

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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D.A.NO.2679/90

New Delhi, this the 25th day of August, 1995

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

1. Smt. Shashi Gupta,
w/o Shri S.K. Gupta,
r/o E-3, P.G.Housing Society,
Vikas Puri, New Delhi.
2. Shri U.N. Jha,
s/o Shri Arjun Jha,
r/o A-6/27, Krishiniketan,
Paschim Vihar, New Delhi.
3. Shri Kuldeep Singh,
s/o Shri Mohan Singh,
R/o 12/20, East Patel Nagar,
New Delhi.
4. Shri Om Prakash,
s/o Shri Pyare Lal Jain,
R/o G-78, Vikas Puri,
New Delhi.
5. Shri Suresh Chand,
s/o late Shri F.C. Jain,
R/o AE-28, Shalimar Bagh,
Delhi.
6. Shri S.M.G. Saran,
s/o late Shri K. Prasad Srivastava,
r/o 12, Krishi Niketan, Block A-6,
Paschim Vihar, New Delhi.
7. Shri D.K. Gulati,
s/o Shri K.L. Gulati,
R/o C-57, West Patel Nagar,
New Delhi.
8. Shri P.K. Azad, s/o Shri C.B. Azad,
r/o BP-77, Shalimar Bagh,
Delhi.
9. Shri P.K. Mitra, s/o Shri B.N. Mitra,
R/o A-6/14, Krishi Niketan,
Paschim Vihar, New Delhi.
10. Shri M.S. Verma,
s/o M.S. Verma,
r/o 23, Krishi Niketan,
A/6, Paschim Vihar,
New Delhi.
11. Shri Prakash Lal,
s/o Shri Kishan Chand,
r/o A-5C/9A, Janak Puri,
New Delhi.
12. Shri P.K. Awasthi,
s/o Shri L.N. Awasthi,
R/o A-6/29, Krishi Niketan,
Paschim Vihar,
New Delhi.

13. Shri Ramesh Kumar,
s/o late Shri Lechhman Das,
R/o 5517, Shora Kothi,
Pahar Ganj, New Delhi.

(all working as T5 (Technical Officers
excluding 1 and 12)

... Applicants

By Advocate: Shri B.K. Paul,

Vs.

1. Indian Council of Agricultural Research
through its Director General (ICAR),
Krishi Bhavan, New Delhi.
2. Indian Agricultural Statistics
Research Institute (IASRI)
through its
Director (ICAR), Pusa,
Library Avenue,
New Delhi.

... Respondents

By Advocate: Shri A.K. Sikri

ORDER (ORAL)

Hon'ble Shri J.P. Sharma, Member(J)

The applicants were Senior Computer in the pre-revised scale Rs.425-600 before the constitution of the Technical Service Rules of Indian Council of Agricultural Research. That service came into force w.e.f. 1.10.75. The applicants were appointed on different dates from 1969 till February, 1975 to the post of Senior Computer in the scale Rs.425-600. However, the Technical Service Rules introduced 3 categories with respect to

certain grades and pay scales. Here we are concerned with category II. In Category II there were 3 grades (i) T-II-3(i) Rs.425-700; (ii) T-4(ii) Rs.550-900 and T-5(iii) Rs.650-1200. However, at the time of arguments it appears that at the time of filing of this application, some of them were in Category II in the pay scale of T-II-3(i) and T-4(ii) also.

The Industrial Dispute of 9/82 was raised between the workmen of the Indian Agricultural Statistics Research Institute Employees Association with the management of Indian Council of Agricultural Research(ICAR) regarding the fitment of their pay scales on the commencement of the Technical Service Rules w.e.f. 1.10.75. The issue framed in that case was whether the graduate Technical Assistants(Stat.) are entitled to place in the grade of Rs.550-900 and if so, from which date and what directions are necessary in this respect. The Industrial Dispute was decided in the form of an award holding that those workmen came before the Labour Court are entitled to the scale of Rs.550-900 w.e.f. 1.10.75 and also be fitted into T-4(ii) i.e. Category II. The applicants

in this application have averred that they are also T.A. (Stat.) working as Senior Computer before the promulgation of the Technical Service Rules, 1975 and as such the benefit which has been given to the workmen of the Indian Agricultural Statistics Research Institute (IASRI) they be also granted the same benefit as this is also an established ^{ment} and constituent of the ICAR. The applicants, therefore, prayed for the grant of the relief that all of them be granted the grade of Rs. 550-900 w.e.f. 1.10.75 alongwith consequential benefits including arrears etc.

