

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No.2487/2000 &
O.A. No.2488/2000

New Delhi this the 25th day of May, 2001

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

OA No. 2487/2000

1. Federation of Stenographers of Central Secretariat and Allied Offices

Represented through:-

Shri Raghbir Singh
Secretary General
B-121, Hari Nagar
New Delhi-110064

2. Shri Amit Jain
Stenographer Grade D
in the Ministry of Environment and Forests
Paryavaran Bhawan, CGO Complex
Lodi Road, New Delhi-11000

-Applicants

Versus

1. Union of India
through the Secretary
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)
North Block, New Delhi-110001

-Respondent

OA No. 2488/2000

1. Federation of Stenographers of Central Secretariat and Allied Offices

Represented through:-

Shri Raghbir Singh
Secretary General
B-121, Hari Nagar
New Delhi-110064

2. Shri N.S. Chatrath
Private Secretary
in the Ministry of Environment and Forests
Paryavaran Bhawan, CGO Complex
Lodi Road, New Delhi-11000

-Applicants

Versus

1. Union of India
through the Secretary
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)
North Block, New Delhi-110001

-Respondent

(By Advocate: Shri R.D. Makheeja, for the applicants)
Shri K.C.D. Gangwani, for the respondent)

O R D E R

By Hon'ble Mr. V.K. Majotra, Member (A)

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Issues in OA No. 2487/2000 and 2488/2000 being similar, they have been taken up for disposal by this common order.

2. OA 2487/2000 has been directed against the refusal and failure of the Central Government in revising the pay scale of Rs.1400-2300 (pre-revised) (revised to Rs. 5000-8000) w.e.f. 6.12.91 in terms of the Arbitration award dated 30.7.1998 for Grade 'D' Central Secretariat Stenographers Service (for short 'CSSS') and in the case of Central Secretariate Stenographers' Service (Gazetted Officers) in OA 2488/2000 against the refusal and failure on the part of the Central Government in not implementing the Arbitration award dated 4.2.93 in which it was recommended that Private Secretary ((Merged Grade A & B) of CSSS working in Ministries/Departments should also be sanctioned special pay on the same basis on which it is paid in the Prime Minister's Office/Cabinet Secretariate.

3. Under the JCM Scheme, the demands/issues raised by the Staff side in the Departmental Council (JCM) of Department of Personnel & Training are agreed or disagreed by the official side. The disagreed items are divided into two categories- arbitrable and non-arbitrable. The non-arbitrable items are considered and decided upon by a Group of Ministers. Arbitrable items are referred to the Board of Arbitration to be appointed by the Ministry of Labour. Under the JCM Scheme, compulsory arbitration is limited to (a) Pay and allowances; (b) weekly hours of work, and (c) leave of a class or grade of employees.

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Under this Scheme, the recommendations of the Board of Arbitration are binding on both Staff and Official sides subject to the over-riding authority of Parliament. In case of disagreement with the recommendations of the Board of Arbitration, the Central Government has to lay before each House of Parliament, the report of the Board containing its recommendations together with proposed modifications with reasons therefor, and thereupon Parliament may make modifications in the recommendations.

4. The case of the applicant is that when an Arbitration award is proposed to be rejected/modified, a formal Resolution has to be moved in Parliament for its approval for rejection/modification of the award and not only that award should be processed expeditiously, a final decision should be taken in the matter as far as possible within a period of six months. As per Annexure A-1 in OA-2487/2000 the award was given on 30.7.98 in the following terms:-

"We have heard the submission of both the parties with rapt attention. We have duly examined the entire materials placed on the record by the parties and have given our careful consideration to the arguments advanced by the representatives of the Parties. We have also given thoughtful consideration to all the relevant facts and circumstances having bearing on the matter-in-issue between the parties. We do hereby make our Award as follows:-

The pay scale of Grade 'D' of Central Secretariat Stenographers Service be revised to Rs. 1400-2600/- per month.

This Award shall be given effect to from 6th December, 1991, the date of recording disagreement".

5. According to the applicants, this award has not been implemented by the respondents within a period of six months and as per Annexure A-2 which are Minutes of the 2nd Session of the 55th Ordinary Meeting of the JCM, it

has been explained that the matter relating to award in respect of Grade-D Stenographers, Private Secretaries of CSSS has been processed for rejection of the award and that a notice has been moved for placing the Resolution in both Houses of Parliament. The applicants have contended that since the Central Government has not complied with the mandatory requirement of seeking approval of the Parliament to the modification/rejection of the award, the same has become binding on both sides and it has created vested interests. (11)

6. In their counter the respondents have stated that implementation of the Award would disturb the parity of pay scales between UDCs and Stenographers Grade 'D'; that it will have impact on national economy as it involves an additional expenditure of Rs. 6.45 Crores; that a Resolution is proposed to be moved in the Parliament for rejection of the Award and that the period of six months prescribed for this purpose is only directory and not mandatory.

