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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.2413/2004

New Delhi this the ^{st Aug} 17th July, 2005

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

1. Harish Basnotra son of late Shri Kesho Dass Basnotra;
2. Bula Ram s/o late Shri Ram Chander;
3. J.K. Bhasin son of late Shri H.K.Bhasin;
4. K.S.Pathania son of late Shri P.R. Pathania;
5. Daljit Sahir wife of Shri Sandeep Sahir;
6. Ashok Verma son of Shri Goverdhan Verma;
7. S.P.Kalra son of late Shri P.D.Kalra;
8. Prem Chand Sharma son of Shri Gopal Dutta Sharma;
9. R.L.Kanojia son of Shri Maku Lal;
10. Joseph Titus son of late Shri K.B. Titus;
11. Bishambar Dayal son of late Shri Bhagwan Dass;
12. Victoria D' Cousta son of late Shri Patrick D' Cousta;
13. Ram Raj son of late Shri Chowthi Ram;
14. Mahajan son of late Shri Thunoo Ram;
15. Shri Ram Saini sons of late Shri Baza Ram;
16. Surjeet Singh son of Shri Gurbansh Singh;
17. Ganeshi son of late Shri Ram Chandra;
18. Prem Singh son of late Shri Chandgi Ram;
19. Rajesh Kumar Vedic son of Shri Ramesh Chand;
20. Chandra Pal son of Shri Chhottey Lal; ...Applicants

All working in PD/PD/SE Sections, Ministry of External Affairs,
Akbar Bhawan, New Delhi.

(By Advocate: Shri H.P.Chakravroti)

Versus

1. Union of India Thro'
The Principal Secretary,
Ministry of External Affairs,
South Block, New Delhi.
2. The Secretary,
Department of Personnel & Training,
North Block, New Delhi. ... Respondents.

By Advocate: Shri Ashish Nischal for Shri Rajinder Nischal)

ORDER

By Shri S.A.Singh, Member (A)

The applicants were employees of the Indian Tourism Development Corporation (ITDC) working in Akbar Hotel. Akbar Hotel was taken over by the Government of India in 1986-87 and 137 employees of that Hotel were retrenched.

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Aggrieved by the retrenchment the applicants filled Writ Petition No.468/1986 in the Supreme Court. The court seeing no valid reason to entertain the petition disposed of the writ on 28.1.1988. However, the court recorded that respondents had made a statement before the Court that every retrenched employee had been provided alternate service and the last pay drawn before the closure of the hotel, shall be paid and wherever necessary the difference would be treated as personal pay until appropriate pay scale is available.

2. The applicants filed OA 356/1989, which was disposed of vide order dated 06.3.1992 directing the respondents to appoint an Expert Committee to examine the issues and take a final decision. The applicants were, however, given liberty to move the Tribunal if they were still aggrieved after the recommendations of the committee were implemented.

3. The respondents appointed an Expert Committee, and it submitted its report on 14.7.1992. As per recommendations of the committee, 117 ex-cadre posts were created by order-dated 3.8.1993 and applicants were adjusted in MEA against these ex-cadre posts. The applicants were not satisfied so they filed OA 52/1995. At the admission stage, the Tribunal in its order dated 21.4.1995 deleted relief 'a' to 'c' of Para 8 on the ground that these had already been decided by the earlier decision of the Tribunal in OA 356/1989 and cannot be re-considered. The Tribunal further observed that what had been directed in OA 356/1989 had been complied with by the respondents.

4. The respondents granted ACP benefits to a few of applicants vide orders-dated 17.4.2001 and 7.9.2001. Some other employees were granted ACP in higher grade on 21.6.2002 and 1.10.2003. The applicants plead that they have been discriminated, as they have not been given ACP benefits equivalent to the General Staff of MEA IFS (B). Aggrieved by the orders dated 22.8.1993 they have filed the present OA. The applicants have also impugned respondents' order creating 117 ex-cadre posts for absorption of the ex ITDC employees and orders dated 22.2.1993, 12.4.1993, 15.4.1993, 03.8.1993, 17.4.2001, 7.9.2001, 21.6.2002, 6.10.2003,

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16.10.2003, 18.3.2004, 21.6.2004 and 6.7.2004 so far as they adversely affect the rights and interest of the petitioner in regard to appropriate pay scales, promotional avenues, ACP benefits pay and seniority at par with other MEA IFS 'B' staff in general cadre.

5. The main ground of the applicants for seeking parity between IFS (B) General Cadre is that the impugned order dated 22.2.1993 creating the ex-cadre posts in various pay scales was not in terms of directions of Tribunal in OA 356/1989. Moreover, the respondents have created 117 ex cadre posts without providing for any promotional opportunities to the petitioners, which is highly discriminatory.

