

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2529/96

(12)

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 5th day of May, 2000

1. Central Govt. Staff Car Drivers' Association through its General Secretary Mr. S.K.Roy, G-86, Moti Bagh-II New Delhi - 110 021.

2. Bikram Singh
s/o Shri Umed Singh
Aged 52 years
r/o 348 Sector XII
R.K.Puram
New Delhi - 110 022. ... Applicants

(By Shri D.C.Vohr, Advocate)

vs.

Union of India through
the Secretary
Dept. of Personnel & Training
Ministry of Personnel, Public
Grievances & Pensions
North Block
New Delhi - 110 011. ... Respondent

(By Shri S.Mohd. Arif, Advocate)

O R D E R (Oral)

By Reddy. J.

The first applicant is the Central Government Staff Car Drivers Association represented by its General Secretary and the second applicant is one of the Staff Car Drivers. The applicants seek declaration that they are entitled to the same promotional scheme in the graded structure as available for the Staff Car Drivers for the Ministry of Railways.

2. The applicants, initially, filed OA No.2957/91 before the Principal Bench, CAT for the relief to devise the scheme of graded pay structure as adopted by the Ministry of Railways in the Grade of Rs.950-1500, Rs.1200-1800 and Rs.1320-2040 for the



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Staff Car Drivers. At the time of filing the OA, the above three grades were available in the Railways for the Staff Car Drivers. The said OA was allowed directing the respondents for the grant of three grades as prayed for. Accordingly, the respondents had revised the Central Government Staff Car Drivers pay in the above three grades on 30.11.1993.

3. It is stated that pending the said OA, the Ministry of Railways had introduced yet another grade for Master Craftsman/Head Staff Car Driver of Rs.1400-2300 in its OM dated 25.9.1992. Though the Hon'ble Tribunal, while disposing of the OA, had noticed the said OM, the Tribunal had directed for allowing only the three grades earlier existing, as prayed for in the OA. It is the grievance of the applicants that the respondents having adopted the pay structure available in the Ministry of Railways for the Staff Car Drivers, in toto, there was no reason for not allowing the grade allowed in the OM dated 25.9.1992 of Rs.1400-2300, to the applicants. It was stated that the applicants had been agitating this matter in the Joint Consultative Machinery (JCM) meetings. But as no favourable response having been received, the Association has demanded the same by its representation dated 20.12.1995, in parity with the grades existing in the Ministry of Railways. This representation has been rejected on 20.2.1996. The applicants kept on making representations thereafter but as that was no favourable response from the respondents and after exhausting of departmental remedies the applicants, comprising of 2500 members having left no remedy, filed the present OA.



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4. The learned counsel for the applicant Shri D.C.Vohra submits that as per the ratio of the judgment in the earlier OA, the respondents should have been allowed the scale of Rs.1400-2300 which has been introduced subsequent to the filing of the earlier OA. A clear finding was given by the Tribunal that the applicants were entitled to the same graded structure of pay scale of Staff Car Drivers in the Railways. Hence, it is inescapable for the respondents except to allow their claim.

5. The respondents have filed the reply and contested this matter. The learned counsel for the respondents, Shri S.Mohd. Arif submits that the OA is not only barred by limitation but it is also barred by res-judicata as the earlier OA filed by the applicants being for the same relief as prayed for in the present OA and as the same has been disposed of on merits, however, without allowing the present scale claimed by the applicants, the applicants cannot reagitate the same question in the present OA. It is further stated that as per the direction of the Tribunal the respondents had granted the three scales which were existing to the Staff Car Drivers in the Railways. It is further argued that if the applicants were aggrieved by the earlier Judgment, they should have either filed a review petition or questioned the same in the higher forum, as they have not done so, the judgment has become final and it cannot be reagitated in the present OA.

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6. We have carefully considered the pleadings as well as the arguments advanced by the counsel on either side.

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7. The first contention, with regard to limitation, has to be first disposed of. The contention of the learned counsel for the respondents is that the Grade of Rs.1400-2300 has been introduced in the OM dated 25.9.1992 but Tribunal in its wisdom has not allowed the same, hence, the applicants should have filed the OA within the period of limitation as permitted under Section 21 of the Administrative Tribunals Act, 1985. Hence, it is contended that the OA filed in 1996 is clearly time barred. We do not agree. It should be noticed that the OM dated 25.9.1992 allowing the scale of Rs.1400-2300 to the Railway Staff Car Drivers is not an adverse order. In a sense, it was an order in favour of the applicants and rightly the Association was hopeful that as per the ratio of the judgment of the earlier OA, the respondents would grant the said grade to the applicants also as was done in respect of other grades. When it was not allowed, they made certain representations in 1996 and when they were rejected they filed the present OA, within the period of limitation from the date of rejection of representation. The adverse order therefore is the date of the rejection of the representation, i.e., 22.2.1996. We are therefore, of the view that the limitation is not attracted, and the OA is not barred by limitation. The objection in this regard is rejected.



8. The main contention is as regards the resjudicata. Prima-facie, it appears that the contention is plausible but on a close examination of the pleadings, we find that there is no substance in the contention.

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9. In this connection, it is necessary to read certain relevant portions of the Judgement in OA 2957/91 dated 4.1.1993, wherein the Tribunal had stated that:

"In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have requested for a direction for setting aside/modifying the respondents' O.M. dated 30.9.1991 and a direction to devise promotional scheme and graded structure for staff car drivers as adopted by the Ministry of Railways whereunder the grades of Rs.950-1500, 1200-1800 and 1320-2040 have been specified for the staff car drivers in the Ministry of Railways."