7. We have heard the learned counsel of both sides and perused the material made available by both sides.

8. The learned counsel of the applicants Shri R.D. Makheeja, stated that as per OM dated 10.6.1988 ((Annexure R-XVI) after receipt of the award, it would either be implemented or statement laid on the table of both the Houses of Parliament within six months, proposing modification/rejection of the award. This procedure was modified by DOPT by its OM dated 20.2.1989 (Annexure R-XV) whereby it was provided that in respect of the awards which are proposed to be rejected/modified, a formal Resolution may be moved in Parliament to seek its approval

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for rejection/modification of the award instead of just placing the statement of modification/rejection on the Tables of Parliament Houses. OM dated 14.2.1996 (Annexure R-XVII) DOPT reiterated its earlier instructions and enjoining upon the Ministries/Departments to ensure that the awards given by the Board of Arbitration are processed expeditiously and a final decision in the matter is arrived at, as far as possible, within a period of six months. Shri Makheeja submitted that the period of six months prescribed for implementation of the award or its modification/rejection with the approval of the Parliament is mandatory and not directory. In terms of the JCM Scheme, the award is binding on both sides subject to the over-riding authority of the Parliament. In the absence of modification/rejection with the approval of the Parliament within a period of six months, the award becomes binding thereby creating vested rights for the parties. Since the Central Government has not rejected/modified the award with the approval of the Parliament within the prescribed period of six months, it has become binding and is required to be implemented. Shri Makheeja relied on A.P. Aggarwal Vs. Govt. of NCT of Delhi AIR 2000 SC 205 and The Quarry Owners Association Vs. State of Bihar AIR 2000 SC 2870. In the former case, it was observed that Section 13(4) of the Delhi Sales Tax Act, 1975, provided that any vacancy in the membership of the Appellate Tribunal shall be filled up by the Central Government as soon as possible. In its OM dated 14.5.1987, the Central Government issued instructions providing inter-alia that the reserve list may be operated in cases where a vacancy is created by a candidate resigning the post or in the event of his death, within a period of six months from the date of his joining. This Hon'ble Tribunal in OA No. 630/1996 held that the

instructions contained in the aforesaid OM dated 14.5.19987 were only directory and not mandatory. This view point was affirmed by the Hon'ble High Court of Delhi. On appeal, the Hon'ble Supreme Court revised the finding and held that since the said OM was issued by the Central Government to give effect to the statutory provisions expressed in mandatory terms, the period of six months prescribed in the OM is also mandatory. The learned counsel stated that the present case is on all fours with the above case and the period of six months is mandatory as held by the Hon'ble Supreme Court in the aforesaid case.

9. In the latter case, the Hon'ble Supreme Court was interpreting the modes of laying papers before the Parliament and the impact thereof. The Apex Court held that laying before House of Parliament are made in the three different ways. Laying of any rule may be subject to any negative resolution within specified period or may be subject to its confirmation. This is spoken as negative and positive resolution respectively. Third may be mere laying before the House. In case where House is entrusted with power to annul, modify or approve any rule, it plays positive role and have full control over it, requirement is mandatory. In the thrid case where the papers are merely laid on the Tables of the Parliament, the requirement is directory.

10. The learned counsel contended that in the present case, the approval of the Parliament is required to be obtained by way of a formal Resolution to any modification/rejection of the binding award and the period prescribed for this period is six months only. Having

regard to the view taken by the Hon'ble Supreme Court in the case cited above, there is no element of doubt that the period of six months is a mandatory requirement.

11. The learned counsel pleaded that since the Central Government did not comply with the mandatory requirement of seeking approval of the Parliament to the modifications/rejection of the award within a period of six months, the award has become binding on both sides and it has created vested interests. Therefore, Central Government should be directed to extend the benefit of award to the applicants.

12. The learned counsel of the respondents Shri K.C.D. Gangwani stated that in the matter of OA-2487/2000 whereas the award was given on 30.7.1998, Cabinet conveyed decision for rejection of award on 8.2.2000 and statement of rejection of award was laid in Rajya Sabha and Lok Sabha on 16.5.2000 and 17.5.2000 respectively. Later on, Resolutions regarding rejection of the award were admitted by the Lok Sabha/Rajya Sabha on many occasions last being 5.3.2001 and 8.3.2001 respectively. The learned counsel contended that instructions relating to JCM and procedure for processing cases relating to arbitrable issues are only executive in nature and do not have the statutory force. Non-compliance of such instructions do not attract any penalty and the stipulated period of six months within which rejection of the award should have approval of the Parliament is only directory and not mandatory. The learned counsel relied on State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya 2 SCR 679 and The Remington Rand of India Ltd Vs. The Workmen 1968 (1) SCR 164. In the former case, it was observed that enactment in form mandatory might in substance be directory and that the use

of the word "shall" does not conclude the matter. The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The Courts have to get at the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and above all, whether the object of the legislation will be defeated or furthered. According to the learned counsel, in the present case, the instructions are only directory and non-compliance with them does not involve any penalty or consequences of the award becoming final and binding.