6. The respondents vehemently contested the averments of the applicants stating that most of the employees were doing maintenance job in the erstwhile Akbar Hotel and their adjustment in the appropriate pay scales and posts was done based on their previous jobs. The Expert Committee was appointed on the direction of the Hon'ble CAT in OA No.356/89. The question of acceptance of recommendations of the committee had been gone into by the Tribunal in OA 356/89 and 52/95.

7. The applicants have been given ACP benefits. In OA 52/1995, the Tribunal had held that the Ministry of External Affairs had complied with the direction of Hon'ble CAT in OA No.356/1989 with regard to, inter alia, adjustment of these employees in appropriate posts and pay scales. CAT had decided in OA 52/1995 that the question of absorption of the applicants in the ex. Cadre posts in the Ministry of External Affairs had already been decided in OA 356/89 and cannot be re-considered.

8. We have heard the counsel for the parties and gone through the documents placed on record. We find that in OA 52/95, the applicant has asked the following relief:

"In the present application the applicants have prayed for the grant of the following reliefs: -

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- (a) Issue a direction to absorb the applicants in regular post in the main stream of the Min. of External Affairs and not on ex-cadre posts.
- (b) Issue a direction quashing the conditions (i) to (iii) contained in order No.G/PG/632/1/93 dt. 3.8.1993 of the Govt. of India, Min. of External Affairs.
- (c) Issue a direction commanding the respondent to make proper fitment and absorption of each of the applicant on pay scales based on the Ministry of external Affairs.
- (d) Issue a direction directing the respondent to take the applicants service rendered in the I.T.D.C. for the purpose of determination and payment of their pension and other post retirement benefits.
- (e) Issue a direction quashing order no. DE (9) A. Bhawan/ECDC/94 434 dated 7.12.1994
- (f) Issue any other appropriate direction that may be deemed necessary for doing complete justice."

and the Tribunal in order of 21.4.1995 at the admission stage directed:

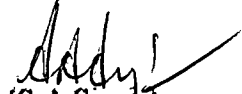
"As regards the relief prayed for in sub Para (a) to (c) in Para 8 of the relief clause, the matter has already been decided by the earlier decision of the Tribunal in OA No. 356/89 and it cannot be re-considered. If the applicants were not satisfied with the direction issued in the decision given by the Tribunal in OA No. 356/89 they were free to move for review of the judgement or assail the same as provided under law. What was directed in OA 356/89 has been complied with by the respondents. In case the applicants felt that the respondents have complied with the direction or misunderstood the direction, they were free to take appropriate steps for implementation of the judgement accordingly to the procedure prescribed. No fresh application can be filed with respect to the relief which has already been considered."


9. The present applicants are seeking the following relief:

"8.1 to allow the OA and direct the respondents to grant the respondents appropriate pay scales, at par with other existing staff of Ministry of External Affairs, in grades III, IV, V and VI in General Cadre of Indian Foreign Service Branch 'B' where the petitioners happened to have been posted and working from the date of absorption and deemed to have been absorbed against vacancies in above grades occurred due retirement / transfer / promotion of General Cadre on normal wastage, with protection of seniority, pay and promotional avenues and the ACP benefits akin to MEA General Cadre IFA 'B' staff, by quashing the impugned orders dated 22.2.1993, 12.4.1993, 15.4.1993, 03.8.1993, 17.4.2001, 7.9.2001, 21.6.2002, 6.10.2003, 16.10.2003, 18.3.2004, 21.6.2004 and 6.7.2004 in so far as they adversely affect the rights and interest of the petitioner in regard to appropriate pay scales, promotional avenues, ACP benefits pay and seniority at par with other MEA IFS 'B' staff in general cadre; and"

When the relief in the present OA is compared with the relief in OA 52/95, we find that in essence they are same: namely absorption of the applicants in the mainstream of MEA. Having failed to achieve this objective in earlier OAs, they are praying substantially for the same relief in the following manner "... to grant the applicants appropriate pay scales, at par with other existing staff of Ministry of External Affairs, in grades III, IV, V and VI in General Cadre of Indian Foreign Service Branch 'B'". The ground for re-agitating the issue is that the creation of the ex cadre posts in various pay scales vide impugned order dated 22.2.1993 was not in terms of directions of this Tribunal in OA 356/1989. The Tribunal has already found in order-dated 21.4.1995 that "What was directed in OA 356/89 has been complied with by the respondents". Further, the Tribunal observed that, "As regards the relief prayed for in sub Para (a) to (c) in Para 8 of the relief clause, the matter has already been decided by the earlier decision of the Tribunal in OA No. 356/89 and it cannot be re-considered". The respondents have granted ACP benefits.

10. In view of the foregoing, the application is without merit and is accordingly dismissed. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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