

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 1165/1991

Date of Decision: 17.9.93

Shri Kanhaiya Lal : Petitioner
Shri R.L. Sethi : Advocate for the
Petitioner

Versus

Union of India & Ors : Respondents
Shri K.C. Sinha : Advocate for the
Respondents

CORAM:

The Hon'ble Mr. J.P. Sharma, Member (J)
The Hon'ble Mr. S. Gurusankaran, Member(A)

1. Whether Reporters of Local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes.*

J U D G E M E N T

This judgement was delivered by Hon'ble Mr. S. Gurusankaran, Member(A)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved by his having been granted the higher pay scale of Rs 425-700 from 22.1.1986 only and not from the date he joined in grade Rs 330-560, that is, 22.1.1983 and has prayed for directing the respondents to grant all benefits of revision of grade from Rs 330-560 to Rs 425-700 with effect

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from 1.11.1983 along with arrears of pay and allowances from 1.11.1983.

2. The applicant has also filed M.P.2069/1991 for condoning the delay in filing this application and the same is being disposed of along with this order. The respondents have filed their reply contesting the application.

3. We have heard Shri R.L. Sethi for the applicant and Shri K.C. Sinha, counsel for the respondents. Shri Sethi submitted that granting of higher grade of Rs 425-700 to the applicant from 22.1.1986 is not based on any logic and is arbitrary. He argued that since the revision of pay scales of Draughtsman of all Government of India offices has been effect from 1.11.1983, the applicant who has joined service on 22.1.1983 should have also been given the revised pay scale from 1.11.1983. He pointed out that the applicant had filed a representation dated 14.12.1989 (Annexure-A1) and the same has ^{not} been disposed off. Since he was waiting for a favourable reply from the respondents, there was delay in filing this application, which was filed only on 6.5.1991. Since it is well settled that the benefits allowed to a particular set of persons should be invariably be extended to similarly situated persons by the state respondents and the orders of the Chandigarh Bench of this Tribunal in O.A. 420/HR/88 has already been implemented by the respondents vide their order dated 30.5.1991 (Annexure attached to the M.P.) the delay in filing this application is bonfide and deserves to be condoned.

4. Shri Sinha appearing for the respondents pointed out that the order dated 6.2.1985 (Annexure-A3) clearly stated that it would be applicable only to those

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Draughtsman, who were in service before 13.5.1982 and since the applicant joined service only on 22.1.1983, the benefits of the circular dated 6.2.1985 cannot be extended to him. He further submitted that the applicant did not possess the necessary qualification even as per 6.2.1985 letter in view of the fact that he completed only 2½ years Diploma Course including training and did not have the practical experience of at least one year in an organisation of repute after getting the Diploma. He pointed out that it has been brought out in the reply that the Petitioner has been inadvertently allowed the benefit of higher pay scale of Rs 425-700 from 22.1.1986 for which he was not entitled to as per rules, as he was not in service on 13.5.1982 and he did not possess the necessary qualifications. We specifically asked the learned counsel for the respondents as to the rationale behind granting higher pay scales to only those persons, who were in service on 13.5.1982 and not to persons who joined the department after that date, since they would be discharging exactly similar nature of duties and carrying similar responsibilities. The counsel for the respondents could not give us any satisfactory reply.

5. Since the applicant has filed M.P. for condonation of delay and the counsel for the respondents has opposed the same, we proceed first to consider the question of condonation of delay. As per the limitations provided under Section 21 of the A.T. Act, 1985, the applicant should have filed this application within a period of 18 months from the date of his submitting his representation dated 14.12.1989, viz., before 14.6.1991. Hence, his application filed on 6.5.1991 is within the period of limitation,

