

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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D.A. No. 2371/98/SC

Date of Decision: 9.9.99.
XXX-1999X

Shri Manoj Kumar & Ors.

...Applicants

(By Advocate Shri Deepak Verma)

Versus

Union of India & Ors.

...Respondents

(By Advocate Shri N.S. Mehta)

CORAM:

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VC (J)

HON'BLE MR. JUSTICE SHANTA SHAstry, MEMBER (A)

1. TO BE REFERRED TO THE REPORTER ~~OR NOT?~~ YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?

Carry
(V. Rajagopala Reddy)
Vice-Chairman (J)

Cases referred: AIR 1996 SC 668
(1996) 6 SCC 267.

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2371/98

New Delhi this the 9th day of September, 1999.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman(J)
Hon'ble Mrs. Shanta Shastry, Member (A)

1. Shri Manoj Kumar
2. Mrs. Usha Bhatia
3. Mrs. Rajini Sehgal
4. Mrs. Jai Devi
5. Mrs. Sushila Bhatia
6. Mrs. Savitri Devi
7. Mrs. Chanchal Kumari
8. Mrs. Shashi Puri
9. Mrs. meena Devi
10. Mrs. Yashoda Joshi
11. Mrs. Sarita Jain
12. Mrs. Rani Malhotra
13. Mrs. Claret Mary Ekka
14. Mr. Lala Ram Dhantwal
15. Mr. Raj Singh Sehrawat
16. Mr. Naval Kishore
17. Mr. Danvir Singh
18. Mr. Jai Parkash Vanvari
19. Mr. Vimal Roy
20. Mr. Harjit Singh
21. Mr. J.K.S. Yadav
22. Mr. Rajinder Kumar Joshi
23. Mr. Rajiv Juneja
24. Mr. Gulshan Kumar
25. Mr. Iqbal Singh
26. Mr. Depender Singh

...Applicants

(By Advocate ^{Mrs. Jaymala Pappi, Sr.} Shri Deepak Verma)

-Versus-

1. The Special Secretary & Director General, National Informatic Centre, Planning Commission, A Block, CGO Complex, Lodhi Road, New Delhi.
2. The Secretary, Dept. of Expenditure, Ministry of Finance, North Block, New Delhi.
3. The Deputy Secretary (Admn. IV), Planning Commission, Yojana Bhawan, New Delhi.
4. Assistant Director (Amdn.), National Crime Records Bureau, MHA, East Block 7, R.K. Puram, New Delhi.

... Respondents

(By Advocate Shri N.S. Mehta)

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O R D E R

By Reddy, J.

In the present case the applicants seek to refix the pay in the Electronic Data Processing (EDP) in the pay scale of Rs.1400-2300 w.e.f. 1.1.86 with all consequential benefits.

2. The facts are not in dispute. The applicants who are 26 in number were working as Data Entry Operators (for short DEOs) in the Computer Services Division (CSD) of the Planning Commission. They were merged with the posts of the National Informatics Centre (NIC) under a Government policy w.e.f. 1.11.88 in the pay scale of Rs.950-1500/- . After merger they were placed as Tradesmen in the pay scale of Rs.1150-1500. A revised EDP scale in pursuance of the proceedings dated 11.9.89 were introduced in NIC by order dated 13.8.90 revising the pay scale at Rs.1400-2300. The implementation of the revised scale came into force w.e.f. 11.9.89. This scheme was challenged in a number of petitions before the various Benches of the Central Administrative Tribunal, seeking revision of pay scales w.e.f. 1.1.86. The Principal Bench also allowed the OAs and granted the benefit of the revised scale of pay w.e.f. 1.1.86. All the applications were allowed and the applicants therein were given the EDP pay scale w.e.f. 1.1.86. Accordingly these pay scales have been implemented w.e.f. 1.1.86 in various organisations under the Ministry of Planning but the applicants were not given such benefit.

3. The learned counsel for the applicants, therefore, seeks the extension of the benefit of the judgement delivered by the Principal Bench in OA-955/97 dated 9.1.98 and similar other cases

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wherein the Tribunal stated that the benefits should not be confined to the parties of the case but the entire department should be benefitted by the Rule. In spite of such a clear decision the benefit was confined only to the applicants in the said cases.

4. The respondents do not dispute that in various other cases the benefit was extended w.e.f. 1.1.86 to the applicants in those cases and that the applicants herein are also entitled to the revised pay scales w.e.f. 1.1.86, as prayed for. But it is their contention that this OA is barred by limitation. The learned counsel for the respondents, therefore, contends that the OA has to be dismissed as not maintainable. He relies upon the decision of a Coordinate Bench of this Tribunal, which would be considered in detail hereinbelow.

5. The learned counsel for the applicants relying upon **M.R. Gupta v. Union of India**, AIR 1996 SC 668 contends that there is no limitation in cases where pay scales are challenged, as other employees similarly placed would be getting higher pay whereas the applicants are getting lesser pay packet every month. Hence, they are entitled for the pay based on correct fixation as per law. The revised scales are given to the applicants w.e.f. 11.9.89, whereas others were given w.e.f. 1.1.86, thus subjecting them to discrimination.

