

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: 22.10.92

OA 312/92

Y.R. BAWDEKAR

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant

... SHRI D.R. GUPTA.

For the Respondents

... Ms. JASVINDER KAUR,
proxy counsel for
SHRI JOG SINGH.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporters or not? *Yes*

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant has assailed in this case the orders dated 17.1.91 and 22.2.91 rejecting the request of the applicant for the fixation of pay equivalent to that of his junior namely namely Shri M.L. Narula in the light of the judgement given in TA 89/85 decided on 10.3.86 by the Principal Bench. The reliefs claimed by the applicant in the present Original Application;

- a) A direction to the respondents to step-up the pay of the applicant from Rs.150/- to Rs.155/- per mensem w.e.f. 16.8.62.



b) to recalculate the pensionary benefits of the applicant on the basis of revised pay as a consequence of the refixation of the pay as above,

c) interest at the rate of 10% p.a. on the arrear of the pay.

2. The applicant was appointed as LDC in the department of Light Houses and Lightships under respondent No.1 and was promoted to the post of UDC w.e.f. 10.1.58. At that time, the pay of the applicant was fixed at Rs.80/- in the old scale of Rs.80-200 which was subsequently revised to Rs.130-330. On 16.8.62, the applicant was drawing, in the grade of UDC, Rs.150/- p.m. while the pay of his next junior Shri Raj Kumar Sharma, who was promoted as UDC on 16.8.62 was fixed at Rs.155/- with effect from that date. Shri M.N. Narula, who was also junior to the applicant, also made a similar request on the ground that he was senior to Shri Raj Kumar Sharma but his pay was not stepped-up to the level of Shri Raj Kumar Sharma and he, therefore, got the matter decided by the court by filing a Writ Petition in Delhi High Court, No.1593/73, which was transferred to CAT as TA 89/85 and was decided on 10.3.86. The Division Bench in that case allowed the Writ Petition and directed the respondents that the pay of Shri M.L. Narula be fixed under FR 27 at Rs.155/- p.m. w.e.f. 16.8.62 as in the case of his junior with all consequential benefits accruing therefrom. After the decision of this judgement the applicant has made representations one after another and finally he was informed by the impugned order dated 22.2.91 and 17.1.91 (Annexure A-I).

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3. The respondents contested the application and took the plea of limitation stating that the grievance of the applicant arose on 16.8.62 and over the same grievance Shri M.L. Narula filed a case in the High Court, Delhi and was later on decided by CAT TA 89/85 on 10.3.86. The applicant has retired on superannuation on 31.7.86 i.e. more than four months after the above judgement of Shri Narula. However, the applicant represented to the department only on 27.7.88 i.e. after a lapse of more than two years of the said judgement and the present application is barred by limitation. The respondents ~~are~~ also referred to the OM of 1962 where it is specifically stated that if in the lower post the junior officer drew from time to time a higher rate of pay than the senior by virtue of fixation of pay under normal rules or any advance increment granted to him the provision contained in the OM should not be invoked to step-up the pay of the senior officer. The applicant is not entitled to the benefit of the judgement of Shri Narula as that was not a judgement in rem.

4. I have heard the learned counsel for the parties at length and have gone through the records of the case. The applicant has also moved an application for condonation of delay as he has taken the point of limitation on the basis of the judgement of Shri M.L. Narula Vs. UOI decided in March, 1986. The contention of the learned counsel for the applicant is that having come to know about the aforesaid judgement and its subsequent implementation in the case of Shri M.L. Narula, the applicant made representation but

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it was finally rejected on 17.1.91. I have considered the application for condonation of delay also but the fact remains that the applicant had made the representation after his retirement on 15.3.90 (Annexure A-2). During the course of hearing, the learned counsel for the applicant has also filed a representation, which the applicant had made sometimes in 1964. He has also filed another representation which he has made sometimes in July, 1988. The applicant has superannuated on 31.7.86. He did not make any representation while he was in active service of the respondents though the judgement in Narula's case was delivered on 10.3.86. The learned counsel for the applicant, however, argued that the applicant continued to make representations on the assurance given to him that the respondents should themselves re-fix the pay of the applicant w.e.f. 16.2.68 at the level of his junior who has been fixed at Rs .155/- while at that time he was getting Rs .150/-. The averments made in the application for condonation of delay do not make out any reasonable and substantial cause within the meaning of sub-clause 3 of Section 21 of the Administrative Tribunals Act, 1985. The Hon'ble Supreme Court on the point of delay in the case of State of U.P. vs. Bahadur Singh (1983 (3) SCC 723) observed that the court helps the vigilant and not the indolent and the ^{stale} ~~stale~~ cases cannot be considered after a lapse of considerable time. The same view has been taken by the Hon'ble Supreme Court in the case of Amrit Lal Bery vs. Collector, Central Excise (1975 (4) SCC 714). When the applicant has made a representation in 1964 then like

