

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.1205/2000  
M.A. NO.1511/2000

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New Delhi this the 22nd day of January, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

1. Shri Kirat Singh Rawat  
S/o Late Shri B.S.Rawat  
R/o 141-L.R.Complex  
New Delhi.
2. Shri S.N.Balodi  
S/o Late Shri Dharam Dev Balodi  
R/o 81/3, Pushp Vihar, Sector-1  
M.B.Road, New Delhi-17.
3. Shri Pravakar Mishra  
S/o Late Shri Sonatan Mishra  
R/o Q.No.13-C, Sector-IV  
Pushp Vihar, New Delhi-17.
4. Shri Gian Chand  
S/o Late Shri Amar Singh  
R/o 130, White Gate, Khaniara Road  
Gamru Area, Dharamshala, Distt. Kangra  
Himachal Pradesh-176215.
5. Shri Babu Ram  
S/o Late Shri Rasila Ram  
R/o 130, White Gate, Khaniara Road  
Gamru Area, Dharamshala, Distt. Kangra  
Himachal Pradesh-176215.
6. Shri Vijay Singh  
S/o Shri Gohard Singh  
R/o Q.No.7, ARC Complex  
Patparganj, Delhi.
7. Shri Amarjit Singh  
S/o Shri Bhagat Singh  
R/o WZ-37, Krishna Park  
P.O. Tilak Nagar  
New Delhi.

... Applicants

( By Shri S.K.Gupta, Advocate)

-versus-

1. Union of India through  
Cabinet Secretary  
Cabinet Secretariat  
Rashtrapati Bhawan  
New Delhi.
2. Director  
Aviation Research Centre  
D.G. (S)

Ref

Cabinet Secretariat  
East Block-V  
R.K. Puram  
New Delhi.

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... Respondents

(By Advocate Shri A.K. Bhardwaj )

**O R D E R (ORAL)**

**Justice Ashok Agarwal:-**

MA No.1511/2000 for joining together in one OA is granted.

2. Applicants, who are seven in number, initially joined as Constables with effect from different dates. Applicant Nos.1 to 5 and 7 joined prior to 1.1.1973 whereas applicant No.6 has joined thereafter. They were appointed as Constables in the pay scale of Rs.85-110. Subsequently the post of Constable was redesignated as Security Guard and ultimately as Field Assistant. While applicants were holding the posts of Constable, the report of the Third Pay Commission was declared. The same recommended two different pay scales for Constables differentiating them into Matriculate and Non-Matriculate Constables. A pay scale of Rs.225-308 was recommended for Matriculate Constables whereas a pay scale of Rs.210-270 was recommended for Non-Matriculate Constables. Aforesaid recommendations were accepted and the same were brought into force with effect from 1.1.1973. Some of such Non-Matriculate Constables had filed OA No.57/1986 (Shri Bichitrananda Mohanty and others vs. Union of India and others) before the Cuttack Bench of the Tribunal. By a judgement and order rendered on

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6.2.1992, aforesaid distinction of pay scales prescribed for Matriculate and Non-Matriculate Constables was quashed and Non-Matriculate Constables were directed to be paid the pay scale of Rs.225-308 which was payable to Matriculate Constables. Aforesaid order of the Cuttack Bench was carried by the respondents to the Supreme Court by filing a Special Leave Petition. By an order passed by the Supreme Court on 24.11.1998 in Civil Appeal No.3567 of 1993, the aforesaid order of the Tribunal was upheld and the appeal was dismissed. Applicants before the Cuttack Bench were accordingly given higher pay scale of Rs.225-308 which was payable to the Matriculate Constables with retrospective effect from 1.1.1973. By the present OA, applicants seek extension of the very same benefit which has been granted to the applicants before the Cuttack Bench of the Tribunal to them also.

