

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1410/2004
with
OA 1530/2004, OA 1560/2004, OA 1561/2004 and 1562/2004

New Delhi this the 20th day of January, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Shri S.A. Singh, Member (A)

OA 1410/2004

Karam Chand Verma,
S/o late Shri Daroga Ram,
71, Aliganj, Lodhi Road, New Delhi.

...Applicant

(By Advocate Shri Deepak Verma)

VERSUS

Union of India through

1. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjehan Road,
New Delhi.

2. The Secretary,
Deptt. of Personnel and Training,
North Block, New Delhi.

...Respondents

(By Advocate Shri M.M.Sudan)

OA 1530/2004

Jai Prakash Sharma,
S/o late Shri D.C.Sharma,
RZ 42-D, Gali No.7, Geetanjali Park,
W.Sagarpur, New Delhi.

...Applicant

(By Advocate Shri Deepak Verma)

VERSUS

Union of India through

1. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjehan Road,
New Delhi.

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2. The Secretary,
Deptt. of Personnel and Training,
North Block, New Delhi.

..Respondents

(By Advocate Shri M.M.Sudan)

OA 1560/2004

Sushil Kumar,
S/O late Shri Tyoti Pd,
RZ E-54, New Roshanpura,
Najafgarh, New Delhi.

..Applicant

(By Advocate Shri Deepak Verma)

VERSUS

Union of India through

1. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjehan Road,
New Delhi.

2. The Secretary,
Deptt. of Personnel and Training,
North Block, New Delhi.

..Respondents

(By Advocate Shri M.M.Sudan)

OA 1561/2004

Bhagwat Singh,
S/O Bishan Singh Bora,
House No. 318-III, Sadiq Nagar,
New Delhi-110049

..Applicant

(By Advocate Shri Deepak Verma)

VERSUS

Union of India through

1. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjehan Road,
New Delhi.

2. The Secretary,
Deptt. of Personnel and Training,
North Block, New Delhi.

..Respondents

(By Advocate Shri M.M.Sudan)

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OA 1562/2004

Kanwar Singh,
S/O Shri Sujan Singh,
E-264, East Vinod Nagar,
Gali No.8, Delhi-110091

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...Applicant

(By Advocate Shri Deepak Verma)

VERSUS

Union of India through

1. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjehan Road,
New Delhi.

2. The Secretary,
Deptt. of Personnel and Training,
North Block, New Delhi.

...Respondents

(By Advocate Shri M.M.Sudan)

ORDER (ORAL)

Hon'ble Mrs Meera Chhibber, Member (J)

All these OAs were clubbed together as they are identical in nature. Therefore, they are being disposed off by a common order.

2. In all these cases, applicants have sought a direction to the respondents to fix their pay in the grade of DEO-B (Rs.1350-2200) w.e.f. 1.3.1989, the date from which the same is given to his juniors Shri Birendra Singh and Jai Bhagwan with all consequential benefits as a result of re-fixation.

3. For the purposes of giving the facts, O.A. No. 1410/2004 is being taken up as a leading case. The brief facts as submitted by applicant are that he was senior to Shri Birendra Singh and Shri Jai Bhagwan as Mechanical Operator which post was later redesignated as Data Entry Operator 'B'(DEO-B) w.e.f. 11.9.1989. He has referred to page 13 to show that he was at serial number 52 while Birendra Singh and Jai Bhagwan were at serial numbers 58 and 59 in the seniority list of Mechanical Operators. Similarly

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in the seniority list of DEO Gr.'B' issued on 8.9.1995 in the pay scale of Rs.1350-2200 also applicant was senior to them as he was at serial number no.3 while Birendra Singh and Jai Bhagwan were at serial numbers 9 and 10 respectively (page 10 and 11).

4. It is submitted by applicant that all the persons were initially appointed as Mechanical Operators in Gr.'C' vide order dated 14.3.1983 on ad hoc basis w.e.f. 1.3.1983 (page 17). They were subsequently appointed on regular basis vide order dated 16.5.1990 w.e.f. 4 April, 1990. Applicant was at serial number 24 while Shri Birendra Singh and Jai Bhagwan were at serial nos. 30 and 31 (page 18).

