

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2 /1989.
T.A. No.

199

DATE OF DECISION 30.5.1991.Dr. Vidya Bhushan

Petitioner

Shri M.K.Gupta

Advocate for the Petitioner(s)

Versus

Union of India & Ors

Respondent s.

Shri N.S.Mehta,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Off. by*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

AB
 (Amitav Banerji)
 Chairman
 30.5.1991.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

D.A. No. 2/1989.

Date of decision: 30.5.1991.

Dr. Vidya Bhushan

....

Applicant.

vs.

Union of India & Ors. ...

Respondents.

CORAM

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. I.K. Rasgotra, Member (A).

For the applicant ...

Shri M.K. Gupta, Counsel

For the respondents ...

Shri N.S. Mehta,
Sr. Counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman).

The question involved in this case is in a narrow compass. The applicant was appointed as a Physicist with effect from 1.9.1958 in the Ministry of Health at Safdarjang Hospital, New Delhi. He has claimed that he is entitled to the pay and allowances of a Senior Physicist as laid down by the 4th Central Pay Commission. He is at present drawing pay of Rs.3750/- in the scale of Rs.3000-4500, and had his promotion and appointment as a Physicist, he would have been promoted as a Senior Physicist and he has been deprived of by the action of respondent No.1. He has further stated that he retires with effect from 31.5.1991.

On behalf of the respondents Shri N.S. Mehta, learned counsel pleaded that the cause of action for the

applicant arose in 1973-74 and he has filed the present O.A. on 31.12.1988. His case is hopelessly barred by time.

It is also pleaded in the reply that one post of Physicist in the scale of Rs.650-1200 had been sanctioned for the Radiotherapy Department of the Hospital which is being held by the applicant since 1958. During the year 1983-84, the Internal Work Study Unit of the Ministry conducted the work measurement of the Radiotherapy Department and recommended the creation of one post of Senior Physicist which was created in 1987 in the scale of Rs.3000-4500. In the meantime the 4th Pay Commission also recommended the scale of pay of Rs.3000-4500 for the post of Physicist held by Dr. Vidya Bhushan. This recommendation has been implemented and the applicant is in this pay scale from 1.1.1986. There are two posts of Physicist and Senior Physicist for the Radiotherapy Department. It was decided that the post of Physicist held by the applicant may be redesignated as Senior Physicist which is in the improved pay scale of Rs.3000-4500 and the other post may be redesignated as Physicist in the pay scale of Rs.2200-4000 and made feeder post for promotion to the post of Senior Physicist. It was then urged that the applicant could have no grievance in this state of affairs.

It was further urged that the applicant was not found eligible as per the existing rules under the scheme

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of 'Flexible complementing and special merit appointments' since the said scheme was applicable to Class-I 'Scientific post only'. The applicant's case had been considered and his request for further upgradation of the pay scale could not, however, be agreed to since the pay scale of Rs.3000-4500 was allowed to him and it was found to be in conformity with the existing norms and the recommendations of the Bhabha Atomic Research Centre. Reasons have already been given as to why the representation of the applicant was not processed. Lastly, it was stated that the Flexible Complementing and special merit appointment Scheme was not violative of Articles 14 or 16 of the Constitution of India, and not discriminatory either.

We have heard Shri M.K.Gupta for the applicant and Shri N.S. Mehta for the respondents and perused the material on the record. There is no dispute that the 4th Pay Commission recommended the upgradation of the post and granted a pay scale of Rs.3000-4500. There is no dispute that this has been implemented and the applicant is getting the same. The dispute hovers round the question as to whether the applicant was entitled to be given a higher pay scale than Rs.3000-4500 because of his enhanced qualification, increased experience and greater utility of the applicant for the department. He had a long experience, technical training in the Bhabha Atomic

Research Centre and had rendered very useful service to the Hospital. He was entitled to the pay in the scale of Rs.5900-6700 with retrospective effect. The question whether he is entitled to a higher pay scale than what has been recommended by the 4th Pay Commission is not within our jurisdiction for the reason that we cannot take the place of the Pay Commission and assess the worth of the applicant in the background of his experience and qualification. Whether the post should have upgraded scale or not is also beyond the jurisdiction of the Tribunal particularly when the Pay Commission had clearly directed that his pay scale should be raised from Class II post to Class I post and should be in the scale of Rs.3000-4500.

We now come to the question of limitation as raised by learned counsel for the respondents. In reality the applicant is aggrieved by letter dated 14.8.1974 issued by the Directorate General of Health Services, New Delhi (Annexure 1 to the OA). It is stated:

"The scale of 'flexible complementing and special merit appointments' is applicable to Class I Scientific posts only. Since Dr. Vidya Bhushan, physicist is holding a Class II post, he is not eligible to be considered under this scheme."

