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Central Administrative Tribunal
Principal Bench

O.A. 1910/99

New Delhi this the 6 th day of July, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

O.P. Chadha,
S/o late Shri B.N. Chadha,
108, Narang Colony,
Janakpuri,
New Delhi-110058.

... Applicant.

(By Advocate Ms. Manjeet Chawla).

Versus

The Director General (QA),
Directorate of Quality
Assurance (Armaments),
"G" Block Hutments,
Ministry of Defence,
New Delhi.

... Respondent.

(By Advocate Shri K.K. Patel)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the letter issued by the respondents dated 3.3.1998 in which they have referred to their representation dated 8.12.1994 and rejected his request for extension of the benefit of the orders passed by the Tribunal (Bangalore Bench) in OA 181/86.

2. The brief facts of the case are that the applicant, who was working with the respondents and posted as Supervisor Grade-III on 30.7.1952 was promoted to a Gazetted post on 1.2.1968 and retired from service on 30.11.1985 as Principal Scientific Officer (PSO). He relies on a circular issued by the respondents on 4.2.1969 in which it has been stated that a civilian employee with the respondents, who acquires a Degree in Engineering or an equivalent qualification while he is serving in a

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non-gazetted Technical/Scientific Grade, shall have his pay refixed with effect from the date on which he acquires the necessary qualification. He has also referred to the decision taken by the respondents granting one advance increment in the scale of pay on acquiring/enhancing academic knowledge. He has stated that he had sent a representation to the respondents for grant of advance increment in pursuance of the circular dated 4.2.1969 followed by a number of reminders. Ms. Manjeet Chawla, learned counsel for the applicant has submitted that as the applicant was repeatedly making representations, the cause of action has been extended so as to cover the applicant's case regarding claim for grant of advance increment in terms of the circular dated 4.2.1969. She has also submitted that in the impugned letter issued on 3.3.1998 to the representation made by the applicant dated 8.12.1994 the respondents have denied the implementation of the relied upon circular by the applicant only on the ground that as he was not a petitioner in OA 181/86 which had been decided by the Bangalore Bench, he was not entitled to the benefit.

3. The respondents in their reply have agreed that the Ministry of Defence vide their letter dated 4.2.1969 laid down a Scheme for grant of advance increments to an employee, who acquires the prescribed qualification while serving in a non-gazetted Technical/Scientific Grade. The financial benefit was to be allowed from 1.12.1968 to those employees, who had acquired the requisite qualification and from the date of announcement of the results of the examination of those who have attained the qualification after 1.12.1968 (Annexure R-I). These orders were extended by another letter dated 2.6.1971 to those employees who

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possessed the prescribed qualifications at the time of entering in Government service in the non-gazetted Technical/Scientific grade. These benefits were not available to those persons who had received promotion to a Gazetted rank prior to 1.12.1968. In the clarification issued by the respondents dated 5.9.1972, they have stated that the benefit of advance increment is not admissible in the case of non-gazetted Technical/Scientific Grade employees where ~~the~~ Degree is the minimum qualification prescribed under the Rules for that post. They have stated that by letter dated 15.4.1981, a decision had been taken to restore the three advance increments to those non-gazetted employees, who possessed Degree or equivalent and had entered service on the basis of that qualification though the same was prescribed as the minimum qualification for the post for which they have been recruited in compliance with the directions issued by the High Courts of Andhra Pradesh and Karnataka (copies of the orders at Annexure R-5). According to the respondents, the cause of action has arisen to the applicant on 15.4.1981 after the respondents issued the aforesaid circular on which the applicant had made a representation on 6.10.1982. Shri K.K. Patel, learned counsel has submitted that under Section 21 (3) of the Administrative Tribunals Act, 1985, as the cause of action has arisen in this case three years prior to the coming into effect of the Act in November, 1985, this Tribunal has no jurisdiction to entertain the matter which is also barred by limitation. He has also pointed out that the applicant has not even cared to file an application for condonation of delay. He has also submitted that the applicant himself has also referred to the claim for the benefit of advance increments in accordance with their letter issued on

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4.2.1969 w.e.f. 1.2.1968. The applicant was promoted to a Gazetted post in February, 1968, that is prior to 1.12.1968. Taking into account the impugned orders and the facts, he has submitted that without even a prayer for condonation of delay the O.A. is hopelessly barred by limitation as well as the fact that the Tribunal has no powers to entertain the matter which has arisen prior to the three years of setting out of the Tribunal in November, 1985. He has, therefore, prayed that the O.A. is not maintainable and may be dismissed.

