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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

(1) Regn. No. O.A. 1100/1989. DATE OF DECISION: 25.7.1991.

Shri P.D. Makkar ... Applicant.

V/s

Union of India & Ors. ... Respondents.

(2) Regn. No. O.A. 57/1988.

Shri Padam Kumar Jain
& Ors. ... Applicants.

V/s

Union of India & Ors. ... Respondents.

CORAM: Hon'ble Mr. Justice U.C. Srivastava, Vice Chairman.
Hon'ble Mr. I.P. Gupta, Member (A).

Shri P.D. Makkar, applicant in O.A. 1100/1989, in person.
Shri M.D. Goyal, counsel for applicants in O.A. 57/1988.
Shri P.H. Ramchandani, Sr. counsel for the respondents.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice U.C. Srivastava, Vice Chairman)

JUDGMENT (ORAL)

In both these cases, similar question of law is involved and, as such, these can be conveniently disposed of by a common judgment. The applicants in both these cases were promoted to the regular cadre of Indian Defence Accounts Service (IDAS, for short) in the Time Scale with effect from 21.9.1979 and were designated as Assistant Controller of Defence Accounts (ACDA), vide order dated 21.9.1979. Prior to this, they were working as Accounts Officer in the Defence Accounts Department, a Subordinate Gazetted Service. From the time of their promotion to the IDAS Time Scale, they worked and discharged the duties of Group Officer, a post which although did not exist in the rules, but according to the applicants, was a Senior Time Scale post in the office of Joint Controller of Defence Accounts (Funds), Meerut and later on they held Group Charge posts elsewhere also. Under the recruitment rules, which were promulgated in 1958, 80 per cent of the posts were required to be filled by competitive examination and the remaining 20 percent by promotion from amongst the members of Subordinate Gazetted Service. Prior to 1.1.1973, the lowest rank in

the IDAS had an Integrated Scale of Rs.400-1250. The said scale was bifurcated into two scales with effect from 1.1.1973 after the report of the Third Pay Commission.

The Senior Time Scale was Rs.1100-50-1600 and the Junior Time Scale was Rs.700-40-900-EB-40-1100-50-1300. Although the recruitment rules were in existence, it appears that a few Accounts Officers were promoted as Temporary ACDA under a special scheme, which came into existence for the purpose of coping up with the work. These Temporary ACDA were assigned Group Charges and were placed in the scale of Rs.1100 - 1500 with effect from 1.1.1973 as against the scale of Rs.1100 - 1600, which is the Senior Time Scale in the cadre of IDAS. Notwithstanding the fact that there was no such provision in the statutory rules, in the year 1976, two officers, viz., S/Shri S. Sankaran and S.S. Raghavan, who were working as ACDA along with others, were promoted to the Senior Time Scale in the IDAS. These promotions were made after they were selected by a Departmental Promotion Committee. Eight other Accounts Officers who were selected in the cadre of IDAS and were placed in the Junior Time Scale of Rs.700 - 1300 challenged the fixation of their pay before the High Court of Delhi, in a Civil Writ Petition No.1342 of 1979 (K.G. Menon and Others Vs. Union of India & Others). The High Court of Delhi, vide its order dated 9.12.1980 held that there was no justification for denial of the Senior Time Scale to the petitioners therein who were similarly placed ... and consequently the writ petition was allowed. The Delhi High Court held that if an officer is asked to work in a post which is in the Senior Time Scale, then he would be entitled to receive the salary in the scale of Rs.1100-1600. A direction was accordingly issued by the High Court of Delhi to pay to the petitioners in Civil Writ Petition No.1342 of 1979 the salary in the pay scale of Rs.1100 - 1600 with effect from the date they were appointed to the Senior Time Scale post.

2. The applicants in both the instant applications did not file any writ petition in the High Court. According to them, they were watching the result of the writ petition filed by the aforesaid Accounts Officers in the High Court of Delhi. The respondents have stated that the Government have gone in appeal against the said judgment dated 9.12.80 of the Single Judge of the High Court of Delhi, vide Letters Patent Appeal No.50/1981. Subsequently, one of the officers, namely, Shri M.V. Narayanaswamy, who was holding the post of Temporary ACDA, filed an appeal in the High Court of Karnataka as till the date of his retirement he had not been extended the Senior Time Scale of Rs.1100-1600 and his representations to the departmental authorities did not bear fruit. The said appeal on transfer to the Central Administrative Tribunal under Section 29 of the Administrative Tribunals Act, 1985 came before the Bangalore Bench. The transferred application was accepted and the applicant therein was declared to be entitled for fitment in the Senior Time Scale of pay of Rs.1100 - 1600 with effect from 1.1.1973 along with some other reliefs, vide judgment dated 20th January, 1987.

