

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

DATE OF DECISION: 30.4.92 (7)  
01.5.1992 Lth

1. OA No. 1870/89

SHRI H.K. ANAND

.. APPLICANT

VERSUS

DELHI ADMINISTRATION & ANOTHER

.. RESPONDENTS

2. OA No. 1873/89

SHRI GURDEV SINGH

.. APPLICANT

VERSUS

DELHI ADMINISTRATION AND ANOTHER

.. RESPONDENTS

3. OA No. 1875/89

SHRI P.C. BHATIA

.. APPLICANT

VERSUS

DELHI ADMINISTRATION AND ANOTHER

.. RESPONDENTS

4. OA No. 1879/89

SHRI BHIM SINGH CHAUHAN

.. APPLICANT

VERSUS

DELHI ADMINISTRATION AND ANOTHER

.. RESPONDENTS

CORAM:-

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE-CHAIRMAN (J)

THE HON'BLE MR. K.J. RAMAN, MEMBER (A)

FOR THE APPLICANTS: S/SHRI R.K. MEHTA & VIRENDER MEHTA

FOR THE RESPONDENTS: SHRI M.M. SUDAN

1. Whether Reporters of the local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? yes..

(JUDGEMENT OF THE BENCH DELIVERED BY THE HON'BLE  
JUDGE MR. K.J. RAMAN, MEMBER(A))

These four applications referred to above involve identical facts and issues as well as reliefs and are, therefore, being disposed of by this common order.

2. It is sufficient to note the salient facts of application

No. 1870/89. The applicant was employed as a Skilled Workman (Painter) from 21-7-1964 in the then grade of Rs. 130-212 in the

Junior Technical School, Kashmir Gate, Delhi. He was declared

Permanent by an order dated 13-9-1968. By an order dated

31-5-1975, the respondents decided to close down two schools

resulting in reduction in the sanctioned strength of the grade

to which the applicant belonged. By an order dated 12-5-1976,

the services of the applicant were terminated on the ground

that the applicant had been rendered surplus. A notice of

three months was given before the actual termination. The

services of the applicant were terminated in August, 1976.

Steps were, however, taken by the Administration to absorb the

persons like the applicant who had been rendered surplus. By an

order dated 3-12-1976, the applicant was appointed as a Laboratory

Assistant in the scale of Rs. 290-500. It is stated that the

scale of pay of the applicant before the termination of his

services as above, was Rs. 440-750. The applicant, however,

accepted the offer as well as the conditions imposed in the

offer including that he would not have any right whatsoever to

count his past services in the new grade. On representation

by the applicant, however, the respondents issued a further

appointment order dated 13-11-1978 appointing the applicant

in a post in the scale of Rs. 440-750. It was stated that this

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appointment was on ad hoc basis. Thus the applicant started drawing his pay in the higher scale referred to above on the basis of this order dated 13-11-1978.

3. What happened to the present applicant had also happened to the other three applicants in the other applications referred to above. The position was the same in respect of a number of other persons junior to the applicants in their erstwhile service as Skilled Workman (Painter). In the case of some of these juniors, it appears that, after the termination of their services in May 1976, they were appointed again as Craft Instructors in the various trades in the Industrial Training Institutes of the Directorate in 1977 as a result of a policy decision to accommodate the retrenched employees. Accordingly, the said persons were selected as Craft Instructors, but unlike the present applicants, they were appointed in the scale of Rs. 440-750. Fresh offers of appointments were issued in this connection in January 1978. They were also required to give an undertaking accepting their appointments as a fresh one and not to claim any seniority on the basis of their earlier service. Those persons gave the undertaking. However, in 1979 they filed suits in the Civil Court, Delhi, praying for a decree declaring the termination order as invalid, and declaring that those persons were entitled to the continuity of their services from the date of their respective terminations in 1976. Their suits numbering nine were in due course transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 and re-numbered as Transferred Applications Nos. T-71/86, T-541/86, and T-533/86, T-542/86, T-112/86, T-114/86, T-113/86, T-274/86, T-527/86.

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By an order dated 31-5-1988, these Transferred Applications were allowed. The operative portion of the order of this Tribunal in the above transferred cases is reproduced below:

"9. In the facts and circumstances, we decree the suits declaring the order of termination of the plaintiffs' service in 1976 as illegal and directing that the break in service between August 1976 and 1978 should be condoned with all consequential benefits of seniority, pension, back wages, etc.

in full. There will be no order as to costs."