10. Thus, the relief claimed by the applicants was no doubt, the same relief, namely, to devise promotional scheme and graded structure for staff car drivers as adopted by the Ministry of Railways. But, it is important to notice, only three grades existed at that time, i.e., Rs.950-1500, Rs.1200-1800 and Rs.1320-2040, the applicants had asked for the three grades to be allowed to them.

11. It is true that, pending the OA, the OM dated 25.9.1992 has been passed introducing the 4th scale, i.e., the present scale of Rs.1400-2300, claimed by the applicants and the Tribunal has also noticed said OM and the higher scale and held that:

"The graded structure provides the scales of Rs.950-1500, 1200-1800, 1320-2040 and 1400-2300. This graded structure has been given by the Ministry of Railways by

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treating the staff car drivers as skilled category, skilled grade II category, skilled Grade-I category and Master Craftsman. The posts are distributed in various grades in the structure according to some ratios prescribed by the Ministry of Railways. We do not find any difference in the type of work done by the staff car drivers in the Ministry of Railway than that done by the staff car drivers in other Ministries. There is no difference in the recruitment rules, the content of job to be performed and other relevant factors. No doubt, there can be difference in the pay scales if the amount of physical or mental work entails different quality of work, some more sensitive, some requiring more tact, some less; it varies from nature and culture of employment but we fail to decipher any such difference. We concede that equation of posts, and equation of pay are matters primarily for the Executive (Government) and expert bodies like the Pay Commission and not for courts but we must hasten to say that where all things are equal i.e. where all relevant considerations are the same, persons holding identical posts may not be treated differential in the matter of their pay merely because they belong to different departments. There must be an intelligible basis in regard to any differentiation made. It has also to have a rational nexus with the object sought for, Government must be a model employer and it cannot take advantage of its dominant position. Any unreasonable discrimination has to be removed and where all things are equal no discrimination should be made on the ground of there being different departments."

12. Thus, the above is the ratio in the Judgment and as per the said ratio the Tribunal had given a clear finding that the Staff Car Drivers in the Central Government are entitled for the same graded structure as is available in the Railways to the staff car drivers, namely, Rs.950-1500, Rs.1200-1800, Rs.1320-2040 and Rs.1400-2300. However, while disposing of the OA the Tribunal directed to grant the three grades, i.e., Rs.950-1500, Rs.1200-1800 and Rs.1320-2040 as prayed for. It is, therefore, seen that the Tribunal could not have granted the 4th



scale, though the applicants are also entitled for it as the relief claimed by the applicants in the OA was limited to grant of the scales. Mr. S.Mohd. Arif, learned counsel for the respondents, vehemently contends that the applicants should have amended the OA, seeking the relief for the payment of the 4th grade. It is true that the applicants were entitled to have amended the OA. It is stated in the OA that the respondents had wrongly denied to the members of the applicant-1/association, their fundamental right of parity of pay scales when their duties were identical and the method of recruitment is the same ~~agd~~ held by the Tribunal. Hence, they have agitated this matter before the JCM meetings for total parity of the scales. This explanation may be acceptable or may not be acceptable for not amending the OA. But the issue in question is whether the earlier OA operates as resjudicata in the present OA. In view of the above factual material, as the earlier OA was filed only for the existing graded structure of three grades and the present OA is for the relief of granting of the 4th pay scale which has been subsequently allowed by the Railways, subsequent to the filing of the earlier OA, and the said relief was not granted in the earlier OA, we are of the firm view that the earlier OA does not operate as resjudicata. This objection is, therefore, wholly misconceived and hence rejected.

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13. The next point that arises for consideration is whether the applicants are entitled for the scale of Rs.1400-2300 as was given to the Master Craftsman/Head Staff Car Driver in the



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Railways. Since the Tribunal in the earlier case has given a clear finding that the applicants were also entitled for this grade, as per the same graded structure as was available in the Railways and as the Tribunal has also given a finding that there was no difference between the Staff Car Drivers in the Railways and the work done by the Staff Car Drivers in other Ministries and that there was also no difference in the recruitment rules and the persons holding both the points are identical, could not be differentiated in the matter of pay scales merely because they belong to different departments, we are of the view that on the basis of the above ratio of the Tribunal, the applicants' claim has to be allowed. We are not unaware of decision of the Supreme Court in Union of India Vs. P.V. Hariharan, 1997 SCC (L&S) 838 wherein the Supreme Court held that "Unless, a clear cut case of hostile discrimination is made out, there should be no judicial interference with pay scales fixed by the Government on the recommendation of Pay Commission." Now, there is a hostile discrimination between the same set of employees under the same Government, it can be corrected by the Tribunals in the exercise of the judicial review. In the present case as the Tribunal has found in OA No.2957/91 dated 4.1.1993 that there was a hostile discrimination, and on that basis the Tribunal has come to the conclusion that the applicants were also entitled for the same graded structure of pay scales as is allowed in the Railways, the OA should succeed.

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14. The respondents are directed to grant the applicants the pay scale of Rs.1400-2300 for the Master Craftsman/Head Staff Car Driver, presently existing in the Railways, from the date of filing of the OA and to grant arrears and to allow consequential benefits. The respondents shall implement the order within a period of three months from the date of receipt of a copy of this order. The OA is accordingly allowed. No costs.

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Shanta
(SMT. SHANTA SHASTRY)
MEMBER(A)

Om Rajagopal Reddy
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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