4. Learned counsel for the applicant has relied on the observations of the Tribunal in *Devi Prasad Vs. Union of India & Ors.* (1993(25) ATC 524). She has submitted that the only ground taken by the respondents in the impugned letter dated 3.3.1998 for not extending the benefit of advance increment to the applicant who she states is otherwise entitled is only because that he was not ^{a 12} the petitioner in the case which was filed by other similarly situated persons in the Bangalore Bench of the Tribunal. Learned counsel for the applicant has, therefore, submitted that taking into account the fact that the respondents have rejected the applicant's representation dated 8.12.1994, after a number of years on 3.3.1998 and this O.A. has been filed within one year thereafter on 9.9.1999, the same is not barred by limitation.

5. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

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6. It is seen from the impugned letter dated 3.3.1998 that the respondents have chosen to give the reply dated 8.12.1994 after more than three and half years by a speaking order. In this letter, they have stated the reason that as the applicant was not petitioner in OA 181/86 which was decided by the Bangalore Bench of the Tribunal, he was not entitled to the same benefits as given to the applicants in that case. The decision of the Bangalore Bench of the Tribunal is dated 1.10.1986 (Annexure A-8). From this, it is noticed that the application had been transferred to the Tribunal from the Karnataka High Court. In Para 3 of the order dated 1.10.1986, the Tribunal has noted the submission made by the learned counsel for the respondents that instructions had been issued to extend the benefit of the judgment of the Andhra Pradesh High Court dated 15.11.1974 to all persons similarly placed whether they were petitioners before the Andhra Pradesh High Court or not. It is further noted that the request of one of the applicants in that case for grant of three increments as in the case of the petitioners before the Andhra Pradesh High Court had been rejected by the respondents, on the ground that his request was belated. It was observed in that case that Government having agreed in principle that the benefit of the judgement of Andhra Pradesh High Court should be made available to all persons in similar circumstances, "it is unkind cut to deny the same on a mere technical ground of delayed application". These observations of the Tribunal are fully applicable to the facts of the present case. The respondents themselves have chosen to give a belated reply

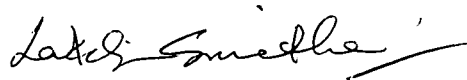
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to the representation made by the applicant dated 8.12.1994 after more than three years in which they have stated the same ground which has not found favour with the Tribunal in order dated 1.10.1986 in OA 181/86. The facts also show that the respondents have been extending the benefits accruing to the concerned employees in terms of their earlier letters issued in 1968-69 followed by their letter dated 15.4.1981 and even after 1986 in implementation of the Tribunal's order, following the decision of the Andhra Pradesh High Court on 15.11.1974. In the circumstances of the case, the reason given by the respondents in their letter dated 3.3.1998 in rejecting the applicant's representation to be given the same benefit as given to other similarly situated persons is not tenable and is accordingly rejected.

7. In the facts and circumstances of the case, the plea of limitation and jurisdiction taken under Section 21 of the Administrative Tribunals Act, 1985 is also untenable. In the impugned letter dated 3.3.1998, the respondents themselves have given a reasoned reply to the representation made by the applicant on 8.12.1994, which for the reasons given above cannot be accepted. The O.A. having been filed within one year of the impugned letter dated 3.3.1998 cannot, therefore, be held to be barred by limitation or not maintainable as contended by the learned counsel for the respondents. ^{However 18-} ~~This~~ actual claim for monetary benefits will, ¹⁸⁻ ~~however~~, be subject to the law of limitation as held by the Supreme Court in M.R. Gupta Vs. Union of India & Ors. (1995 (5) SCALE 29).

8. In the result, for the reasons given above, the O.A. succeeds and is allowed with the following directions:

"Respondents to consider the case of the applicant for grant of advance increment(s) in terms of the relevant circular dated 4.2.1969 and letter dated 15.4.1981, keeping in view the judgements of the Andhra Pradesh High Court/Tribunal, referred to above, within two months from the date of receipt of a copy of this order. He shall be entitled for extension of the same benefits as given to the applicants in OA 181/1986. However, taking into account the facts of the case, the applicant shall be entitled for payment of arrears of the increment(s) only from the date of filing of the O.A., i.e. 30.8.1999 and notional fixation of pay earlier with consequential benefits in accordance with law and rules. No order as to costs.



(Smt. Lakshmi Swaminathan)
Member(J)

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