13. The second case namely, *The Remington Rand of India Limited (Supra)* deals with the provisions of Section 17(1) of the Industrial Disputes Act, 1947. This provision provides for publication of the award of the Industrial Tribunal by the appropriate Government within a period of 30 days from the date of its receipt. It was held that it is merely directory and not mandatory. The fixation of the period of 30 days mentioned therein does not mean that the publication beyond that time will render the award invalid. It is not difficult to think of circumstances when the publication of the award within thirty days may not be possible. On this analogy, Shri

K.C.D. Gangwani, the learned counsel of the respondents contended that delay beyond six months in the approval of the Parliament to the modification/rejection of the award does not make the award binding. 16

14. The learned counsel further stated that as the proposal for rejection of the award has not yet been approved by the Parliament, no final decision in the matter has been taken. Thus, the OA should be dismissed being pre-mature.

15. There is no denying that the Government is expected by all to be a model employer. The JCM Scheme for considering the demands/ issues raised by the staff side has been formulated with pious intentions and a very detailed procedure has been laid down for considering and resolving the demands and issues raised by the staff. The arbitrable disagreed items between the staff and the official sides are referred to a Board of Arbitration in which there are independent Chairman and Members selected/appointed by the Ministry of Labour. As per the modified procedure for implementation of awards given by the Board of Arbitration provided in DOPT OM dated 20.2.1989, the Awards of Arbitration proposed for rejection/modification have to be put up for approval of Parliament through a formal Resolution. It has been enjoined upon the Ministries/Departments to ensure that the awards are processed expeditiously and final decisions are arrived at within a period of six months. According to us, the final decision would mean that implementation of the award or passing of the Resolution for rejection/modification of the award by the Parliament have to be completed within a period of six months of the award. It is true that the limit of six months for taking

a final decision on the award does not have a statutory sanction but obviously an in-ordinate delay has been caused in implementing the award or rejecting/modifying the award. If not within six months, which is the limit prescribed under the relevant instructions referred above for implementation/rejection of the award, it is expected that a final decision must be taken at least within a reasonable time. The Parliament meets several times during the year. There are procedures and machinery headed by the Minister for Parliamentary Affairs to allocate priorities for disposal of parliamentary matters. It is true that the statement relating to the award or resolution for rejection of the award were laid/put-up/admitted in the Parliament on a few occasions, information has not been supplied to us regarding the priority allocated for consideration of this matter in the different sessions of the Parliament. Reasonable time has been defined in the Law Lexicon as "i.e. a reasonable time that preserves to each party the rights and advantages he possesses and protects each party from losses that he ought not to suffer". It is also defined to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In the case of A.P. Aggarwal (Supra) instructions contained in an Office Memo of the Central Government were held to have been expressed in mandatory terms. The instructions relating to JCM had a very laudable objective behind them. In establishing a machinery to resolve the demands and issues between the staff side and the official side, the limit of six months has also been prescribed in implementing the awards relating to arbitrable items referred to the Board of Arbitration. In our view the time limit prescribed by the Government in the related OM

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has been prescribed by the Government after taking into consideration the time to be taken in finalising the decision including the approval of rejection/modification in the award by the Parliament. In the present matter substantial public interest is involved and the respondents have taken an inordinately long time in finalising the decision on the recommendations of the Award. Although already a period of six months for finalising the decision of the award expired way back on 30.1.1999 in relation to OA-2487/2000 we consider it fit and proper to direct the respondents to take a final decision of the award within a period of six months from the receipt of a copy of these orders. (18)

16. In the facts and circumstances of the case, we find merit in OA 2487/2000 and allow the same partly directing the Government to take a final decision on the award of Arbitration dated 30.7.1998 within a period of six months from the date of receipt of a copy of this order failing which in the interest of justice the award would become final and binding with retrospective effect from 6.12.91 with consequential benefits.

17. In OA-2488/2000 the Board of Arbitration in C.A. reference 2/91 the matter relating to Private Secretary (Merged Grade A&B) of Central Secretariate Stenographers Services working in the Ministries/Departments was considered and the following award was given on 4.2.93 :-

"The Private Secretary (Merged Grade A&B) of the Central Secretariat working in Ministries/Departments shall be sanctioned special pay on the same basis on which it is sanctioned in Prime Minister's office/Cabinet Secretariat with effect from the date of decision for recording the disagreement i.e. 6th October 1987".

18. The statement for rejection of this award was laid for the first time in Lok Sabha and Rajya Sabha on 14.12.95 and 15.12.95. The Resolution was admitted for the first time in the Lok Sabha and Rajya Sabha on 29.2.1996. Thereafter no action was taken till 22.11.2000. Statement of rejection of award was again put up in the Parliament on 23.11.2000 and last time it was admitted in the Lok Sabha and Rajya Sabha on 5.3.2001 and 6.3.2001 respectively.

19. In the facts and circumstances of this case too, we find merit in the OA and allow the same partly directing the Government to take a final decision on the award of Arbitration dated 4.2.93 within a period of six months from the date of receipt of a copy of this order failing which in the interest of justice the award would become final and binding with retrospective effect from 6.12.91 with consequential benefits. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

cc.