (in the case of **Smt. Urmil Sharma vs. Union of India & Anr.**)?

11. It is to be noted that the issue of granting the benefit of the revised pay scale notionally from 22.08.1973 and actually from 16.11.1978 to the applicants, was considered on merit by this Tribunal in OA No. 134/1998 decided on 15.10.1999. In the case of **Smt. Urmil Sharma vs. Union of India & Anr.**, OA No. 2233/2000 (supra), the application was considered in the same context. There are no fresh grounds explored in the OA No. 2233/2000. Moreover, a coordinate Bench is barred from going into the merits of the order passed by another

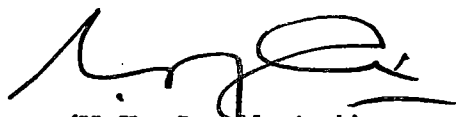


Bench. This was the reason why, in OA No. 266/2001 decided on 6.2.2002, the Tribunal came to the conclusion that the application was barred and non-maintainable on account of the doctrine of *res judicata*. It was specifically mentioned: "Moreover, this Court has also no jurisdiction to act as an appellate court over the decision of the coordinate Bench". While dismissing the application accordingly, the applicants were given the liberty to pursue their grievances in appropriate proceedings in accordance with law.

12. In view of the facts and circumstances mentioned above, we come to the inevitable conclusion that this Tribunal has no authority to pass any fresh order in the matter. However, since several persons in the same category have been provided relief subsequently, Government, as a model employer, may consider the request of the applicants administratively.

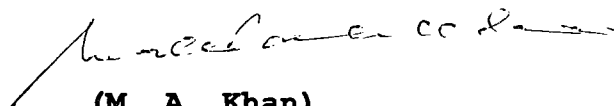
13. In the result, for the foregoing reasons, the OA is dismissed.

14. There will be no order as to costs.



(V.K. Agnihotri)
Member (A)

/na/



(M. A. Khan)
Vice Chairman (J)