

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

RA 10/2002  
in  
OA 946/1998

AA

New Delhi this the 25th day of November, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).  
Hon'ble Shri Govindan S. Tampli, Member (A).

In the matter of:

Govt. of NCT

1. Secretary, Medical Govt. of NCT Delhi  
Old Sectt. Delhi,  
now, Delhi Sachivalaya,  
ITO New Delhi.
2. The Director,  
Guru Nanak Eye Centre,  
New Delhi  
Maharaja Ranjit Singh Marg,  
New Delhi.
3. Dy. Medical Superintendent (M),  
Guru Nanak Eye Centre,  
New Delhi  
Maharaja Ranjit Singh Marg,  
New Delhi.

..Review Applicants/  
Respondent

(By Advocate Shri Vijay Pandita)

Versus

1. Mrs. Anju Jain,  
W/o Shri P.K. Jain,  
R/o Sector-15, H.No.1050,  
Vasundhara, Ghaziabad, U.P.

Presently working at  
Guru Nanak Eye Centre  
Maharaja Ranjit Singh Marg,  
New Delhi.

... Respondent/  
Applicant

(By Advocate Shri P.S. Mahendru)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J).

RA 10/2002 in OA 946/1998 has been filed with MA  
67/2002 praying for condonation of delay in filing the  
review application by the respondents. In the review

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application, they have submitted that admittedly a mistake has been committed by the Department, praying for review of the order passed by the Tribunal dated 9.11.2000 in OA 946/1998. (AS)

2. We have heard Shri Vijay Pandita, learned counsel for the review applicants and Shri P.S. Mahendru, learned counsel for the respondent/original applicant in OA. The applicant was offered the post of Technical Assistant (Ophthalmology) vide order dated 5.12.1987 in the pay scale of Rs.1400-2600 (revised) which was earlier in the pay scale of Rs.425-700 (pre-revised). We find from Paragraph 4.1 of the reply filed by the respondents to the O.A. that they have submitted these facts, including the fact that in the offer of appointment made to the applicant to the post of Technical Assistant (Ophthalmology), the pay scale was erroneously written as Rs.1400-2600 instead of Rs.1400-2300. They have further submitted that the rates of increment in both the scales are the same and the applicant had earned 9 increments before it came to their notice that the wrong pay was given. When the case was finally heard and disposed of by order dated 9.11.2000, none had appeared for the respondents, although the clerical mistake, as contended by the respondents, has been noted in the judgement/order.

3. Learned counsel for the review applicants has relied on the judgement of the Tribunal in Jagmohan Vs. Union of India, Ministry of Defence (1989 (11) ATC 616), wherein it has been held that a liberal approach must be followed in condonation of delay, taking into

P.C

account the manner in which the Union of India functions. He has also relied on the judgement of the Supreme Court in Ashok Kumar Pattanaik & Ors. Vs. State of Orissa and Anr. (1998 (6) SCC 176). Learned counsel for the review applicants has submitted that in the circumstances of the case, since the post of Technical Assistant (Ophthalmology) itself carried only the pay scale of Rs.1400-2300, the applicant cannot be given the pay scale of Rs.1400-2600 which has been earlier given erroneously to her. He has referred to Annexure R-1 to the additional affidavit filed by him dated 5.7.2002 giving the pay scale (pre-revised) of the post.

4. We have heard Shri P.S. Mahendru, learned counsel for the respondent and also seen the replies. According to the learned counsel, the review applicants have introduced a new plea and the RA is barred by limitation. He has also denied that there has been any typographical or clerical error in mentioning the scale of pay, in which the applicant was appointed. He has relied on the judgement of the Punjab and Haryana High Court in Bhupinder Singh Vs. State of Haryana & Ors. (AIR 1968 (P&H) 406). The learned counsel has contended that the affidavits filed by the review applicants are not in proper form or in accordance with the provisions of the Civil Procedure Code which is mandatory. This argument can be straightway rejected, having regard to the provisions of Section 22 of the Administrative Tribunals Act, 1985. He has also relied on the judgement of the Hon'ble Supreme Court in Subhash Vs. State of Maharashtra & Anr. (JT 2001 (10) SC 339) and has submitted that the review application should be rejected

18

as the grounds taken by the review applicants do not fall within the scope of such an application. He has also submitted that the M.A. for condonation of delay in filing the review application should also be rejected as no grounds have been given for the delay. (AT)

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

6. Having regard to the stand taken by the review applicants in the reply filed by them to O.A. itself, it is seen that they had committed an error in the offer of appointment, by mentioning the pay scale for the post of Technical Assistant (Ophthalmology) as Rs.1400-2600 instead of Rs.1400-2300. No doubt, the respondents have taken an inordinately long time to discover their mistake but the Rules cannot be ignored. As held by the Hon'ble Supreme Court in Subhash's case (supra), the scope of review application is very limited under Section 22(3)(f) of the Administrative Tribunals Act, 1985 which is the same as vested in a civil court under Order 47 Rule 1 CPC. In the present case, we are not re-examining the matter as if it is an original application or an appeal but are conscious of the limited scope of a review application. It is relevant to note that in the review application, they have submitted that there are other 253 Technical Assistants who are working in the pay scale of Rs.1400-2300 which is the scale prescribed under the Rules. The pay scale prescribed for the post of Technical Assistant (Ophthalmology), to which post the applicant had been appointed in 1987 was in the

pay scale of Rs.425-700 (pre-revised) which was revised to Rs.1400-2300. This position has not been contested by Shri P.S. Mahendru, learned counsel although he has submitted that no show cause notice was issued to the applicant. In the circumstances of the case, we are unable to agree that a new plea has been taken by the review applicants. In this view of the matter, the review application is entitled to succeed on merit, as the applicant in the O.A. cannot get benefit from an erroneous order.

(A8)

7. In the above facts and circumstances, in the interest of justice, we consider that this is an appropriate case where the prayer for condonation of delay should be allowed. Accordingly, MA 67/2002 is allowed.

8. Accordingly RA 10/2002 is allowed and the order dated 9.11.2000 in OA 946/98 is recalled.

9. List OA 946/1998 on 2.12.2002.

(Govindan S. Tampi)  
Member (A)

SRD

(Smt. Lakshmi Swaminathan)  
Vice Chairman (J)

*Lakshmi Swaminathan*