3. The applicant in case No. O.A. 1100/1989 filed a representation dated 26.12.1988 for claiming the same benefit but he was informed that the Government have gone in appeal against the judgment of the Single Judge of the High Court of Delhi which is pending hearing, vide communication dated 12.10.1982. In the second case No. O.A. 57/1988 in which the applicants have claimed arrears of pay and allowances with interest on account of difference in the pay of Senior and Junior Time Scales, filed various representations in the years 1983, 1984, 1985, 1986 and 1987. All those representations filed in the case by the applicants were rejected and they were told that the same could not be acceded to.

4. On behalf of the applicants, it has been contended that they were working against the posts which were in fact Senior Time Scale posts and, as such, they were also to be given the same benefit, which has been extended to some other officers similarly placed. It has also been stated that they were also granted charge allowance (special pay) of Rs.150/- per month for performing group charge duties after completion of three years in the Junior Time Scale of IDAS, and they were subsequently appointed in the Senior Time Scale in 1983 and they have been performing the duties of Group Charge since 1979.

5. The respondents have challenged the contentions of the applicants and amongst others, they have also taken the plea that the applications are barred by limitation under Sections 20 and 21 of the Act. It has been pleaded that the applicants could not be given the Senior Time Scale as claimed by them contrary to the recruitment rules. It has been stated that on promotion to Gr. A post which carries the Junior Time Scale in the IDAS, the promotee officers are given Group Charge. The officers who are promoted from Group 'B' to Group 'A' carry approximately thirty years experience in the Department besides carrying roughly 10 years experience of holding charge of the Section, whereas the direct recruits after receiving one year's training at the Institute and one year on the job are required to hold charge of important sections for two years in a Controller's office before assuming Group Charge. Regarding Shri K.G. Menon and others, it has been stated that the judgment is already under challenge as the eligibility conditions for being appointed to the Senior Time Scale as provided in the Recruitment Rules cannot be changed. The grounds on which the aforesaid judgment has been challenged have also been urged before us as part of the arguments by the learned counsel for the respondents. It has been contended that in the absence of any provision in the Recruitment Rules, no monetary benefits can be given to them either with retrospective or prospective effect.

6. The contention of the applicants, however, is that they cannot be deprived of the pay in the Senior Time Scale when they worked against the Senior Time Scale posts and more so, when the benefit has already been extended to persons similarly placed and precisely the High Court of Delhi and the Bangalore Bench of this Tribunal have allowed the claims of some officers. They also claim that under Articles 14 and 16 of the Constitution of India, they cannot be discriminated.

7. Obviously, it cannot be denied that the Government had created an exception in the case of two persons viz., S. Sankaran and S.S. Raghavan and the explanation that has been given does not fall within the four corners of the rules and on the same ground, the benefit has also been extended to K.G. Menon and others. Thus, the benefit which has already been given to persons similarly placed as are the applicants herein, cannot be denied in the instant applications. Undoubtedly, in case K.G. Menon and others are deprived of the benefit as a result of the Letters Patent Appeal filed against the judgment dated 9.12.80, they will have to part away with this benefit. So far as the preliminary objection is concerned, undoubtedly in one case, the applicant made a representation on 26.12.88 after the decision of the Bangalore Bench of this Tribunal and during the pendency of the LPA. His representation was not rejected on the ground of limitation, but rather it was considered on merits but the benefit was not extended to him as the Government had gone in appeal against the judgment of the Single Judge of the High Court of Delhi, which was still under challenge. In the case of O.A. 57/1988, representations were made from the year 1981, the first representation having been made by one of the applicants on 31.3.81, but the same was not acceded to. Learned counsel for the respondents made a reference of the case of S.S. Rathore V. State of Madhya Pradesh (AIR 1990 SC 10)

in support of his contention that repeated representations would not extend the limitation. Suffice would it be to say that the Hon'ble Supreme Court observed "It is appropriate to notice the provision regarding limitation under S. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58." The instant case is not a civil suit but a matter before the Administrative Tribunal. In such a case, the cause of action is continuing. In case some appeal has been pending in the court of law, normally the employees would wait for the decision of the court. On the other hand, they have been making representations after representations and in some cases they were informed that the Government have gone in appeal against the judgment of the Single Judge of High Court of Delhi which was still pending and as such their request could not be acceded to. Accordingly, the limitation in both the cases deserve to be condoned.

6. In view of the foregoing discussion, both the cases are allowed and the respondents are directed to refix the pay of the applicants with effect from their respective date(s) of appointment in the IDAS in the Senior Time Scale and other consequential benefits as have been extended to K.G. Menon & Others with the stipulation that in case as a result of the final decision of the LPA, the position is reversed, they will have to refund the benefits which will be given to them pursuant to this judgment. An undertaking may also be taken from the applicants herein to the above effect. Necessary action

for implementation of this judgment will be taken by the respondents within a period of three months from the date of communication of this judgment. There shall, however, be no order as to costs.

I.P. Gupta

(I.P. GUPTA)
Member(A)

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(U.C. SRIVASTAVA)
Vice Chairman(J)

25.7.1991.