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if the limitation is calculated from the date of submitting the representation. However, the fact remains that the applicant was given the higher scale of pay of Rs 425-700 with effect from 23.1.1986 and if he was aggrieved in any manner with that order, he should have submitted a representation immediately without waiting for nearly 4 years before submitting the representation. Thus since the cause of action arose on 23.1.1986 and the representation itself has been filed belatedly, this application is clearly hit by limitation. However, the learned counsel for the applicant explained that the orders of the Chandigarh Bench of this Tribunal in the case of similarly situated persons was implemented only on 30.5.1991 and hence the delay if any deserves to be condoned. In view of the circumstances explained and we are aware of the fact that a large number of such applications have been filed before various Tribunals by Draughtsmen working in the Telecommunication Wing and a large number of orders have been issued, we condone the delay and proceed to consider the case on merits.

6. We find that a similar case has already been considered by the Ernakulam Bench of this Tribunal in C. Stanly Vs. Union of India and 2 others in O.A. No.K 325/1987 decided on 7.12.1990. We find that in that case also the applicant was promoted as Draughtsman Grade-II in scale Rs 330-560 from 17.11.1982 only. Thus, Stanly's case is squarely on all fours with the present case. In fact in stanly's case, the applicant had joined as Draughtsman Grade-II in scale Rs 330-560 on 17.11.1982, whereas as per order dated 6.2.1985, the revised pay scale was to be given effect to from 1.11.1983. Similarly, in the present case also the applicant joined as Draughtsman on

23.1.1983. In Stanly's case the Ernakulam Bench has considered the various orders given by the Bangalore Bench and Madras Bench in similar cases and also the decision of the larger Bench sitting at Madras rendered in O.A. 677/1987 on 6.3.1990. Since all the points raised in the present application have been considered therein, we find that it is not necessary to consider all the points in detail once again and we ^{are}/respectfully in agreement with the decision of the Ernakulam Bench. As pointed out by the Ernakulam Bench in Stanly's case, the applicant in the present case also has not challenged the vires of the order dated 6.2.1985. On the other hand, the applicant herein relays on the very same order for getting his relief of revision of pay scale from 1.11.1983 onwards. It is clearly laid down in the order dated 6.2.1985 that that would be applicable only to those persons, who were in service on 13.5.1982 and since the applicant was not in service on 13.5.1982, it is clear that the applicant cannot get the benefit from 1.11.1983. However, the Ernakulam Bench has upheld the validity of the decision taken by the Department in their letter dated 12.9.1984 and explained at length the reasons. However, they have not agreed with the contents of the letter dated 16.9.1987 issued by the respondents as it was restricted to the benefit of higher pay scales of Rs 425-700 only in respect of those persons who were in service as on 13.5.1982. In fact, the applicant in this case has not even questioned the validity of the order dated 16.9.1987 and the respondents have not ^{also}/referred to the existence of such an order. However, this would not affect the case of the applicant since in Stanly's case, the Ernakulam Bench passed the following orders while disposing off the O.A.K325/1987 on 7.12.1990.

Para-15: In the circumstances, we dispose of this case with the following orders/directions:

- (i) The letter dated 16.9.1987(Ann.7) is quashed.
- (ii) The Ann.2 order dated 12.9.1984 in so far as it pertains to the revision of pay scales of Draughtsmen Grade II from Rs 330-560 to Rs 425-700 shall stand modified such that it is made applicable to all Draughtsmen Grade II, whether in service on 13.5.1982 or thereafter. The revised pay scale of Rs 425-700 will, however, be payable only after completing three years of service in the pay scale of Rs 330-560.
- (iii) The revision in respect of Draughtsman Grade II who are in service between 13.5.1982 and 12.9.1984 will be notional with effect from 13.5.1982 or the date of their appointment if that is later and the actual benefit will be allowed to them with effect from 1.11.1983 or the date on which they complete 3 years of service whichever is later. In respect of persons who became Draughtsmen after 12.9.1984, the revised pay scale will become applicable with effect from the date of completion of 3 years of service in the pay scale of Rs 330-560.
- (iv) The applicants pay on 17.11.1985 shall be fixed in the light of the aforesaid order/direction and the consequential benefits shall be disbursed to him within two months from the date of receipt of this order and accordingly, the impugned Ann.8 order is quashed.