It may be stated here that the main ground on which the above applications were allowed was the violation of Section 25-FFF of the Industrial Disputes Act 1947.

4. The applicants in all these applications were in identical situation. The only difference in these cases is the difference in their dates of original appointments and termination of their services and their re-appointments which is not material.

5. All these applicants have averred that the applicants in the Transferred Applications referred to above, decided on 31-5-1988, were junior to the present applicants in the grade of Skilled Workman (Painter), before the services of all these persons were terminated in 1976 on the ground of their being surplus. They have further contended that the juniors whose Transferred Applications have been allowed by the said order dated 31-5-1988, have been given the benefit of continuity of service from their date of original employment not in 1976, ignoring the terminations of 1978. They have only been given continuity of service and the break in service

between August 1976 and 1978 had been condoned, but also they have been given the benefit of seniority, pension, backwages in full on the basis of such continuity in service ignoring the termination of their services in 1976. The present applicants have, therefore, contended that, being similarly placed like those applicants, they should also be extended the same benefits. It is stated that their representation for the extension of such benefits has not been accepted by the respondents. Being aggrieved, they have filed these applications. The relief in OA 1870/89 is as follow:-

"In view of the facts submitted above, it is respectfully prayed that the respondents be directed to pay to the applicant the pay scale of Rs. 440-750 (pre-revised) with effect from 31-12-1976 (on which date the applicant was wrongly placed in the grade of Rs. 290-500) or at least with effect from January, 1978 when the petitioners in transferred cases decided vide judgement dated 31-5-1988 (Annexure 'G') have been given the said pay scale of Rs. 440-750 and further the respondents be directed to give the continuity of service with effect from the date of his original appointment on 21-7-1964, seniority in the grade of Craft Instructor with effect from 3-12-1976 or with effect from January 1978 when juniors to the applicant were given the said scale of pay, seniority, continuity of service. The respondents be also directed to pay the arrears for the intervening period with effect from 21-8-1976 on which date the applicant was declared surplus till the date he was reinstated in service with all other consequential benefits to which the applicant is entitled in consonance and spirit of the judgment dated 31-5-1988 of the Central Administrative Tribunal Principal Bench, New Delhi in transferred cases mentioned above. Such other relief which this Hon'ble Tribunal deems fit and proper under circumstances of the case be also awarded in favour of the applicant and against the respondents."

6. The reliefs claimed in the other three applications are on similar lines.

7. In the reply filed on behalf of the respondents, the facts detailed above have been admitted. The only objection raised in the reply is that the applicants have claimed the reliefs after 13 years on the basis of the judgment of this Tribunal in the Transferred Applications referred to above, and did not approach the Court at the proper time like the applicants in those Transferred Applications. It is, therefore, stated that the present applications are barred by limitation and the applicants are not entitled for the same benefits as in the other cases.

8. The case has been heard when the learned counsel for the applications and the learned counsel for the respondents submitted their arguments.

9. The learned counsel for the applicants reiterated the facts and contentions indicate above. In support of his contention that the present applications are entitled for the same benefits as were given to those in the Transferred Applications, without their having been parties in those Transferred Applications, he cited the following decisions:-

1. Shri A.K.Khanra and others v. Union of India and others.  
ATR 1988 (2) CAT 518
2. TOTA RAM SHARMA v. UNION OF INDIA AND OTHERS,  
11(1990) ATL7 (CAT) 618
3. Harbajan Singh Beins v. State of Punjab & Others,  
1986 (3) SLJ 21.
4. Rita Sarkar (Bose) v. Union of India and Others  
I (1991) CSJ (CAT) 12 (SN)

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10. The learned counsel for the respondents on the other hand urged that the applications were barred by limitation and he, in this connection, relied on the decision of this Tribunal dated 18-7-1991 in Shri DEVI RAM Vs. UNION OF INDIA & OTHERS, in O.A. No. 2255/1986.