3. Respondents have resisted the aforesaid claim by, inter alia, contending that the aforesaid benefit was available only to the applicants before the Cuttack Bench. The same cannot be extended to others though similarly placed. As far as applicant No.6 is concerned, it is pointed out that he had been recruited as a Constable after 1.1.1973 which was after the two scales had been provided in terms of the recommendations of the Third Pay Commission. In pursuance of the aforesaid recommendations of the Third Pay Commission, relevant recruitment rules were framed under Article 309 of the Constitution of India

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vide Notification dated 26.4.1976 whereby two distinct pay scales has been prescribed, namely Rs.225-308 for Matriculate Constables and Rs.210-270 for Non-Matriculate Constables. Applicant No.6 has been recruited on 21.12.1976 which was after the coming into force of the aforesaid recruitment rules which came into force on 26.4.1976. He is accordingly fully governed by the aforesaid rules. He accordingly cannot claim the benefit of the aforesaid judgment of the Cuttack Bench which has dealt with the case of Constables who had been recruited prior to 1.1.1973.

4. We have heard Shri S.K. Gupta and Shri A.K. Bhardwaj, learned counsel appearing for the contending parties. We find that as far as applicant Nos.1 to 5 and 7 are concerned, they are fully covered by the decision of the Cuttack Bench of the Tribunal which has been upheld even by the Supreme Court. Each of them had initially i.e. prior to 1.1.1973 been drawing the same pay scale. It was by virtue of the recommendations of the Third Pay Commission which has culminated into the issuance of the service rules which have come into force vide notification dated 26.4.1976 that two pay scales had been prescribed for Matriculate and Non-Matriculate Constables. Applicants who are Non-Matriculate Constables are receiving lesser pay scale than that of the Matriculate Constables. Since the duties performed by both categories of employees is identical, they in terms of the decision of the Cuttack Bench would be

*W. J.*

entitled to the same pay scale which is payable to Matriculate Constables. Present OA, in so far as applicant Nos.1 to 5 and 7 are concerned, is liable to be allowed.

5. As far as the decision of the Cuttack Bench is concerned, the same, according to the respondents, can be extended <sup>only</sup> to the applicants therein. The same cannot be extended to others like the applicants herein though similarly placed. In this connection, a reference to a decision of the Supreme Court in the case of **Ashwani Kumar & Ors. v. State of Bihar & Ors.**, JT 1997 (1) S.C. 243 can usefully be made wherein it has been observed as follows:-

"Nor can we say that benefit can be made available only to 1363 appellants before us as the other employees similarly circumscribed and who might not have approached the High Court or this Court earlier and who may be waiting in the wings would also be entitled to claim similar relief against the State which has to give equal treatment to all of them otherwise it would be held guilty of discriminatory treatment which could not be countenanced under Articles 14 and 16(1) of the Constitution of India."

6. If one has regard to the aforesaid decision, a conclusion in our view is irresistible that the benefit granted by the Cuttack Bench has to be extended to the applicants herein, namely applicant Nos.1 to 5 and 7 who are similarly circumstanced.

7. The case of applicant No.6, however, stands on a different footing. He has been recruited as

Constable after the coming into force of the service rules of 26.4.1976 which have prescribed two different pay scales for Matriculate Constables and Non-Matriculate Constables. Whereas the aforesaid rules have come into force on 26.4.1976, applicant No.6 has been recruited later on 21.12.1976. Applicant No.6, in the circumstances, will be governed by the aforesaid rules. He is not like the other applicants who had initially been receiving same pay scale and were thereafter differentiated on account of the aforesaid rules. He has been employed afresh after the issuance of the aforesaid rules. As far as the said rules are concerned, a reference to the case of **State of Mysore & Anr. vs. P. Narasing Rao**, (1968) 1 S.C.R. 407 can usefully be made wherein it has been observed as follows:-

"It is well-settled that though Art.14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Art.14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated, Arts. 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Art.16 is only an instance of the application of the general rule of equality laid down in Art.14 and it should be construed as such. Hence, there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the