The respondents contested this application by filing reply taking the stand that the present application is barred by delay and laches, as the application has been filed in the year 1990 for a relief prayed for w.e.f. 1.10.75 and even if award is taken into account that was delivered by the Industrial Tribunal on 8.1.88. This application, therefore, having been filed in November, 1990 and refiled in December, 1990 is barred by the provisions of section 21 of the A.T. Act, 1985 and the applicants cannot be granted the relief on this account.

Regarding the limitation, we have considered the aspect of the matter and we do find that the application is suffering from delay and laches in view of the fact that the respondents have themselves implemented the award. Subsequently after unsuccessfully assailing the award before the Hon'ble Supreme Court firstly by writ petition and then by S.L.P. and ultimately by Review application so the benefit was given from 1.12.89. In view of this, though there is no prayer for condoning the delay still in the circumstances of the case if the limitation is counted from the date when the respondents granted the relief to the petitioners before the Industrial Tribunal, the application cannot be said to be barred by delay and laches though may not be within the limitation as provided under section 21 of the A.T. Act, 1985.

The other contention of the learned counsel for the respondents is that the applicants are senior computer and the award dated 8.1.88 in Industrial Dispute of 9/82 was given in the case of Technical Assistant (Stat.) The qualification requirement of entering in the service and the duties

to discharge has not been averred specially in the O.A. to equate Senior Computer with the T.A.(Stat.) over the petitioners in the Industrial Tribunal. It is said, therefore, that the aforesaid award does not cover and will not include in its scope the benefit given to the T.A.(Stat.) in the Industrial Dispute 9/82.

We have seen that aspect of the matter and we do find that the Senior Computers were placed in the pay scale of Rs.425-600 and while the Technical Assistants in the scale of Rs.425-700. Thus the pay scale of Senior Computer with those of Technical Assistant was totally different. The difference of the pay scale is covered from the stage ultimately reached in the scale thus the ^{respondents'} ~~technical~~ stand is that Technical Assistants were in the higher pay scale than the Senior Computers. It is another fact that the scale Rs.425-600 was merged subsequently on the commencement of Technical Service Rules, 1975 to the scale Rs.425-700 but the fact remains that the Senior Computers who were on a lower pay scale than T.A.(Stat.) thus the duties, responsibilities

as well as pay scale are not ~~impar~~ ^{in pari materia} with those of technical ^(Stat.) stand in whose favour award was given.

The learned counsel for the applicant hammered ~~emphatically~~ that as modern employer ICAR should not discriminate between the employees and he has referred to the fact that certain persons having been granted the benefit after the commencement of the Technical Service Rules, 1975 in ICAR. Senior Computers were also designated as Technical Assistants and they should be taken at par at least from 1.10.75 and therefore they be given the benefit of the award of Industrial Dispute 9/82. We have considered this matter and we have also perused the relevant rules. The contention of the learned counsel for applicant would have definitely a greater force while the Hon'ble Supreme Court rejected the SLP ^{after} ~~without~~ making an observation that the legal questions involved in this decision of the Industrial Tribunal are left open meaning thereby that the legal aspect of the matter cannot be seen ~~whenever~~

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whenever an occasion arises, whether Senior Computer designated as Technical Assistant w.e.f. 1.10.75 can be given benefit of a particular statutory rules that^b the question of law[^] which has been left open and has to be considered and decided without taking the award of Tribunal as a final precedent. In fact when we go to the Tribunal, we find that the Tribunal has not considered the various rules under which the fitment of the pay scale has to be done. In the award the Tribunal has only considered the aspect that the Scientists should not get lesser pay scales. We point^{ed}ly asked the learned counsel for the applicant to refer to the particular aspect of the rules wherein the applicants, who were in Category II, T-II/III can jump over to the next Category II - T-4 which provides pay scale of Rs.550.900. The learned counsel ^{tried} ~~rightly~~ to convince that the award given by the Industrial Tribunal covers their case and that is the only reliance placed by the applicants for getting the pay scale Rs.550-900. The learned counsel for the respondents has taken us to the recent decision of the Hon'ble Supreme Court in the case of Director, Central Rice Research Institution, Cuttack and Another Vs. Shri Khetra Mohan Das reported in JT 1994(6)SC 482.

