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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1137/94

New Delhi this the 28th Day of October, 1994.

Hon'ble Mr. B.N. Dhoundiyal, Member(A)

1. Shri M.L. Mahna,
2. Kiran Vihar,
Delhi-2.

2. Shri Jagan Nath,
C-8/26, Sector-8,
Rohini, Delhi-85.

Applicants

(through Sh. U.S. Bisht, advocate)

versus

1. Union of India; through
Secretary, Ministry of Defence,
New Delhi-11.

2. Engineer-in-Chief's Branch,
Kashmir House, DHQ PO.,
Rajaji Marg,
New Delhi-11.

3. C.A.O. & Jt. Secretary,
Ministry of Defence,
C-II Hutments,
New Delhi-11.

Respondents

(through Sh. V.S.R. Krishna, advocate)

ORDER(ORAL)

delivered by Hon'ble Mr. B.N. Dhoundiyal, Member(A)

There are two applicants in this O.A.

Applicant No.1 (Sh. M.L. Mahna) was a Principal Barrack Stores Officer in the E-in-C Branch from 6.6.1988 to 31.12.1992 till his retirement on 31.12.1992 in the pay scale of Rs.3700-5000. The second applicant (Sh. Jagan Nath) who was a member of the cadre of Administrative Officer and served as Senior Administrative Officer in the E-in-C Branch from 6.5.1985 to 24.11.1988 and as Principal Administrative Officer w.e.f. 25.11.1988 till his retirement on 30.9.1989. They are aggrieved by the letter issued by the Engineer in Chief's Branch on 21.3.1994 informing them their case for grant of

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special pay was taken up with the Ministry of Defence but it ~~can~~ not been agreed to till the S.L.P. in a similar case filed in the Supreme Court is disposed.

The brief facts of the case are these. In pursuance of the recommendations of the 3rd Pay Commission, the Ministry of Defence vide O.M. dated 20.8.1975 had issued orders granting special pay at specified rates to the officers of class-I non technical, technical and engineering services in Defence Establishments when they were posted to headquarters organisations. Initially this special pay was given to the officers belonging to the cadre of Barrack officers/administrative officers. However, by a subsequent order dated 6.8.1976, issued by the C.G.D.A., it was clarified that this special pay was admissible to technical and engineering officers of organised i.e. class-1 service ^{only}. This led to filing a writ petition (CWP 176/79) in Delhi High Court by some officers of these two cadres in November, 1978 which was allowed by a judgement dated 3.9.1980. By a decision taken vide Ministry of Defence letter dated 14.5.1991, the payment of special pay was limited to the applicants in CWP No.176/79. These instructions were again reiterated in the Ministry of Defence letter dated 9.6.1982 (R-5). This led to filing of another writ petition No. 887/83 in the High Court of Delhi. The writ petition was allowed vide judgement dated 11.7.1984 in which these instructions were quashed and the respondents were directed to give special pay to the applicants. The Union of India filed L.P.A.No.121/84 against the above order which

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was dismissed vide judgement dated 23.8.1991 by the High Court of Delhi observing inter alia that Government should follow uniform policy and once the judgement of the High Court involving the same points had become final, the Government should apply the principle laid therein to all similar cases. Vide O.M. dated 8.5.1992, sanction was issued for grant of special pay to only the applicants who had gone to the High Court. This led to a number of representations being filed. It is understood that a number of cases were filed in the various Bench of this Tribunal and one such case OA-2803/92 (U.S. Bisht Vs. U.O.I. & Ors.) was decided by this Tribunal on 31.1.1994.

I have heard the learned counsel for the parties and perused the records. The learned counsel for the respondents has contended that if the applicant is aggrieved by the order dated 21.3.1994, he has not made a specific request to quash it and also the applicant had submitted his representation for extension of the benefit of the High Court judgement dated 13.12.1991. They should have come to this Tribunal within six months thereafter and the application ^{in which} has been filed on 27.5.1994, is, therefore, time barred. Repeated representations will not extend the period of limitation. He also argued that the issue ^{is} whether the cadre of Barrack officers and Administrative Officers belongs to any organised service is under consideration of the Hon'ble Supreme Court in S.L.P. against the judgement of this Tribunal in OA-211/86 and 498/86 (A. Lakshminaryana & Ors. Vs. U.O.I.) in which an ad interim stay had

been granted on 15.4.1994. Another S.L.P. has been filed in the Hon'ble Supreme Court on 20.8.1993 against the judgement of 'this Tribunal relating to grant of headquarter special pay to one of the SDSO. In view of these developments, the disposal of this O.A. should be postponed till the decision of the Supreme Court is available.

The learned counsel for the applicants has argued that the applicants could not approach the Tribunal without exhausting all the remedies available to them. On the basis of their representation, their case was recommended by the Engineer & Chief (Personnel), Ministry of Defence on 24.12.1992 and only after this recommendation was rejected by the order dated 21.3.94, they had approached the Tribunal. A reading of the order dated 21.3.1994 also shows that the reason given for not grant of special pay is that S.L.P. in a similar case filed in the Hon'ble Supreme Court is yet to be disposed of. As regards not challenging the order dated 21.3.1994, he stated that if the reliefs prayed for is the extension of the benefit of the judgement of the High Court and if this is granted, specific orders need not be quashed. He also contended that so far as the question of grant of special pay is concerned, no stay has been granted by the Supreme Court. In their judgement dated 3.9.1980, the following observations were made by the learned High Court:-

"The Government should follow uniform policy and once the judgement of the High Court involving the same points had become final, the Government should

apply the principle laid therein to all similar cases. It is not disputed that the points involved in the present writ petition are same as were in the earlier writ petition. Petitioners here also occupy the same position as the petitioners in the earlier writ petition, though the petitions may not be same but certainly they are similarly situated."

It was on this basis that a writ of mandamus directing the respondents to give the special pay to the petitioners was granted. This decision was not challenged. This matter was again considered by the Hon'ble High Court in Writ Petition No.887/83 against which LPA 121/84 was filed by the respondents. In their decision dated 23.8.1991, the following observations were made by the Hon'ble High Court:-

"Mr. Chari referred to a decision of the Supreme Court in Chief Secretary to the Government of Andhra Pradesh and another Vs. V.J. Cornelius and others, (1981) 2 S.C. 347, where the court held that in such cases the Government should follow uniform policy and once the judgement of the High Court involving the same points had become final, the Government should apply the principle laid therein to all similar cases. It is not disputed that the points involved in the present writ petition are same as were in the earlier writ petition. Petitioners here also occupy the same position as the petitioners in the earlier writ petition, though the petitioners may not be the same but certainly they are similarly situated. The respondents (now the appellants) in any case are the same. Even if it can be said that principles of resjudicata are not strictly applicable, in service jurisprudence principles analogous to res judicata would certainly be applicable when both the parties occupy the same position. The appellants remain bound by the principles laid in Writ Petition No.176/79 which assumed finality."

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As the above judgement has become final and no stay has been granted by the Supreme Court in respect of payment of special pay, the application succeeds and is allowed with the following directions:-

- (i) The respondents are directed to strictly adhere the judgement of the High Court dt. 11.7.1984 in CWP No.887 of 1983 and upheld in letters Patent Appeal in 121 of 1984 on 23.8.1991.
- (ii) Compute the arrears of the said allowance of the applicant and pay him the same within a period of 4 months from the date of production of a certified copy of this order before the relevant authority.
- (iii) There shall be no orders as to costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal)
Member(A)

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