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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI:

D.A. NO. 2491/92

New Delhi, this the 9th September, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri D.D. Khurana,  
s/o late Sh. Khushi Ram Khurana,  
R/o H-300, Raj Nagar P.2  
Palam Colony, Near Gurdwara,  
New Delhi.

... Applicant

(By Shri R.P. Oberoi, Advocate)

Vs.

1. Union of India  
through its Secretary,  
Ministry of Defence, South Block,  
New Delhi.

2. The Director General,  
Defence Estates, Ministry of Defence,  
West Block IV, R.K.Puram,  
New Delhi.

... Respondents

(By Shri K.C. Sharma, Advocate)

ORDER (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant is an employee of the Ministry of Defence, Department of Defence Estates. He initially joined in the year 1965 in the pay scale of Rs.150-240 as Surveyor Draftsman. He was promoted to the post of SDO (Group 'C') in October, 1976 in the scale of Rs.425-700. The applicant has equated in this application the post of Surveyor Draftsman to that of SDO Grade III and that of SDO (Group 'C') to SDO Grade II. The applicant filed this application in September, 1992 making certain clarifications by way of amendment in 1992 and filed an amended application in October, 1993 whereby certain

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more facts have been taken for the grant of relief prayed for. The relief prayed for filing in the amended O.A. is as follows:

- (i) direct the respondents to grant the pay scale of Rs.425-700 and Rs.550-750 (Pre-revised pay scales inforce upto 31.12.1985) to the applicant in the post of Surveyor Draughtsmen (since redesignated as S.D.O. Grade III) and S.D.O. Grade-II held by him on the analogy of and w.e.f. the dates the said pay scales were revised in respect of corresponding categories of staff in M.E.S.
- (ii) The respondents be also directed to pay arrears of pay and allowances admissible as a result of upgradation of these pay scales with all consequential benefits including promotion to the next higher grade with appropriate revision thereof as a promotional pay scale.
- (iii) the applicant be also awarded interest @ 24% p.a. on the amount of arrears of pay and allowances admissible to the applicant from the date of amount fell due to the date of actual payment.
- (iv) the applicant be also awarded the cost of this application.
- (v) any other orders/directions which this Hon'ble Tribunal may deem fit, proper, just, fair and equitable on the facts and circumstances of the case.

2. Knowing well the application is not within the limitation the applicant has also filed M.P.3118/92 for condonation of delay in filing this application under section 21(3) of the A.T. Act, 1985. He again

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supplemented this application for condonation of delay by bringing out more clear facts in M.A. filed on 20.4.93. The applicant has also filed certain more documents annexed to the rejoinder filed in reply by the respondents.

3. The respondents in their counter have taken objection of maintainability of this application being barred by delay, latches and the provisions of section 21 of the A.T. Act, 1985. The respondents have also opposed the application for condonation of delay M.P. No. 3118/92. Since the learned counsel for the respondents Shri K.C. Sharma who appeared after Ms. Raj Kumari Chopra who ceased on the panel, prayed that the matter of limitation be decided foremost before entering into the merit of the case. The application was therefore heard on the point of limitation on M.P. 3118/92 has subsequently modified by another M.A. of 20th April, 1993.

4. The relief claimed by the applicant is finally amended is that he should be given the benefit of the revised pay scale for the post of SDO Grade II and SDO Grade III w.e.f. the date the similar scale has been given to the similarly situated employees of Grade II and Grade III working in M.E.S., another wing of Ministry of Defence. That date is from 1.11.83.

5. We have also perused the judgement placed on record of O.A. 1001 of 1988 of the Chandigarh Single Bench and O.A. No. 8 of 1987 of the Calcutta Bench decided in June, 1989 and September, 1987

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respectively. Photocopies of the judgements are Annexure III and IV respectively alongwith Q.A.

