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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 742 of 2004

New Delhi, this the ^{7th} day of November 2004

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

A.P. Nagrath
(None for the applicant even on revised call)

.....applicant.

Versus

Union of India and another
(By Advocate : Shri M.M. Sudan)

.....Respondents.

1. To be referred to the reporter or ~~not~~? Yes/~~No~~
2. To be referred to the outlying Benches of the Tribunal or ~~not~~? Yes/~~No~~

S. Raju
(SHANKER RAJU)
MEMBER (J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.742 of 2004

New Delhi, this the 11th day of November 2004

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

A.P. Nagrath Son of Shri H.P. Rai Nagrath,
aged about 62 & ½ years, resident of Block NO.5/1A, Aravali View,
Rail Vihar, Sector 56, Gurgaon-03, last employed as Administrative
Member, Central Administrative Tribunal, Additional Bench,
Jodhpur.applicant.
(None for the applicant even on revised call)

Versus

1. Union of India
Through Secretary to the Government,
Ministry of Personnel, Public Grievances and Pensions,
Department of Personnel and Training, New Delhi.
2. The Principal Registrar,
Central Administrative Tribunal, Principal Bench,
Copernicus Marg, New Delhi.

.....Respondents.

(By Advocate : Shri M.M. Sudan)

ORDER

SHRI SHANKER RAJU, MEMBER (J) :

This OA has been filed by an Ex-Administrative Member of the Central
Administrative Tribunal seeking the following reliefs:-

- “(i) That the DOP&T may kindly be directed to place the applicant and other Members similarly placed of Central Administrative Tribunal, in higher pay scale of Rs.24050-660-26000 with effect from 1.1.96 and the impugned rules Annexure A/1, may be ordered to be modified/amended accordingly; and
- (ii) Further direct the DOP&T to place the applicant in the revised scale of Rs.24050-600-26000 w.e.f. 3-10-2000 and he be paid the arrears of difference of pay thereof and also allowed all consequential benefits;
- (iii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice; and
- (iv) That the costs of this application may be awarded, and if any adverse order has been passed on my representation, the same may be also quashed or set aside.”



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2. Factual matrix, giving rise to the present OA, is that the applicant on attaining the age of 62 years, as per the condition of appointment, retired from service. In the wake of recommendations of 5th Central Pay Commission, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training vide notification dated 29.1.1998, under the powers conferred by Section 35 (2) of the Administrative Tribunals Act, 1985, amended the C.A.T. (Salaries and Allowances and Conditions of Service of Chairman, Vice Chairmen and Members) Rules, 1985 which pertain to the salaries and allowances and conditions of service of Chairman, Vice Chairmen and Members. By the amendment to Rule 3, pay of the Chairman & Vice Chairmen has been revised to Rs.26,000/- per mensem and in respect of the Members it has been revised in the scale of Rs.22400-26000.

3. Ministry of Finance, vide OM dated 30.6.1999, based on the recommendations of 5th Central Pay Commission relating to Group 'A' posts including in the organized Group 'A' service, recommended the upgradation of posts retrospectively from 1.1.1996 as a result of which, in all other organized Group 'A' service, the pay scale has been revised to Rs.24050-26000 and the same has been implemented by the Ministry of Railways and other Ministries.

4. As no review has been undertaken by the DOP&T for revision and upgradation of pay scale of the Members of the Tribunal, the applicant, being aggrieved, preferred a detailed representation, which is yet not responded to by the respondents, hence the present OA.

5. None appeared for the applicant despite revised call. We proceed to dispose of the present O.A. in terms of Rule 15 of the CAT (Procedure) Rules, 1987.

6. Shri M.M. Sudan, learned counsel for the respondents took a preliminary objection of jurisdiction by stating that in the light of the decision of

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the Constitutional Bench of the Apex Court in the case of *L. Chandra Kumar vs. Union of India*, (1997) 3 SCC 261, the relief sought by the applicant that there could not have been amendment in the Salaries and Allowances Rules framed under Section 35 of the Administrative Tribunals Act, 1985 amounts to challenging the vires of the parent statute, for which the Tribunal does not have the jurisdiction. On merit as well, it is stated that pay scale of Members of the Central Administrative Tribunal had never been equal to the higher posts in the Central Govt. There is no relativity with the other posts and, therefore, the question of upgradation does not arise. In nutshell, the posts are not comparable.

7. In the rejoinder, applicant contended that there is no challenge to vires of the Administrative Tribunals Act, 1985 but his prayer is against non-action of the respondent no.1 to review the pay scale in the light of the OM dated 30.6.1999.

8. We have carefully considered the contentions, raised by the learned counsel of the respondents, and perused the records.

9. In the case of *L. Chandra Kumar vs. Union of India* (supra), the Constitutional Bench of the Apex Court has observed as follows:-

“93. Before moving on to other aspects, we may summarize our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before the Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as

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mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned."

10. If one has regard to the above, what precludes from being dealt with by the Tribunal is a question or dispute whereby vires of the parent statute is assailed, being unconstitutional.

11. In the above conspectus of the case, we find that what has been assailed is non-consideration by the DOP&T to review the salary and allowances of the applicant in the light of the Ministry of Finance OM dated 30.6.1999. In case, the same pattern is maintained to the Members of the Tribunal by revision/upgradation of their pay scale, as a consequence thereto the Salaries and Allowances Rules *ibid* require modification and in no manner, provision of the parent Act or its constitutionality has been put to test or assailed. As such, overruling the objection of the respondents, we proceed to deal with the merits of the case.

12. In our considered view, DOP&T vide its OM dated 29.1.1998 has accepted the recommendations of the 5th Central Pay Commission. In para 7 of the explanatory note of the said OM, not only the pay scale but also Leave Travel Concession and other allowances had been revised. Pay and allowances, which include revision of pay scales, are conditions of service for which a Member of this Tribunal can approach for redressal before the same Forum.

13. Ministry of Finance, vide OM dated 30.6.1999, further upgraded the Group 'A' posts and attached scales which had been unanimously followed in organized Group 'A' service by other Ministries and departments. It appears that the DOP&T, after promulgation of OM dated 30.6.1999, has not taken a decision on recommendations of the Ministry of Finance dated 30.6.1999 which are *based^k* on the recommendations of the 5th Central Pay Commission, which had already been followed in the case of revision of pay and allowances of the Members of the Tribunal. However, it is a trite law that in the matter of pay and allowances the Courts should not interfere in the matter in judicial review, unless

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there is a gross violation of Articles 14 and 16 of the Constitution of India or the action is actuated with mala fide and the matter should be left for the Govt. to decide. However, we find that a detailed representation of the applicant made on 9.7.2001 is still to be responded to.

14. In the result, for the foregoing reason and in the interest of justice, we direct respondent no.1 to dispose of the pending representation of the applicant by passing a detailed and speaking order within a period of three months from the date of receipt of a copy of the present order and communicate the same to the applicant.

15. The present OA is disposed of in the above stated terms. No costs.

S. Raju
(Shanker Raju)
Member (J)
11/11/2004
/ravi/

V.K. Majotra
(V.K. Majotra)
Vice Chairman (A)
11.11.04