The letter further directed:

"As regards the upgradation of the post of Physicist, the matter will be examined in the Medical Division (Medical Hospital Section) of this Directorate, to whom the representation from Dr. Vidya Bhushan is being forwarded."

The applicant had made a request for grant of premature increments w.e.f. 1.1.1986 to him. This was not accepted by the Directorate General of Health Services (Annexure II to the O.A.). The request of the applicant for upgradation of the post of Senior Physicist in the revised pay scale of Rs.4500-5700 was also turned down by the Directorate General of Health Services vide letter dated 14.12.1987 (Annexure-III to the OA).

It is true that the Medical Superintendent of Safdarjang Hospital recommended personal promotion of the applicant but this was turned down by the D.G.H.S. vide letter dated 14.8.1974. The matter continued as such until 14.12.1987 when two petitions of the applicant had been rejected. It is, therefore, 1974 representation and its rejection and which is still being pursued by the applicant.

Now it is well settled that the Tribunal has no jurisdiction to go into a matter in which a cause of action arose beyond three years before the date of commencement of the Administrative Tribunals Act, 1985. The only exception which has been pointed out by the Hon'ble Supreme Court is where the cause of action is continuous one and survives. Where the cause of action arose on declining a higher grade of pay for the post held by the applicant, it was one time action, it does not survive nor it was continuing. It is also well settled that successive

representations do not extend the period of limitation. (See S.S. RATHORE V. STATE OF MADHYA PRADESH (AIR 1990 SC 10). Consequently, the representations made in 1987 or in 1988 would not enure to the benefit of the applicant.

Learned counsel for the applicant, however, cited following cases in support of the case of the applicant:

THE MADRAS PORT TRUST Vs. HYMANSHU INTERNATIONAL
(1979 (1) SLR 757).

In this case P.N.Bhagwati, J (as he then was) observed:

"The plea of limitation based on this Section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens."

This observation was made in a case where the respondent Hymanshu International had asked for refund of the amount wherfage, demurrage and transit charges paid to the appellant was barred by Section 110 of the Madras Port Trust Act (II of 1905). The appellant, Madras Port Trust had lost the case in the High Court and a decree for Rs.4838.87 p was passed against the appellant.

The facts of the above case are not similar to the present case and, therefore, this case is distinguishable.

The second case cited by the learned counsel for the applicant was the case of STATE OF MAHARASHTRA V. JAGANNATH ACHYUT KARANDIKAR (1989 (10) ATC 593).

In this case it was held:

"The person who has not exhausted the available chances to appear in the examination cannot be denied of his seniority. It would be unjust, unreasonable and arbitrary to penalise a period for the default of the government to hold the examination every year. ... If the examination is not held in any year, the person who has not exhausted all the permissible chances has a right to have his case considered for promotion even if he has completed nine years' service. The government instead of promoting such persons in their turn made them to wait till they passed the examination. They are the persons falling into the category of "Late Passing". To remove the hardship caused to them the government wisely restored their legitimate seniority in the promotional cadre. There is, in our opinion, nothing improper or illegal in this action and indeed, it is in harmony with the object of the 1962 Rules."

Their Lordships further said:

"This takes us to the question whether the government was justified in individual cases to relax the period for passing the examination. It is said that the number of persons falling into this category are not more than five. In the rejoinder filed on behalf of the government, it is stated that the government made some orders extended the period for individuals to pass the examination on administrative grounds or on some genuine hardships. It is also stated that such orders were made upon recommendations by the respective departments and those persons passed the examination within the period extended. There is no reason to doubt the correctness of these statement made in the rejoinder. The power to relax the

conditions of the rules to avoid undue hardship in any case or class of cases cannot be gainsaid."

The observations made in this case justified the government action. We do not see anything in this case either to support the case of the applicant who was asking for upgradation of the post he was holding and to give him a higher scale of pay.

The third case that was referred was the case of MRS. NEELIMA BHATNAGAR V. UNION OF INDIA AND OTHERS (1989 (9) ATC 601). In this case the relief asked for was for quashing of the reversion. The present case is not one of reversion and, therefore, this case is also distinguishable.

We have considered the applicant's case as submitted by his counsel and also by means of written arguments and we do not find any good reason to persuade ourselves to allow the prayer of the applicant by directing the respondents to grant him enhanced pay scale, i.e., Rs.5900-6700 for the post of Senior Physicist.

For the reasons given above, this application fails and is dismissed. We leave the parties to bear their own costs.

De Ligh
(I.K.RASGOTRA)
MEMBER (A)
30.5.1991.

Ab.
(AMITAV BANERJI)
CHAIRMAN
30.5.1991.