6. The contention of the learned counsel is that the applicant has claimed parity in the scales of pay as was claimed by the employees of MES who were similarly placed taking the equation of pay and post in the CPWD of Draftsman Grade II. The learned counsel for the applicant argued that the applicant has a meritorious case and that the technical plea of limitation should not deny the benefit which has already been allowed to similarly placed employees in another Department i.e. Ministry of Defence and in the CPWD organisation, a department of Union of India. He refer to the case of State of Karnataka V. Pitu Swamy reported in AIR 1987 S.C. 1354 and quoted extenso guidelines laid down by the Hon'ble Supreme Court regarding the view to be taken in a mater in which the petitioner could not reach for judicial review within the statutory period provided under the law. Similarly on the similar fact cited the case of Som Prakash Reddy Vs. Union of India reported in AIR 1981 S.C. 212 and highlighted para 71 whereby the Hon'ble Supreme Court laid down the ratio that liberal interpretation has to be given and a meritorious claim should not be allowed to fail on the technical point of limitation.

7. Regarding the facts it is argued by the learned counsel that the respondents themselves in a meeting of the JCM in May, 1991 and January, 1993 have

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actively considered the case of SDO Grade II and Grade III for giving them benefit of the revised pay scales which have been given on the basis of decisions of C.A.T. to similarly situated employees of the Ministry of Defence, ~~and~~ Military Engineering service. The learned counsel has also referred to an order issued by the Government itself whereby ~~benefit~~ has been accorded by the sanction given in 1989 w.e.f. November, 1983. This was the case of implementation of the judgement of C.A.T. and the second judgement ~~of~~ of Hyderabad Bench was implemented. in the case of MES on 10.7.90. The applicant has also made representations to the respondents and copy of the same is being annexed at pages 11 and 12 of the O.A. which is dated 24.2.92.

8. Regarding the claim of the applicant said to be sound on merit we are not touching the case. But we do observe that there is no judgement of C.A.T. or of any other judicial body regarding the pay scales of SDO in Defence Estates. We also observe that equation of pay and post is a matter which is exclusively in the domain of the administration particularly of expert bodies unless and until action of the respondents is arbitrary, unfair, unequitable and violative of Article 14 and 16 of the Constitution. It is a fact that the applicant joined the service as Surveyor in Defence Estates at no point of time he held the post of SDO Grade III he was promoted in 1976 as SDO (Group 'C'). The recruitment rules for the post of Group 'C' and 'D' of the Defence Estates were notified in the year 1990

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and were named Recruitment Rules 1988. In these recruitment rules which obviously came after the acceptance of the recommendations of the Fourth Pay Commission, the scale of SDO Grade III of Defence Estates is Rs.1200-2040 and that of SDO Grade II Rs.1400-2300. There is no challenge to the recruitment rules in the present application which has been filed in the year 1992. The statutory rules cannot be kept in abeyance with regard to recruitment to the post. It was open to the applicant to challenge the said recruitment rules as arbitrary. There is another factor also which may come in the way of the contention of the learned counsel for the applicant that the claim of the applicant is sound on merit. It is on the fact that the applicant before 1976 was only Surveyor but he is still praying for the grant of relief of the pay of SDO Grade III which post he never held. This figment of his imagination that if he is granted a scale of SDO Grade II he will automatically be given benefit of the scale according to his own thinking of SDO Grade III which post did not exist at the time when he was promoted as SDO (Group 'C'). However, we are not touching the merit of the case.

9. The limitation of course lays down period when a particular grievance can be agitated before a judicial forum a ~~cutout~~<sup>off</sup> date is provided so that a person after that date may think that his claim though may be right but stale and will not be enforceable at law. Limitation also gives a valuable right to the adversary and that is why a legal point of limitation can be

raised inspite of being specifically pleaded by the adversary. In any case we have given careful consideration taken magnanimous and sympathetic view to the matter and also the arguments advanced by the learned counsel on whatever material available on the record. The applicant's case for grant of limitation is defeated benefit of by his own representation he preferred in February, 1992. In the representation he has only prayed the benefit from 1.1.73 both for the post of SDO Grade II and Grade III. The judgement of the Single Bench of Chandigarh is with regard to ~~MES~~ that came in the year 1989. Though the judgement does not give a cause of action but accepting, for the sake of arguments, that the applicant got strength from that judgement and wanted to come for judicial review, even then he could have come within one year. The Calcutta Bench judgement was in September, 1987. That too also does not given any cause of action and even for the sake of arguments if we consider the same he should have come much earlier in the year 1988. These are only grounds he mentioned in the M.P. 3118/92. These grounds speak for themselves.

