

M

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

REGD. NO. 1442/88

Date of Decision: 21.10.88.

Shri Jai Prakash Gupta

....

Applicant.

Versus

Union of India

....

Respondents.

For the applicant

...

Shri Umesh Misra, Advocate.

For the respondents

...

Shri M.L.Verma, Advocate.

Hon'ble Ajay Johri, member (A).

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant, Shri Jai Parkash Gupta, aggrieved by an order dated 28.12.1987 in regard to non-fixation of his pay on promotion from Senior Computer to Statistical Assistant under F.R. 22-C, has approached this Tribunal for a direction to be issued to the respondents to fix his salary under F.R. 22-C on the basis of the judgment given, in Registration (T.A.) No. 58 of 1986, B.D. Verma v. Union of India, by this Bench on 27.7.1987 and has also claimed for the benefit of re-fixation and arrears of pay and other consequential benefits.

2. The applicant's case is that on 28.4.1973 he was promoted from the post of Senior Computer to the post of Statistical Assistant. According to him this post carried higher duties and responsibilities than those of the Senior Computer and, therefore, on 6.3.1973 his pay was rightly fixed having been given two increments under F.R. 22-C but by a subsequent order dated 31.3.1981 these increments were withdrawn and he was given re-fixation under F.R. 22-A(ii). According to the applicant he had represented against his re-fixation of pay on 23.1.1981 but his representation was rejected. He made a fresh representation on 28.9.1987 consequent to the relief given to B.D. Verma in Registration (T.A.) No. 58 of 1986. His representation

5

-: 2 :-

was rejected on 28.12.1987 on the grounds that the judgment was applicable only in the case of Shri B.D. Verma and could not be applied to other cases, therefore, his request for fixation of pay under F.R. 22-C could not be acceded to.

3. I have heard the learned counsel for both the sides. Shri Umesh Misra, learned counsel for the applicant, contended that it would be wrong for the respondents to make classification amongst those who went to the court and those who did not go to the court. The learned counsel has also relied on a judgment given by the Madras Bench of this Tribunal in Registration (O.A.) No. 332 of 1987 decided on 15.3.1988 in regard to the limitation which was the main ground taken by the learned counsel for the respondents, Shri M.L. Verma. According to the learned counsel for the applicant the post on which the applicant was working and the post occupied by Shri B.D. Verma, who has been given the relief under the Registration (T.A.) No. 58 of 1986 are similar and equivalent posts and discrimination could not be made on the ground that the applicant did not file a petition in Court of Law when his representation was rejected in 1981. The learned counsel for the respondent also submitted that the judgment in the case of B.D. Verma was in 'persona' and not to 'rem' and, therefore, it could not be applied to the applicant.

4. I am in agreement with the view taken by the Madras Bench in Sundar Rajan and others v. Union of India and others, Registration (O.A.) No. 332 of 1987, that there is no bar of limitation in this case. Therefore, this application is not barred by limitation. I also take support from another decision which has been relied upon by the learned counsel for the applicant (Registration (O.A.) No. 1942 of 1987, A.K. Khanna v. Union of India and others), which was decided by this Bench of the Tribunal on 6.9.1988. In para 3 of the judgment it has been stated that "it is true that the applicants were not parties to the Civil Writ Petition which was allowed by this Tribunal. But there is no valid reason not to extend the benefit of that judgment to the applicant when they were similarly placed

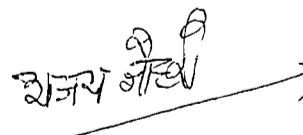
6.

-: 3 :-

as the petitioner in T.A. No. 335 of 1985. In fact instead of driving each of the senior computers to seek redressal of grievance before the Tribunal, when the judgment in T.A. No. 335 of 1985 has become final, the respondents should have extended the benefit of that judgment to the entire class of Senior Computers similarly placed.....". In Baldev Raj v. State of Punjab (1984 SCC (L&S) 650) the Hon'ble Supreme Court made an observation that "the State should extend the benefit of judgment of this court to all who are similarly situated."

5. On the above considerations I feel that principle laid down by this Tribunal in B.D. Verma's case should be equally applicable to the applicant's case. His pay should have been fixed under F.R. 22-C. The order dated 31.3.1981 cancelling the earlier fixation and fixing him under F.R. 22-A(ii) is thus bad and liable to be quashed. On the question of arrears, which have been claimed by the applicant as one of the relief, in the background that the applicant did not agitate the matter when he should have in 1981 when his pay was re-fixed, the applicant is not entitled to get the same except from the date he represented in 1987.

6. In conclusion, therefore, I direct that the pay of the applicant should be fixed under F.R. 22-C from the date of his promotion. The orders of re-fixation dated 31.3.1981 are quashed. Arrears be paid to him only from the date of his representation, i.e. 28.9.1987. The application is disposed of accordingly with no order as to costs.


MEMBER (A).

Dated: October 21, 1988.