6. It is no doubt true that the date of implementation of the scheme was canvassed in various courts and before the Tribunal and favourable orders were passed granting the benefits of the revised scheme w.e.f. 1.1.86. The applicants who are similarly placed, are also entitled for extension of the above benefits

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w.e.f. 1.1.86. On merits of the case there is no dispute. The applicants are sought to be nonsuited only on grounds of laches and limitation.

7. The question that has to be decided in this case is whether the OA is within the period of limitation and not hit by Section 21 of the Administrative Tribunals Act, 1985. It is not in doubt that the period of limitation started in 1990 as the impugned order was passed on 13.8.90. It is contended that the bar of limitation is not attracted in the present case as the matter pertains to the pay packet that the applicants receive every month and it is thus a continuous cause of action. It is also contended that in view of the decisions of several courts the applicants who are similarly placed are entitled to the extension of the said benefits.

8. In OA-955/97 where the applicants were Data Processing Assistants and Data Entry Operators Grade 'B' in the National Sample Survey Organisation, Department of Statistics, Ministry of Planning, Government of India, the Principal Bench of the Tribunal in its order dated 9.1.98 directed to grant new pay scale w.e.f. 1.1.86 instead of 11.9.89, thus extending the benefits granted in the decision in OA-655/96 by its order dated 14.8.96. Again in OA1759/97 and OA-1599/97 the Principal Bench of the Tribunal, directed to pay the scale w.e.f. 1.1.86. In the latter case the Tribunal also considered the question of limitation and held that as similarly placed persons have been receiving the pay packet from 1.1.86, similarly placed persons should also receive their pay at the same rates. Hence, such a relief should be considered as continuous cause of action and they should come within the ambit of the ratio laid down by the Supreme Court in

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M.R. Gupta's case (supra). Hence, the period of limitation could not attract the pay revision. However, in OA-495/98 disposed of by an order dated 6.3.98 the Principal Bench of the Tribunal also went into the question of limitation with regard to the revision of pay scales to the Scientific Officers Grade SB whose pay was revised by an order dated 3.9.90 held that the applicant cannot seek to overcome the bar of limitation, as the orders were passed way back in 1990. The decision in M.R. Gupta's case (supra) was, however, not considered by the Bench. The learned counsel for the respondents strongly placed his reliance upon the judgement of the Tribunal in the latest case, namely OA-495/98. The learned counsel also placed reliance upon the decision in **State of Karnataka & Ors. v. S.M. Kotrayya & Ors.**, (1996) 6 SCC 267. This decision was also noticed by the Bench in OA-495/98. In this case the Supreme Court while considering the validity of the explanation for condoning the delay under Section 21 of the Administrative Tribunals Act, 1985 held that coming to know of the relief granted by the Tribunal in another case and filing the OA immediately thereafter was not a proper explanation at all. The Supreme Court observed that what was required under sub Sections (1) and (2) of Section 21 was as to why they could not avail of the remedy of redressal of the grievance before the expiry of the period prescribed under Section 21 (1) and (2) of the A.T. Act. In the case on hand no explanation was even attempted to be given why the OA could not be filed within the prescribed period of limitation. The entire effort was to explain how and why they approached the Tribunal, which was held in Kotrayya's case (supra) as not a proper explanation for the delay. Hence, we have no difficulty in holding that the OA is barred by limitation. But is the OA to be thrown out on this ground?

9. This question need not detain us any longer, as the identical question has come for adjudication in M.R. Gupta's case

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(supra). The appellant in this case claimed that fixation of his pay on his joining service in the Railways was incorrect and that he was entitled to fixation of pay at one increment which he would have drawn on 1.8.78. When his claim was rejected, he filed an application before the Tribunal, seeking proper fixation of his pay. The Tribunal, however, upholding the respondents objection based on the ground of limitation, dismissed the OA, as time barred. When the matter came up before the Supreme Court, the Supreme Court held thus:

"if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.78 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."

The Supreme Court also stated that:

"The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules."

10. Hence the OA cannot be thrown out on the ground that it is barred by limitation. Only the applicant's claim for recovery of arrears calculated on the basis of difference in the pay would be time barred and that will not be recoverable. But the applicants are entitled to proper fixation of their pay w.e.f. 1.1.86 till 11.9.89 when they were admittedly given the revised

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pay scale. In view of the ratio of the aforesaid decision of the Supreme Court it should be held that the decision of the Principal Bench in OA-1599/97 dated 29.5.98, holding that the applicants therein are entitled for consequential monetary benefits flowing from such refixation and decision in OA-495/98 dated 6.3.98, dismissing the OA on the ground of limitation, are per incuriam.

11. The OA is partly allowed and the respondents are directed to fix the pay of the applicants w.e.f. 1.1.86 in the pay scale of Rs.1400-2300. It is made clear that the applicants are not entitled for any arrears for the period from 1.1.86 to 11.9.89 or any monetary or other consequential benefits in view of such fixation of pay w.e.f. 1.1.86. No costs.

Shanta
(Smt. Shanta Shastry)
Member (A)

Reddy
(V.Rajagopala Reddy)
Vice-Chairman(J)

'San'.