10. Regarding the JCM meeting of 1991 and 1993 firstly Association has not come before us. Secondly, the meeting only considered the scale of SDO Grade II to be revised to the scale of Rs.1400-2300 in the light of the scales granted to the similarly situated employees in the other wings of Ministry of Defence or Union of India. This does not go to show that the representation of the applicant was kept under consideration. The JCM meet at occasions to remove the grievance and settle

certain pretty matters so that the employees may get satisfaction from the administration and their difficulties ~~are~~ ~~are~~ removed or lessened. The applicant cannot take it for granted that a consideration of the matter under JCM was equivalent to a reply of his representation filed in February, 1992 that his case is being considered and is pending. The representation 1992 is nothing thought but an after to come within a range of exhausting departmental remedies before filing this application in September, 1992 where after representation person has to wait for six months. Thus, this contention of the learned counsel that the meeting where the matter was considered in JCM given cause of action to the applicant and the limitation because of this either it stood extended or the applicant was under the impression he may be granted relief so that the delay be condoned cannot be favourably accepted.

11. The decisions cited by the learned counsel for the applicant are fully followed in letter and in spirit in the present case. These decisions nowhere command that a person coming after years after the grievance has arisen ~~aware~~ of the fact that earlier he could go to the Civil Court or to the High Court or after November, 1985 to the Tribunal but he has come in 1992. In the case of Gurdev Singh Vs. State of Punjab reported in 1991 SCC(4) P.1, the Hon'ble Supreme Court considered the matter of limitation in service matters. They have also considered ~~an~~ earlier case of 1967 ~~Zabir~~ Ali, who was constable removed from police service of M.P. without holding departmental

enquiry according to rules and he filed a suit. The High Court and the Supreme Court held that the order is void and even though that was not declared void that will be ineffective against the petitioner of that case. In the case of Gurdev Singh the Hon'ble Supreme Court held that if an order which is void or where a party wants to seek a declaration he should come within time. He will fail in his claim if the case is not filed within the limitation. Again in the case of U.O.I. Vs. Ratan Chandra Samanta reported in Judgement Today 1993(3) 418, it was held that delay defeat a right. Even if the right is available to a person he cannot enforce the claim under that right because of delay and latches. Again in the case of Boop Singh Vs. UOI reported in Judgement Today 1992(3) 322, a similar point came before Hon'ble Supreme Court where earlier the benefit was given to similarly situated employees by the judgement which Bhoop Singh claimed before the Tribunal and having failed before the Tribunal he went to Hon'ble Supreme Court and the Hon'ble Supreme Court rejected his petition on the ground of delay.

12. In view of the above position of law though the applicant has amended his relief from 1973 to 1983 but still the matter has to be taken into account as to why the applicant did not peruse his remedy in the competent forum at the relevant time.

13. It appears that the judgement delivered earlier did not consider the fact that the Tribunal cannot entertain any grievance which has arisen 3 years earlier to enforcement of A.T. Act, 1985. The cut off

date is 1.11.82. The learned counsel has also argued that the pay as well as the benefits and allowances alongwith pay is continuing cause of action that may be for the period which comes within the limitation and only when the pay and allowances is a specified sum of money. In order to get a claimed amount of money as pay declaration has to be given in the form of direction to the respondents and herein the cause of action cannot be said a continuing one.

14. The M.A. therefore as supplemented by the other M.A. dated 20.4.93 does not show sufficient and reasonable cause for condoning the delay as the applicant is grossly responsible of delay as well as laches and the delay has not been explained in a convincing manner nor gives a reasonable and sufficient cause for coming so late. The O.A. therefore meets the same fate and is dismissed.

15. However, this decision will not debar the applicant for revision of pay scale for the post of SDO Grade III which he presently holds from a prospectus date if he is so advised by making representations either to the Fifth Pay Commission through proper channel or directly to the department concerned to be forwarded to Pay Commission. He may do singly or through his association, if any. The judgement will not be considered as a hitch in that manner. Costs on parties.

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(B.K. SINGH)  
Member (A)

J. P. SHARMA  
Member (J)