*R.S.*

person or persons who are alleged to have been favoured, Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection. It is true that the selective test adopted by the Government for making two different classes will be violative of Arts.14 and 16 if there is no relevant connection between the test prescribed and the interest of public service. In other words, there must be a reasonable relation of the prescribed test to the suitability of the candidate for the post or for employment to public service as such. The provisions of Art.14 or Art.16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such. It is therefore not right to say that in the appointment to the post of tracers the Government ought to have taken into account only the technical proficiency of the candidates in the particular craft. It is open to the Government to consider also the general educational attainments of the candidates and to give preference to candidates who have a better educational qualification besides technical proficiency of a tracer. The relevance of general education even to technical branches of public service was emphasised long ago by Macaulay as follows:

"Men who have been engaged, upto one and two and twenty, in studies which have no immediate connexion with the business of any profession, and the effect of which is merely to open, to invigorate, and to enrich the mind, will generally be found, in the business of every profession, superior to men who have, at eighteen or nineteen, devoted themselves to the special studies of their calling. Indeed, early superiority in literature and science generally indicates the existence of some qualities which are securities against vice-industry, self-denial, a taste for pleasures not sensual, a laudable desire of honourable distinction, a still more laudable desire to obtain the approbation of friends and relations. We, therefore, think that the intellectual test about to be established will be found in practice to be also the best moral test can be devised."

(Hansard, Series, 3 CXXVIII, 754, 755)

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In our opinion, therefore, higher educational qualifications such as success in the S.S.L.C. examination are relevant considerations for fixing a higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in the new Mysore State, one for matriculate tracers with a higher pay scale and the other for non-matriculate tracers with a lower pay scale is not violative of Arts. 14 or 16 of the Constitution." 14

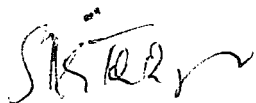
In our view, the aforesaid judgement applies on all fours to the case of applicant No.6 herein. He will accordingly be governed by the service rules of 26.4.1976. He will accordingly not be entitled to the same pay scale as is prescribed for Matriculate Constables.

8. Counsel for the respondents has resisted the present OA also on the ground that the same is barred by the law of limitation. He has pointed out that the cause of action to file the present OA had arisen way back on 26.4.1976 when the aforesaid service rules prescribing different pay scales were notified. Present OA which has been filed on 30.6.2000 is accordingly hopelessly time-barred.

9. As far as the aforesaid contention is concerned, we find that the decision of the Ministry of Finance making the aforesaid judgement of the Cuttack Bench applicable only to the applicants therein was taken on 6.10.1999 and was conveyed vide circular dated 1.11.1999 whereby the benefit of the aforesaid judgment was denied to the applicants

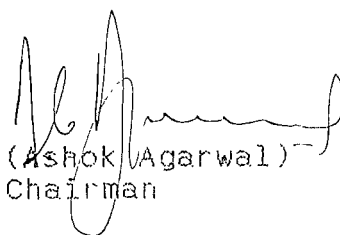
herein. Present OA which has been filed on 30.6.2000 is accordingly within the period of limitation. Aforesaid objection of limitation is accordingly negatived.

10. In the result, the present OA is partly allowed. Applicant Nos.1 to 5 and 7 are directed to be paid the pay scale of Rs.225-308. The same will be payable to them with effect from 1.7.1997 i.e.with effect from three years prior to the date of filing of the OA. The claim of applicant No.6 for grant of the aforesaid pay scale is, however, rejected. Applicant Nos.1 to 5 and 7 will be entitled to notional fixation of pay with effect from 1.1.1973. They will, however, be entitled to arrears only with effect from 1.7.1997 i.e. with effect from three years prior to the date of filing of the OA. Arrears payable to the aforesaid applicants be paid over to them within a period of three months from the date of service of this order. In the circumstances of the case, we make no order as to costs.



(S.A.T. Rizvi)  
Member (A)

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(Ashok Agarwal)  
Chairman