

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1435/2004
MA-1216/2004

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New Delhi this the 5th day of June, 2006.

Hon'ble Mr. Shanker Raju, Member(J)
Hon'ble Mrs. Chitra Chopra, Member(A)

1. Sh. Om Parkash,
S/o sh. Sundaram,
R/o J-195, Mangolpuri,
Delhi.
2. Sh. Summer Singh,
S/o Sh. Ratan Singh,
Ten Mender, Ordnance
Depot, Shakurbasti,
Delhi.
3. Sh. Dharam Chand,
S/o Sh. Hari Singh
Ten Mender, Ordnance
Depot, Shakurbasti,
Delhi.
4. Sh. Dhara Singh,
S/o Sh. Mangli Ram,
Ten Mender, Ordnance
Depot, Shakurbasti,
Delhi.

.... Applicants

(through Sh. B.S. Mainee, Advocate)

Versus

Union of India through

1. The Secretary,
Ministry of Defence,
Army Headquarters,
New Delhi.
2. The Officer Commandant,
Ordnance Depot,
Shakurbasti,
New Delhi.

.... Respondents.

(through Mrs. Promila Safaya, Advocate)

Order (Oral)

Hon'ble Mr. Shanker Raju, Member(J)

Heard the learned counsel for the parties.

2. Apex Court in **K.C. Sharma Vs. U.O.I.** (1998(1)SC SLJ 54) ruled that when similar situated persons approach the Government for implementation of the directions of a judicial forum, as a model employer, it is fair that directions should be suo moto implemented in case of those who are similarly circumstanced but when such an action does not forth come from the Government and the concerned approaches the Court even after delay, the aforesaid delay should invariably be condoned. As what has been sought through the judicial proceedings, extension of benefit of a judgment being identically situated, if it is not so, then there would be a class within the class and would violate principle of equality enshrined under Article 14 of the Constitution of India. 19

3. In the above backdrop, the claim of the applicants in the present O.A. is for extension of benefit of a decision of Principal Bench of the Tribunal in **OA-762/2002** (Surender Singh & Ors. Vs. U.O.I. & Ors.) decided on 2.12.2002 wherein the skilled grade is accorded to the tent menders making them equivalent to the skilled grade tailors. As per the admission of the respondents, it is no more res integra that the aforesaid decision was assailed before the Hon'ble High Court in Writ Petition and was affirmed on 19.4.2006 by dismissal of the Writ Petition.

4. It is also not disputed that the directions of the Tribunal were implemented in 2003 though subject to the final outcome of the Writ Petition sub-judice before the High Court.

5. In the above backdrop, learned counsel of the applicants states that being identically situated, it was incumbent upon the respondents not to drag the applicants to the Court for individual redressal of their grievances and this decision of the Tribunal should have been extended to the applicants, which not only shows fair play on the part of the Government but also avoids multiplicity of litigation and wastage of exchequer.

6. Learned counsel for the respondents though vehemently opposed the O.A. on the ground of limitation by contending that the grounds taken in MA for condonation of delay are flimsy and misconceived and as the applicants even

after 2000 and moreover on implementation of the Tribunal's directions in 2003 had never approached the respondents by filing representations, the decision, which now being affirmed would not extend the cause of action to the applicants to have a advantageous position in the matter of relief.

7. On merit, it is stated that the applicants having failed to approach the respondents, the question of grant of extension of benefit, which has been granted to the applicants who have filed OA-762/2002, had already been complied with, the claim of the applicants is liable to be rejected.

8. In the matter of extension of benefit of a decision to the similarly circumstanced, Article 14 of the Constitution of India would come in operation. What is forbidden under Article 14 *ibid* is unequal treatment to the equals. Here it is a case where in 2000 when the decision has been rendered in respect of almost ten members except the applicants, applicants waited for the compliance and as soon as the compliance has been done in 2003 though it is not clear that they represented to the respondents, yet it is claimed in the OA that they filed the O.A. within one year from the compliance of the decision of the Tribunal. Accordingly, in the Miscellaneous application filed for condonation of delay the ground taken by the applicants is that they had sent a representation but once the decision in the case of similarly circumstanced has come, *suo moto* compliance should have been done as a class to the applicants and as the case is good on merit, condonation of delay has been sought.


9. In the matter of condonation of delay though the delay defeats a legal right who slumber over his right is not allowed to exhaust remedy but the aforesaid principle would ^{not} apply in the facts and circumstances of each case. Here it is a case where the decision was rendered in 2000 and the same on being implemented in 2003, the applicants have filed the present O.A. in 2004. Section 21 of the Administrative Tribunals Act, 1985 provides an application to be filed within one year from the date the cause of action arises i.e. an order passed. An order passed by the Tribunal once implemented though subject to the decision of the High Court and has attained finality though sub-judice Writ Petition was decided on the fate of the pending compliance yet having complied with the


aforesaid order gives a cause of action to the applicants and as such the present O.A. has been filed within one year from the date of compliance of the directions of the Tribunal in respect of similarly circumstanced. We do not find any delay in approaching the applicants before us.

10. However, for the sake of an objection raised by the respondents, Apex Court in **Madras Port Trust Vs. Himanshi International** (1979(4)SCC 176) held that being a welfare Government they should avoid raising technical pleas to avoid performing their fundamental duties. Moreover, in the matter of limitation as held by the Apex Court in **K.C. Sharma's** case (supra) delay has to be condoned when an applicant seek extension of benefit of a decision of the Court. From the decision of the Tribunal, we do not find any indication as to the decision being treated as personam and once the directions have been implemented, in such an event, it is the wisdom and fairness of the Government that the decision would have been suo moto extended to the remaining tent menders who have not approached the Tribunal. By dragging the individual to claim extension of the benefit, it not only shows callousness on the part of the respondents but also their ignorance as to the hardship faced while approaching the Court, which not only affects him financially but also the Court's precious time is wasted. In such an adjudication once the matter could have been sorted out by extending the benefit to the similarly circumstanced, in view of the decision of the Apex Court in **State of Bihar & Ors. Vs. Kamleshwar Pd. Singh** (2001(1) SC SLJ 76) the objections raised is over ruled.

11. At this stage the decision of the Apex Court in **Divisional Manager, Plantation Division, Andaman & Nicobar Islands Vs. Munnu Barrick & Ors.** (2005 SC (L&S) 2000 is relevant to be quoted, which ruled that when serious question of law crops, delay is to be condoned. As regards compliance for grant of extension of benefit, in our considered view, is now a precedent as decision is binding as the directions of the Tribunals have been implemented and affirmed by the High Court, who are in all respects are identically situated and despite that few of them have already retired, directions have been implemented from retrospective effect.

12. In the result, for the foregoing reasons, respondents are directed to extend to the applicants benefit of the decision of the Principal Bench as affirmed by the High Court with all due arrears and consequential benefits while granting pay in skilled category within three months from the date of receipt of a copy of this order. No costs.


(Chitra Chopra)
Member(A)


(Shanker Raju)
Member(J)

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