5. It is submitted by applicant that all this while there was no problem but the problem arose when respondents re-fixed the pay after Tribunal gave its judgement in OA No. 1649-51/2001 to the effect that revised scales of DEO shall be applicable w.e.f. 1.1.1986 with all consequential benefits as upheld by Hon'ble High Court.

6. It is submitted by applicant that while re-fixing the pay, respondents have fixed the pay of applicant at Rs.1250 w.e.f. 1.3.1989 and at Rs.1350 w.e.f. 20.5.1989 while in case of Birendra Singh and Jai Bhagwan, their pay has been fixed at Rs.1350 w.e.f. 1.3.89 (page 8 and 9) as a result of which juniors are getting higher pay then the applicant. This pay fixation was done on 10.11.2002. He, therefore, requested the authorities to remove the anomaly and step up his pay at par with his juniors (page 19). The request was, however, rejected vide letter dated 7.5.2003 on the ground that Birendra Singh and Jai Bhagwan were eligible for grant of deemed placement in the grade of DEO 'B' w.e.f. 1.3.1989 keeping in view regularization of their ad hoc service pursuant to Court orders. Hence it is not a case of stepping up.

7. Counsel for the applicant submitted that as a model employer, respondents should have extended the same benefits to applicant suo moto and cannot compel these persons to knock the doors individually. He relied on following judgements and prayed that the

OA may be allowed:

2000(3) ATFB 39

ATJ 2002(3) Karnataka High Court 51

ATR 1986 (2) CAT 444

1997 (11) SCC 463

1996 (11) SCC 361

8. Respondents, on the other hand, have taken preliminary objection to the maintainability of OA on the ground that OA is barred by limitation as pay was initially fixed on 17.9.1991 at Rs.1350 w.e.f. 11.9.89 while in case of juniors pay was fixed at Rs.1350 w.e.f. 1.3.89 therefore they should have agitated at that time. 2nd re-fixation was done from 1.1.1986 vide order dated 11.10.2002 but from that date also the OA has not been filed within the limitation period. They have thus prayed, that OA may be dismissed on this ground alone.

9. On merits they have admitted that applicant was senior to Shri Birendra Singh and Jai Bhagwan but have submitted that they were granted deemed promotion in the grade of DEO 'B' w.e.f. 1.3.1989 consequent upon regularization of their ad hoc service in the post of Mechanical Operator w.e.f. 1.3.1983 to 5.11.1987 in pursuance of orders passed by Central Administrative Tribunal.

10. They have relied on Govt. of India OM dated 4.11.1993 and judgment of Hon'ble Supreme Court in the case of UOI and Ors Vs. Swaminathan reported in ATR 1997 SC 3554) wherein it had been held that the memorandum dated 4.11.1993 makes it clear that in such instances a junior drawing more pay than his senior will not constitute an anomaly and therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the



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higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay".

11. They have further explained that applicant was placed in the scale of DEO Gr.'B' w.e.f. 20.5.1989 while Birendra Singh and Jai Bhagwan were placed in the grade of DEO Gr.'B' w.e.f. 1.3.1989. Applicant, therefore, cannot state that he was similarly situated. They have further submitted that Birendra Singh and Jai Bhagwan had filed OA in 1994 regarding fixation of pay and also the regularization of their ad hoc service which was decided long back but the applicant did not have any grievance nor he has filed any case. Therefore, the Full Bench judgement relied upon by them is not at all attracted in the present case. They have prayed that the OAs may be dismissed.

12. We have heard both the counsel and perused the pleadings as well.

13. Counsel for the respondents has raised an objection to the maintainability of the OA on the ground that the OA is barred by limitation. However it is seen that the difference crept in only on re fixation done by order dated 11.10.2002. Moreover the prayer made by the applicants have been rejected vide order dated 7.5.2003 whereas OA has been filed on 1.6.2004 i.e. within one year from the date of rejection of their claim. Therefore, the objection of the respondents with regard to limitation is rejected.

