

(24) (21)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

R.A. No.41 of 1997
in

O.A. No.561 of 1995

M.A. No.300 of 1997 IN

R.A. No.41 of 1997

New Delhi, dated this the 7th April, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Shri Mahendra Pal (1),
229/44-A, Railway Colony,
Mandawali, Fazalpur,
Delhi-110092.
 2. Shri A.N. Guha (18),
1663-Y, Timarpur,
Delhi-110054.
 3. Shri Arun Kumar (22),
WZ-643, Naraina Village,
New Delhi-110028.
 4. Shri Braj Bhushan Sharma (3),
64, Shivpur, Sector-9,
Vijay Nagar,
Ghaziabad, U.P.
 5. Shri Gurcharan Singh (11),
F-1/276, Sultanpuri,
Delhi-110041.
 6. Shri Gyan Chand (21),
1-C, Press Block Old Secretariat,
Delhi-110054.
 7. Shri Hillarious Barwa (12),
699, Sunlight Colony,
Harinagar Ashram,
New Delhi-110014.
 8. Shri Hira Ballabh (9),
J-284, Dakshinpuri,
New Delhi-110062.
 9. Shri Jagan Nath (18),
H-24, Majnu-ka-Tilla,
Delhi-110054.
 10. Shri Kashi Nath Jha (7),
14/311, Dakshinpuri,
New Delhi-110062.
 11. Shri Khazan Singh (17),
188, Srai Pipal Thalla,
Adarsh Nagar,
Delhi-110033.
 12. Shri Kiram Pal (4),
1079, Gali No.15, D Block,
Khajoor Khas,
Delhi-110094.
 13. Shri Kunwar Pal (19),
26-C, Seelampur Market,
Delhi-110053.
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14. Shri Nand Kishor (2),
104/8, Gali Shiv Mandir,
Maujpur,
Delhi-110053.
 15. Shri PremSingh (23),
85-A, Mohammedpur,
R.K. Puram,
New Delhi-110066.
 16. Shri Rajendra Prasad (20),
WZ-662, Village Palam,
New Delhi-110045.
 17. Shri Rakesh Pal (10),
F-76, Shiv Vihar-III,
Kanwal Nagar,
Delhi-110094.
 18. Shri Ram Nath (14),
12/IV, Timarpur,
Delhi-110054.
 19. Shri Ramesh Chandra (8),
K-1658, Jahangirpuri,
Delhi-110033.
 20. Shri Shiv Kishor (6),
4455, Aryap/ura,
Subzimandi,
Delhi-110007.
 21. Shri Vijay Singh Rana (15),
C-26, NPL Colony,
New Rajendra Nagar,
New Delhi-110060.
 22. Shri Vipin Sachdeva (5),
8/49-A, Vijay Nagar, D/Storey,
Delhi-110009.
 23. Shri Vir Pal Singh (16),
F-614, Indragali Jagjit Nagar,
Delhi-110053.
- APPLICANTS

VERSUS

1. Union of India through
the Secretary,
Dept. of Defence Research &
Development & Scientific Adviser to
Defence Minister and
Director General, R & D,
Ministry of Defence,
DHQ p.O.
South Block,
New Delhi-110011.
 2. The Director,
Defence Science Centre,
Metacalf House, Delhi-110054.
 3. The Director,
DESTDOC, Metcalf House,
Delhi-110054.
- RESPONDENTS

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(27)

ORDER (BY CIRCULATION)
BY HON'BLE MR. S. R. ADIGE MEMBER (A):

We have perused R.A.No.41/97 seeking review of judgment dated 1.1.97 in O.A.No.561/95 Shri Mahender Pal & Ors. Vs. UOI & Ors.

2. In the said OA, the applicants had sought extension of respondents' order dated 17.11.93 to themselves whereby such of those Tradesmen E who were in pay scale of Rs.210-290 (PR) on 15.10.84 were to be given pay scale of Rs.260-400(PR) notionally with effect from 15.10.84 for the purpose of seniority, and pay fixation w.e.f. 9.2.88 for the purpose of payment of financial benefit.

3. After hearing both parties at considerable length, the OA was dismissed by the impugned judgment dated 1.1.97. What weighed with us while dismissing the OA was that by amendment to the relevant Recruitment Rules in 1981, replacing Tradewise distinction with gradewise structure, Tradesmen E (Rs.210-290) with 3 years' regular service in the grade became eligible for promotion as Tradesmen C (Rs.260-400), the intermediate grade of Tradesmen D having been abolished in 1983. In the background of CAT Bangalore, Full Bench judgment dated 18.6.93 in O.A. NO.111/91 the respondents by impugned order dated 17.11.93 decided that all Tradesmen E in different Trades, who were in the feeder grade for promotion to Tradesmen C, and were in position as on 15.10.84 be given benefit of one time upgradation, which was in the nature of in situ promotion, and as admittedly the applicants were not in a position as Tradesmen E on 15.10.84, they could not get that benefit.