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The Hon'ble Supreme Court has concluded in para 7 by quashing the reasoning given by the Cuttack Bench of the Tribunal and observed as follows:-

"The Tribunal, however, observed that in the meantime the respondent has been promoted to Grade T-I-3 of Category I carrying the same scale as Grade T-II-3 of Category II, therefore, he should be deemed to have been inducted into Grade T-II-3 Category II. This reasoning is erroneous. The crucial date is 1.10.75 on which date the Rules came into force and for fitment into the necessary category Rule 5.1 has to be applied and the existing employees should be fitted only in the grades specified in para 3.1 on point to point basis on the basis of their existing scales of pay on that date. The subsequent promotion of the respondent from Grade T-II of Category I to Grade T-I-3, the higher grade in the same Category can not make any difference so far as the initial fitment on 1.10.75 is concerned as contemplated under Rule 5.1. The Tribunal also made a reference to Rule 8.1 which applies only to direct recruits and it has no relevance so far as the case of the respondent is concerned."

Now coming to the case in hand we find that the applicants before the commencement of the Technical Service Rules, 1975 of ICAR were Senior Computers in the pay scale of Rs. 425-600. This scale was merged with the pay scale Rs. 425-700 and they can only be ^{placed} in the Category II ^T and (III) and cannot aspire to jump to the scale Rs. 550-900 and as rightly pointed out by the learned counsel for the applicant, the applicants are not craving any promotion but only the grant of pay scales of Category II - T4. In fact if they are granted this pay scale then ^{that} ~~they~~ will automatically amounts to promotion. In any case Rule 5.1 as interpreted by the Hon'ble Supreme Court in the

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case of K.M. Dev's case clearly lays down that there should be point to point fitment of the pay scales if the applicants were earlier getting the pay scale Rs.425-600 and there was a similar Category in the new rules. The applicants have been fitted in the same pay scale. On logic we do find how the applicants can get the higher pay scales ^{only where} on which they have to reach after exhausting their position in the scale Rs.425-700. The next grade can be given to them only after appraisal of their work and screening. The earlier fixation of pay has to be on point to point basis without any screening or test.

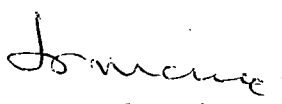
The learned counsel for the applicant, however, referred to a decision in the case of Sunilendu Chowdhury and others Vs. UOI & ors. reported in 1993(23)ATC 461 of Calcutta Bench of Appellate Tribunal where it is laid down that if there is a judgement in the earlier case of similarly situated employees then the limitation will not come in the way if those who did not join earlier have come for the grant of the same relief subsequently. We have already considered this matter and are disposing of the application on merit and also held that the applicants cannot be suited because of delay in filing this application. The learned counsel

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for the applicant has also referred to another decision of Hon'ble Supreme Court in the case of Doordarshan Cameramen Association Vs. UOI reported in AIR 1990 SC 1387. That case relates to equivalence to pay and post where the Cameramen of Doordarshan have compared their duties, responsibilities and entry to the service with Cameramen in other organisation of the Govt. of India, as such that case is not at all applicable for fitment of the case for the applicants in the Technical Service Rules introduced w.e.f. 1.10.75. The learned counsel for the respondents also referred to certain authorities that a judgement cannot by itself give a fresh cause of action but in the circumstances of the view we are taking above it is not necessary to refer to further authorities.

In the conspectus facts and circumstances, we find that the present application is totally devoid of merit and therefore is dismissed leaving the parties to bear their own costs.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

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