

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 2119/2004

New Delhi this the 14th day of March, 2005

**Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. S.K. Malhotra, Member (A)**

Shri Chander Singh,
C-11018-Supervisor, Grade-III (Group 'C' post),
Worker's Canteen,
505, Army Base Workshop,
Delhi Cantt-110010. **Applicant.**

(By Advocate Shri E.J. Verghese)

Versus

1. Union of India through the Secretary,
Ministry of Defence, South Block,
New Delhi-110011.
2. The Adjutant General, Army HQs,
Sena Bhawan, DHQ PO, New Delhi-110011.
3. The Commandant,
505 Army Base Workshop,
Delhi Cantt-110010. **Respondents.**

(By Advocate Shri Madhav Panikar)

O R D E R (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (J):

By this O.A., the applicant has sought the following reliefs:

- "(a) Allow the Application of the applicants under section 19 of the Administrative Tribunals Act, 1985 with cost.
- (b) Direct the respondents to rectify the wrong fixation of the pay of the applicant with all consequential benefits.
- (c) Direct the respondents to fix the pay of the applicant in the grade of Assistant Supervisor Grade III in the revised pay scale of Rs.3200-4900/- with effect from 1/1/1996.
- (d) Direct the respondents to promote the applicant in the grade of Supervisor Grade II in the pay scale of Rs.4000-100-6000 and failing which the respondents may be ordered to grant the second financial up-gradation to the applicant under the ACP Scheme.
- (e) Quash and set aside the order of the respondent No. 3 dated 4/10/2003.



- (f) Grant the cost of the petition, and
- (g) Pass any other orders as deemed fit and proper in the facts and circumstances of the case".

2. It is submitted by the applicant that he was engaged as a Vendor in the Canteen in August, 1970. He was promoted as Assistant Supervisor-cum-Cashier in the pay scale of Rs.110-180 on 14.2.1981 i.e. before he became a Government employee. On 5.1.1982, he was drawing Rs.250/- in the grade of Supervisor. Thereafter, all the canteen employees of defence establishments were declared as Government employees and their pay scales were revised w.e.f. 22.10.1980. Applicant's pay was fixed vide order dated 21.09.1982 as a result of which the mistake has occurred.

3. It is submitted by the applicant that employees, who were similarly situated, were granted protection of pay while fixing their pay on their being declared as Government employees but applicant was not given protection of personal pay. He has compared his case with one Shri Attar Singh, who was a cook yet he is drawing more pay than the applicant even though he was Assistant Supervisor-cum-Cashier which he has tried to explain by drawing our attention to pages 17 and 18 of the O.A. It is further submitted by the applicant that since his initial pay was not fixed properly, therefore, this has resulted in wrong fixation of pay throughout i.e. after 4th Pay Commission and 5th Pay Commission as well. It is submitted by the applicant that his pay should have been fixed at Rs.250/- from 1981 whereas his pay was fixed only at Rs.214/-. Thus, he has been discriminated against.

4. Being aggrieved, he filed O.A. No. 1735/2003. The same was disposed of vide order dated 18.7.2003 by directing the respondents to take a decision in this regard in accordance with law preferably within four months from the date of receipt of a copy of the order. Pursuant to the said directions, respondents have issued a detailed order dated 4.12.2003 explaining the position as to how his pay was fixed by the respondents. Applicant has now filed the present O.A. seeking the reliefs as mentioned above.

5. O.A. has been contested by the respondents who have taken a preliminary objection to the maintainability of the O.A. itself by submitting that



the O.A. is barred by Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 as he has sought multiple reliefs in one O.A. which cannot be granted as they do not flow from one another. Counsel for the respondents further submitted that this O.A. is liable to be dismissed as even otherwise it is barred by jurisdiction.

6. On merits, counsel for the respondents submitted that applicant cannot be granted the benefit of ACP as he had already been granted two promotions in his career and as per Office Memorandum dated 9.8.1999 (Page 23 at page 26), it has been clarified in Para 5.1 as follows:

"Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that the financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him".

Since applicant had already been promoted from Vendor to Assistant Supervisor-cum-Cashier and then Canteen Supervisor Grade-III, he is not entitled for grant of ACP in view of para 5.1 as quoted above. As far as his comparison with other persons, namely, Shri Attar Singh and Shri Mahender are concerned, he relied on CPRO 116 of 1974 wherein the principle of stepping of pay was clarified stating that stepping up of pay can be done only subject to following conditions:

- (a) Both the junior and senior officer should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre;
- (b) The unrevised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical; and
- (c) The anomaly should be directly as a result of the application of the provisions of Art.156-A, CSR in the revised scale. For example, if even in the lower post, the junior officer was drawing more pay in the unrevised scale than the senior by virtue of fixation of pay under the normal rules or any advance increments granted to him, the provisions contained in this decision need not be invoked to step up the pay of the senior officer".



It was thus submitted that since Shri Attar Singh was a cook while applicant was in a different cadre and they were not identical, applicant cannot say that his pay should be stepped up at par with Shri Attar Singh. As far as Shri Mahender is concerned, it is explained that he was in Central Vehicle Depot while applicant was in 505 Army Base Workshop, Delhi Cantt. Therefore, he cannot compare himself with the employee of other organization.