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24

4. In the RA it has been contended that there is an error apparent on the face of record, as the judgment seemed to suggest as if the parties had nothing to say and they said nothing, because it has not been mentioned that the counsel were heard, and the applicants were therefore condemned unheard. The contention that the applicants were unheard, is baseless because in the R.A. it is itself mentioned that the hearings in the OA were spread over several dates. That apart, the names of the counsel appearing on both sides, ^{and} are recorded in the impugned judgment itself and it is obvious on the face of it that they were present and heard.

5. Another error alleged is that although there was no difference in qualifications, and nature of duties and responsibilities of the applicants vis-a-vis those in Rs.260-400 scale and that fact has not been controverted by respondents, the same has not been noticed by us, and the ruling in Lalji Dubey Vs. UOI 1974(1) SCC 230 was not referred to. In our judgment, we had noted that the respondents had decided to grant in situ promotion to all those persons working as Tradesmen 'E' as on 15.10.84 to the grade of Tradesmen C (Rs.260-400) as a one time measure and as admittedly the applicants were not in position as Tradesmen E on 15.10.84, they could not get that benefit. Those who stood appointed as Tradesmen E as on 15.10.84 formed a class distinct, and separate from those who were not Tradesmen E on that date, and if with a view to remove the ^{or vice of} discrimination, the respondents had granted all Tradesmen E in position as on 15.10.84 a one time upgradation to Tradesmen C by their Circular dated 17.11.93, it was a reasonable classification which had a rational

nexus with the objective sought to be achieved and hence the applicants could not claim that benefit. In our judgment, we had further stated that we were fortified in our view by the CAT Bangalore Bench judgment dated 21.9.95 in OAs No.886, 984-991 of 1994 T.A.Moses & Ors. Vs. Union of India & Ors, in which the same relief prayed by similarly placed applicants had been decisively rejected. In this background, Lalji Dubey's ruling (Supra) was not relevant, and its non-mention in any case cannot be termed as an error apparent on the face of record.

6. Another error alleged is that in para 5 of the impugned judgment it had been recorded that Venkateshan Committee Report was relied upon to fortify the so called one time measures, but the Venkateshan Committee's recommendation was not accepted by Govt., and in fact, the Tribunal's reliance on CAT Bangalore Full Bench's judgment was misplaced because that judgment was overruled by a larger bench which had upheld the Hyderabad Bench of the CAT's judgment. In paragraph 6 of the CAT Bangalore Full Bench judgment in O.A.No.111/91, the following observations had been made:

" It is this vice of discrimination flowing from picking of 11 trades for upgradation that is neutralised by the judgment of the Hyderabad Bench of the Tribunal which directed that the benefit of upgradation be given to every trade which was in the feeder category on 15.10.84.....

.....They Hyderabad Bench in our opinion, is also right in relying upon the principle laid down by the Supreme Court in Bhagawan Sahai Carpenter's case wherein it has been held that according to different dates for upgradation to different trades, all of whom belong to the same category and are treated on par, would be discriminator and violative of Articles 14 and 16 of the Constitution. Venkatesan Committee's report recommending the benefit of upgradation to all the trades in the feeder category who were in position on 15.10.84 as a one time measure has the merit of avoiding discrimination."

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7. During hearing, nothing was shown to us to indicate that the said ruling of the CAT Hyderabad Full Bench or indeed the ruling in T.A. Moses's case (Supra) had been stayed, set aside or modified, and under the circumstance this ground also fails.

8. Lastly, it has been contended that the Tribunal was bound to grant the relief prayed for on the uncontroverted plea that there was no difference between qualifications and nature of duties and responsibilities of the applicants and those working in the same department/ units in the pay scale of Rs.260-400(PR). We have already given our reasons why we find ourselves unable to accede to applicants' prayer, and we do not consider it necessary to state ^{anything} further in the matter.

9. Manifestly therefore none of the grounds taken by the applicants bring it within the scope and ambit of Section 22(3)(f) AT Act read with Order 47 Rule 1 CPC under which alone any judgment/decision/order of the Tribunal can be reviewed.

10. The applicant has also filed M.A.No.300/97 praying for hearing in open court by different Bench. Under Rule 17 to CAT Procedure Rules a review application ^{is to} be ordinarily heard by the same Bench which has passed the order, unless the Chairman may for reasons to be recorded in writing directed to be heard by any other Bench. Review applicants have not shown us any order directing that this

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(27)

matter be heard by any other Bench. Similarly under Rule 17(3) CAT Procedure Rules unless otherwise ordered by the bench concerned, a review application shall be disposed of by Circulation and ^{the} Bench may either dismiss the application on direct notice to the opposite parties. In the facts and circumstances of the case as noticed above, no valid reasons have been made out to warrant open hearing, or a direction for notice to the opposite parties.

11. The R.A. is therefore, rejected.

A. Vedavalli
(DR.A. VEDAVALLI)
MEMBER(J).

S.R. Adige
(S.R. ADIGE)
MEMBER(A).

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