Para-16: As there is no grievance in respect of the pay scale applicable to Draughtsmen Grade I, we do not want to pass any orders thereon. We do hope that based on the decision rendered by the various Benches of the Tribunal, including the Full Bench, and this decision, the 1st respondent will take action, suo-moto, to revise the pay scales of Draughtsmen Grade I suitably on the above lines.

There will be no order as to costs. "

7. From the above it will be seen that the Ernakulam Bench has already quashed the letter dated 16.9.1987 and hence it is not necessary for us to quash the same and we have to decide the case treating that the letter dated 16.9.1987 is not in existence. Further, they have also

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directed modification to the letter dated 12.9.1984 to make it applicable to all Draughtsmen Gr.II whether in service on 13.5.1982 or thereafter. However, the Ernakulam Bench have held that the revised pay scale of Rs 425-700 will however be payable only after completing 3 years of service in the pay scale of Rs 330-560. At the same time, they have ordered that the revision in respect of Draughtsmen Gr.II who were in service between 13.5.1982 and 12.9.1984 will be given notionally with effect from 13.5.1982 or the date of their appointment, if that is later and actual benefit will be allowed to them from 1.11.1983 or the date on which they complete 3 years of service, whichever is later.

8. In view of the above, we find that the action of the respondents in granting the applicant the higher pay scale of Rs 425-700 from 23.1.1986 cannot be faulted. But it is not made clear either by the applicant or by the respondents as to whether the pay has been fixed notionally from 23.1.1983 or not. Regarding the point raised by the respondents as to the applicant fulfilling the requirements laid down regarding experience in the letter dated 6.2.1985 we find that this is not relevant in view of their earlier order dated 12.9.1984 and the fact that the applicant has been directly recruited as Draughtsmen Grade II.

9. In the light of the above, we allow this application partly with the following directions:

- (i) In view of the order dated 7.12.1990 of the Ernakulam Bench in O.A.K325/1987 the letter dated 16.9.1987 stands already quashed. Similarly, the order dated 12.9.1984 also stands modified as indicated in the orders of the Ernakulam Bench.

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(ii) The respondents are directed to refix the pay of the applicant notionally from 23.1.1983 in scale Rs 425-700, viz., the date of his joining service and grant the actual monetary benefits from 23.1.1986, that is the date of completion of 3 years. We note that the applicant has already been promoted by the respondents to the higher grade of Rs 425-700 from 23.1.1986 and hence what remains to be done by the respondents^{is} to refix his pay notionally from 23.1.1983 in that grade.

(iii) The respondents are also directed to pay the arrears as due to him on the basis of refixation of pay as indicated above from 23.1.1986.

(iv) The above directions shall be complied within a period of 4 months from the date of this order.

(v) The applicant will not be entitled to any other benefits prayed for by him in this application.

10. Before we part with this case, we may observe that inspite of the specific observations of the Ernakulam Bench of this Tribunal in paras-15 & 16^{of} their order dated 7.12.1990 (extracted above) the respondents have not taken any steps to give effect to the decisions rendered by the various Benches of this Tribunal including the Full Bench and extended the benefit to all similarly situated inspite of their having quashed the order dated 16.9.1987 and modified the order dated 12.9.1984. We hope that the respondents will take suitable action in this matter to avoid further litigations from similarly situated. A copy of this order is directed to be

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forwarded to the Director General, Telecommunication,
respondent no.1 with regard to our observations in this
para.

11. The application is disposed off
accordingly.

Gurusankaran
(S. GURUSANKARAN)
MEMBER(A)

J.P. Sharma
(J.P. SHARMA)
MEMBER(J) 17.9.93

Proposed by me.

J.P. Sharma
17.9.93

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