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Mr. M.L. Narula, who has gone to the High Court by filing a Writ Petition in 1973, the applicant could have also gone to the court of law for redress of his grievances. Had the applicant not made a representation in 1964 then the position might have been different. In the case of State of Punjab vs. Gurdev Singh & Ors. (1991 (4) SCC 1), the Hon'ble Supreme Court held that in service matters the party has to approach the court within the period of limitation. The applicant has not given any cogent or convincing reason as to what ^{was} preventing him to approach the court of law within the prescribed period of limitation. Section 21 of the A.T. Act, 1985 is in the form of an injunction to the Tribunal when it lays down that Tribunal shall not admit an application in respect of the grievance for which an application is made, arisen by ^{reason} ~~recent~~ of an order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this act, ⁱⁿ ~~in~~ respect of the matter to which such order relates. Section 21 is a complete ^{common} ~~code~~ hence ~~coming~~ law as applicable to Writ Petition does not apply to application under Section 19 of the A.T. Act, 1985.

5. From another angle also, the applicant has retired on 31.7.86 and he had made the representation, as contended by the learned counsel by filing a copy during the course of the arguments, on 27.7.88. Even taking this for the sake of arguments as a representation after the judgement of Narula's case, the applicant should have come within a period of 1½ year from making this representation. The

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applicant in the application for condonation of delay has not shown any reasonable or substantial cause for not coming to the court at that time. Thus, this application for condonation of delay is only after thought and cannot be given any favourable consideration for grant of the relief prayed for for the period w.e.f. 16.8.62.

6. Even taking into account the judgement of M.L. Narula's case, the learned counsel for the applicant contended that the judgement was implemented in 1988 so he at that time made a representation much after his retirement. He further asserted that the impugned orders by the respondents were passed in January and February, 1991. These impugned orders in this case specifically states that the judgement given in Narula's case was personal to him and is not a judgement in rem. The principal of law laid down in Narula's case is no new principles of law but only application of FR 27 as provided in Ministry of Finance OM dated 6.3.62. The applicant has already in the representation in 1964 has taken the stand that he was promoted to the post of UDC w.e.f. 16.1.58 while Shri Raj Kumar Sharma, junior to him, was promoted w.e.f. 16.8.62 and his pay was fixed at Rs.155/- under FR 22C while the applicant was drawing Rs.150/- on that date. The applicant has also mentioned in this representation of 1964 the OM dated 6.3.62. In view of the above, no benefit accrues to the applicant because of the judgement given very much personal to Shri M.L. Narula, as his pay was fixed lesser than that of Shri Raj Kumar Sharma, his junior. No two cases of an employee can be similar, and the fixation of pay by stepping-up may be considered on the basis of FR 22C or FR 27. Thus, no

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limitation is extended on the basis of the judgement of Narula's case. Even of OM of 1962 has to be seen for its application in a particular case of an employee.

- 6 7. The learned counsel for the ^{applicant} ~~respondents~~ has referred a number of decisions where step-up of pay has been done, namely in the case of Dev Dutt Sharma vs. UOI & Ors. (1991 (16) ATC 356), Lalita & Ors. vs. UOI & Ors. (1992 (1) CSJ 108). The question here is not of application of the law but the proposition of law whether a person who has retired in July, 1986 can come to the Tribunal after period of about six years stating that his pay be revised w.e.f. 16.8.62 with all consequential benefits. Unless the matter comes within the limitation the relief cannot be granted even on the basis of the case of A.K. Khanna Vs. UOI (ATR 1988 (2) CAT 518), where it has been held that no extending benefit to similarly placed persons would amount to discrimination and violation of Articles 14 and 16 of the Constitution of India. The recent decision of the Hon'ble Supreme Court in the case of Bhoop Singh vs. UOI (1992 (2) ATJ 153), the Hon'ble Supreme Court held that even the benefit of the judgement cannot be given to other similarly situated who have not come in the proper time for the grant of the relief though it may be similar to the relief granted to the earlier litigant. In this reported case, the relief was not granted to Bhoop Singh though similarly situated persons under the Delhi Administration in the Delhi Armed Police were granted the relief of reinstatement by virtue of an earlier order

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of the Delhi High Court and even Dharam Pal, the dismissed constable was allowed relief by the CAT in the case of Dharam Pal vs. UOI (1988 (6) ATC 396). Though, Lt. Governor of Delhi went in SLP against the judgement of the Hon'ble Supreme Court and Supreme Court dismissed the SLP (1990 (4) SCC 13), still ~~the~~ ^(Supra) Bhoop Singh was not allowed the relief because he has not come in time for the relief granted to earlier similarly situated persons. The same view has been taken in the case of Yogendra Pal Bagga vs. UOI, OA 327/89, decided on 12.9.91 by the Principal Bench. The Tribunal held that the applicant never represented regarding his seniority or promotion during his service. Evidently his claim for revised seniority list, promotion and refixation of pay is highly belated even though his case may be covered by the judgement of this Tribunal in a case of similarly situated employee who was vigilant enough to approach the High Court well in time. Application fails. The case of the applicant, therefore, cannot be considered on merit and is hopelessly barred by limitation.

8. The present application, is, therefore, is not maintainable being barred by limitation and dismissed as such leaving the parties to bear their own costs.

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(J.P. SHARMA) 22/10/92
MEMBER (J)