7. Counsel for the respondents submitted that these employees were declared to be Government employees w.e.f. 22.10.1980 and they were made eligible for the benefits admissible to the grades, as per their corresponding pay scales, subject to the usual liabilities attached to such government servants. Accordingly, Applicant was brought on par with the Central Government employees and was appointed as Vendor w.e.f. 22.10.1980 in the pay scale of Rs.196-232 as per the Rules. He was promoted to Supervisor-cum-Cashier in the pay scale of Rs.210-290 w.e.f. 10.2.1981 in accordance with the Govt. of India, Ministry of Defence O.M. dated 21.9.1982. In view of the above, his pay was fixed at Rs.214/- w.e.f. 1.10.1980 in the pay scale of Rs.196-232 with the next date of increment w.e.f. 1.10.1981. After he was promoted as Assistant Supervisor-cum-Cashier in the pay scale of Rs.210-290 w.e.f. 10.2.1981, his pay was fixed at Rs.214/- and by giving him one increment of Rs.4/- as per the provisions of Art.156A CSR by making his pay at Rs.218/-. It is thus clear that his pay was fixed at Rs.218/- w.e.f. 10.2.1981 as per the existing orders on the subject. The pay scale of Rs.210-290 was further revised under RPR 1986 in the corresponding scale of Rs.800-1150 when his pay was fixed @ Rs.890/- per month w.e.f. 1.1.1986. Applicant was then promoted as Canteen Supervisor Grade-III in the scale of Rs.950-1500 when his pay was fixed at Rs.965/- per month and after accrual of increment in the lower pay scale, it was finally fixed at Rs.1010/- w.e.f. 1.2.1991. After implementation of RPR 1996, his pay was further revised in the present corresponding scale of Rs.3050-4590. Accordingly, his pay was fixed at Rs.3350/- as on 1.1.1996 with next date of increment w.e.f.



1.2.1996. They have thus submitted that there is no illegality in the orders passed by the respondents. The O.A. may, therefore, be dismissed.

8. We have heard both the counsel and perused the pleadings as well. The whole grievance of the applicant in this case is that while fixing his pay at Rs.214/- w.e.f. 1.10.1980, a mistake was committed by the respondents whereas according to the applicant his pay should have been fixed at Rs.250/-. Therefore, he wants his pay to be correctly fixed at Rs.250/- w.e.f. 1.10.1980, meaning thereby that his cause of action had arisen at the time when his pay was wrongly fixed as Vendor w.e.f. 1.10.1980 and he wants the Tribunal to fix it correctly w.e.f. 1.10.1980. On this point, it would be relevant to quote Section 21 (2) of the Administrative Tribunals Act, 1985 wherein it is made clear in sub-clause (a) that Tribunal shall not admit an application where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under the Act in respect of the matter to which such order relates and (b) no proceeding for the redressal of such grievance had been commenced before the said date before any High Court. The Central Administrative Tribunal came into being w.e.f. 1.11.1985. Now, in view of Section 21 (2), any matter where cause of action had arisen prior to three years of this date and for which no proceeding for redressal had been commenced by the aggrieved party before the High Court, Tribunal could not have entertained application with regard to such claims. The provision in Section 21 (2) of the Administrative Tribunals Act, 1985 is in a negative form meaning thereby that if subject matter for the redressal of the grievance sought by the applicant relates to a period three years prior to the date of commencement of the Act, it would be beyond the jurisdiction of the Tribunal. Since applicant's claim pertains to the fixing of pay w.e.f. 1.10.1980 and his pay was fixed vide order dated 21.9.1982 which is three years prior to the date of commencement of Administrative Tribunals Act, 1985, we would agree with the respondents' counsel that the O.A. cannot be entertained by the Tribunal as it would be barred by the jurisdiction itself.



9. Counsel for the applicant submitted that pay fixation is a recurring cause of action and since he had come to the Tribunal earlier also, his case cannot be dismissed on the ground of limitation. However, limitation and jurisdiction are entirely two different aspects of the matter. If it was only a case of limitation probably the contention raised by the counsel for the applicant would have been correct because in a case of delay the limitation can be condoned and one could also see whether it is a recurring cause of action or not but when the statute specifically excludes from the jurisdiction of the Tribunal a particular situation, we cannot assume the power or jurisdiction by ignoring the basic provision of the statute itself. The question of limitation is, therefore, not relevant in this case because we are faced with the basic question as to whether we have jurisdiction to deal with the matter or not. As discussed above, since subject matter of the grievance of which redressal is sought is for correction of pay w.e.f. 1.10.1980. Therefore, this case is barred by jurisdiction. The rest of the fixation would be dependent on the initial fixation of pay. At this juncture, we would like to quote the judgment given by this Tribunal in the case of V.K. Mehra Vs. The Secretary, Ministry of Information and Broadcasting reported in ATR 1986 (1) CAT 203, wherein it has already been held that the Administrative Tribunals Act, 1985 does not vest any power or authority in CAT to take cognizance of the grievance arising out of an order passed prior to 1.11.1982. In the instant case, admittedly applicant's pay was fixed vide order dated 21.9.1982 (Annexure R-3). Therefore, this O.A. is clearly barred by jurisdiction. Accordingly, the O.A. is dismissed on this ground alone. However, it would be open to the applicant to seek redressal of his grievance in appropriate forum. No order as to costs.

Amulya
 (S.K. MALHOTRA)
 MEMBER (A)

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 (MRS. MEERA CHHIBBER)
 MEMBER (i)

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