14. Counsel for the applicant vehemently argued that since applicants were given promotion on ad hoc basis by a common order and they were given regular appointment also by a common order and throughout they were senior to Birendra Singh and Jai Bhagwan whose pay were fixed at Rs.1350 from an earlier date than the applicants. Therefore, this anomaly needs to be removed and pay should be stepped up at par with their juniors whereas the respondents have relied on OM dated 4.11.1993 to state that since Shri Birendra Singh and Jai Bhagwan were regularized from an earlier date than the applicants by virtue of the judgement given by the Tribunal. Thus, it is not a case of stepping up of pay. Counsel for the applicant submitted that in case Birendra Singh and

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Jai Bhagwan had been given some benefits by the Court of law, the same should have been extended to the applicants as well without dragging them individually to the Court of law. However, if the reliefs claimed by the applicants are seen and their representations which were given to the respondents are seen, it is clear that the applicants had only prayed to step up their pay at par with Birendra Singh and Jai Bhagwan w.e.f. 1.3.1989. The relief as claimed by the applicants in the given circumstances cannot be given to them so long Birendra Singh and Jai Bhagwan were given benefits of judgment by virtue of which their promotion was regularized on an earlier date than the applicants. The proper course for all the applicants would have been to request the authorities to regularise their service also w.e.f. 1.3.1989 and then to fix their pay at par with their juniors S/Shri Birendra Singh and Jai Bhagwan. From the perusal of the representation it is seen that applicants have not even requested the authorities for giving them the benefit of judgement in the case of Birendra Singh and Jai Bhagwan. Therefore, in these circumstances, the reliefs as prayed by the applicants cannot be given to them.

15. Counsel for the applicants submitted that they should be granted the relief as was given to Birendra Singh and Jai Bhagwan but from the perusal of OA, it is clear that neither there is any averment to that effect nor applicants have sought the relief to that effect. Law is well settled that we cannot traverse beyond the pleadings nor can grant the relief which is not even prayed for. Therefore, the request as made by the applicant's counsel cannot be acceded to. However, the fact remains that applicants have been senior to Shri Birendra Singh and Jai Bhagwan through out. It is also an admitted fact that applicants as well as Birendra Singh and Jai Bhagwan were not only given ad hoc promotion by the same order but they were appointed on substantive capacity also by a common order yet Shri Birendra Singh and Jai Bhagwan's pay has been fixed from an earlier date at Rs.1350, thereby causing heart burning. Their grievance seems to be

 

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genuine we, therefore, think that end of justice would be met, if liberty is given to the applicants to give representation to the respondents even now claiming the same benefits as were given to Birendra Singh and Jai Bhagwan. They should satisfy the respondents that they are similarly situated persons and the directions given by the Tribunal in case of Birendra Singh and Jai Bhagwan were based on some principle of law laid down by Hon'ble Supreme Court. Respondents would have to see the judgement of the Tribunal in the case of Birendra Singh and Jai Bhagwan to find out whether the judgement is in rem or judgment in personam. If judgment is in personam naturally the other persons cannot claim the benefit of same but if some principle of law was decided on the basis of which some benefit was given to those two persons than that benefits should be given to applicants as well. However, at this juncture, we do not wish to comment or give any findings on that aspect because neither there is any averment to that effect in the O.A. nor we have adjudicated on that issue. Therefore, we give opportunity to the applicants to file a detailed and self speaking representation to the authorities within 6 weeks from the date of receipt of a copy of this order by giving all the facts claiming benefit of the judgement in the case of Birendra Singh and Jai Bhagwan. In case such representation is made to the respondents, they shall apply their mind to all the facts and law and pass a reasoned and speaking order thereon within a period of two months thereafter under intimation to the applicants.

16. With the above directions, the aforesaid OAs are disposed of. Copy to be kept in each file. No order as to costs.

(S.A. Singh)
Member (A)

Attested
Subhash Chandra
For S.O. J.I
15/7/05

(Mrs Meera Chhibber)
Member (J)