11. We have very carefully considered the rival contentions. As in this case, we have already pointed out above, the sole ground urged by and on behalf of the applicants is that, consequent to the order dated 31-5-1988 of this Tribunal in the nine Transferred Applications referred to above, the present applicants should be given the same benefits as were given to the applicants in those Transferred Applications in as much as the present applicants were similarly placed like those persons. Further, it has been urged that the present applicants were senior to the applicants in the Transferred Applications who have got both continuity of service, the equivalent scale of pay as well as seniority, as if there had been no termination of their services. We have already reproduced the reliefs claimed in these applications. It is significant to note that the present applicants have not challenged the termination of their services in 1976 unlike the applicants in the Transferred Applications in their suits. There is no doubt that such a challenge of the termination orders would be clearly time-barred in respect of the present application. In respect of such a challenge, the contention of the respondents, and the cases cited by the learned counsel for the respondents would be apposite. In this case, however,

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there can be no doubt that the order dated 31-5-1988 of this

Tribunal in those Transferred Applications did result in

the juniors to the applicants who were parties in the Transferred

Applications, getting continuity of service and seniority from

their dates of original employment as Skilled Workmen. This is

clearly admitted by the respondents. There is, therefore, no

doubt that the present applicants were and are similarly placed

vis-a-vis the applicants in the Transferred Applications. It is,

therefore, evident that a cause of action had arisen for the

applicants on the issue of the order of this Tribunal in the

Transferred Applications. In respect of such a cause of action,

the present applications cannot be said to be barred by limitation,

since the applicants had duly represented after 31-5-1988 and they have

filed these applications broadly within the requirement of

Section 21 of the Administrative Tribunals Act, 1985. We must

at the same time point out that, while the applications were,

no doubt, within time, the relief liable to be granted in respect

of such a cause of action and in the circumstances of these cases

is entirely a different matter. The main reliefs granted in the

Transferred Applications, as indicated above were continuity of

service, pay scale and seniority. In view of the admission of

the respondents that the present applicants were similarly placed

like the applicants in the Transferred Applications, there can be

no doubt that the present applicants are also entitled to appropriate

benefits on the basis of the decision in the Transferred Applications.

The various decisions cited by the learned counsel for the applicants

lend support to this conclusion.

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to be granted -9- is to be granted

12. It cannot at the same time be denied that the applicants have kept quiet about their status and scale of pay and the conditions of re-employment for a very long time. They have not diligently pursued the remedies available to them unlike the applications in the Transferred Applications. In the grant of wholly relief therefore, the present applicants cannot be treated on par with the applicants in the Transferred Applications.

13. The present applicants have prayed for grant of scale of pay of Rs. 440-750 with effect from the date of the termination of their services in 1976 or at least with effect from January 1978 when the applicants in the transferred cases were given the benefit of the pay scale of Rs. 440-750. They have also prayed for arrears to be paid to them from either of these dates. They have further prayed for continuity of service as well as seniority.

14. Since the present applicants are senior to those applicants and indeed discriminatory in the Transferred Applications, it would be anomalous to deny pay fixation benefit and continuity of service and seniority to the applicants on the lines of the decision in the Transferred Applications. We are, however, clear that the applicants would not be eligible for any arrears of monetary benefit from either 1976 or 1978. It would be appropriate to grant them arrears of monetary benefits, if any due, only from the date of filing the present applications. These applicants are, however, be entitled for continuity of service as if their services had not been terminated in 1976. They would also be entitled for notional fixation of their pay in the grade of Rs. 440-750 from the date from which the applicants in the Transferred Applications were given that pay scale in January 1978. If there were

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different dates from which the scale was given to the applicants in the Transferred Applications, the earliest of such dates should be taken.

15. Considering all the facts and circumstances of the case, these four applications are allowed to the following extent, and the following orders are passed:-

(i) The services of the applicants shall be deemed to be continuous from the date of their original appointment as Skilled Workman (Painter), ignoring the termination of their services in 1976 on the ground of being surplus.

(ii) The applicants shall be given notional pay fixation in the grade of Rs. 440-750 with effect <sup>is</sup> from such date as specified in the foregoing paragraph.

(iii) On such notional fixation of pay, from time to time, however, the applicants shall be entitled for payment of arrears of emoluments ~~xxx each~~ ~~fixation of pay~~ only with effect from the dates of the <sup>of</sup> filing the respective application in this Tribunal, and they are not entitled for any arrears for the period prior to these dates.

(iv) Such arrears, if any, shall be paid to the applicants within a period of two months from the date of receipt of a copy of this order by the respondents.

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The applicants shall be granted due seniority

(v) The applicants shall be granted due seniority on the basis of the above directions.

(vi) There will be no order as to costs.

(K. J. RAMAN) Member (A)

30.4.92  
(RAM PAL SINGH)  
Vice-Chairman

May 1, 1992

(PRITAM SINGH)

45/92

True Copy  
M. S. Chaudhary

Central Administrative Tribunal

प्रधान कार्यालय, फतेहगढ़ हाऊस

पटवर्धन रोड, नई दिल्ली-110002

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