

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 643 of 1998

Allahabad this the 04th day of February, 2002

Hon'ble Mr. Rafiuddin, Member (J)  
Hon'ble Mr. C.S. Chadha, Member (A)

1. Noorul Hasan, aged about 57 years, Son of late Shri Ahmed Husain, R/o 11/202, Maqbara, Gwal Toli, Kanpur Old.
2. R.P. Sharma, aged about 58 years, S/o Late Shri Chunni Lal, R/o LIG-I, Barra-3, Janata Nagar, Kanpur.

Applicants

By Advocate Shri Rakesh Verma

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The General Manager, Ordnance Factory, Kanpur.

Respondents

By Advocate Shri Ashok Mohiley

O R D E R ( Oral )

By Hon'ble Mr. Rafiuddin, Member (J)

The applicants have approached this Tribunal seeking following reliefs:-

"(i) To issue a writ, order or direction in the nature of Mandamus directing the respondent no.2 to place the petitioners at the appropriate stage in the pay scale of Rs.110-155 w.e.f.19.1.1966 extending the benefit of Judgment dated 1.9.1992 delivered by the Hon'ble Principal Bench as well as the Judgment dated 1.11.1996 delivered by this

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Hon'ble Tribunal as may be stipulated by this Hon'ble Tribunal

(ii) To issue a writ, order or direction in the nature of Mandamus directing the respondent no.2 to pay arrears of pay and allowances to both the petitioners w.e.f. 19.1.1996 calculated on the basis of higher pay scale i.e. Rs.110-155 extending the benefits of the aforesaid 2 Judgments.

(iii) To issue a writ, order or direction in the nature of Mandamus directing the respondent no.2 to pay to both the petitioners interest at the rate of 18% per annum on the total calculated amount of arrears.

(iv) To issue any other suitable order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit.

(v) To award cost of the petition."

2. The undisputed facts of the case are that the applicants were earlier working in 510 Meerut E.M.E. Base Workshop/as Vehicle Mechanics. The E.M.E. Workshop situated at Meerut and Delhi were under the control of Director General, Central E.M.E., Delhi who had declared few Vehicle Mechanics including the applicants surplus to their requirement in the year 1965. However, the Government taking a sympathetic view instead of retrenching them, transferred to various Ordnance Factories. The applicants and other similarly situated employees were transferred to various Ordnance Factories and they were absorbed in the grade of Rs-75-95 in the grade of Vehicle Mechanic. According to the applicants, they joined their duties under

the control of General Manager, Ordnance Factory, Kanpur-respondent no.2 on 19.01.1966 as Machinist. It is also not in dispute that the applicants were granted all benefits arising at the time of transfer i.e. joining time, transfer T.A. etc., but they were absorbed in the lower scale of Rs.75-95/- as stated above. The applicants claimed that the action of the administration was in public interest, hence they were entitled to their pay scales which they were getting as Vehicle Mechanic i.e. Rs.110-155/- and the respondents <sup>are</sup> ~~are~~ <sup>a justified denying</sup> not justifying in their pay scales. <sup>of</sup> ~~R~~ 110-155/- ~~R~~

3. It appears that some of the similarly situated persons have filed O.A. No.2707 of 1989 D.P. Gulari Vs. U.O.I. & Others before the Principal Bench of this Tribunal, seeking the similar reliefs as sought by the applicants in the present O.A.. The O.A. No.2707 of 1989 was decided by the order dated 01.09.89 allowing the O.A. and directing the respondents to pay the applicant arrears of pay and allowances and over time allowances on the basis of higher pay scale i.e. Rs.110-155/-. The applicants seek the same relief by filing the present O.A.

4. We have heard the learned counsel for the parties and perused the record.

5. Learned counsel for the respondents has vehemently opposed the claim of the applicants. It is contended that the claim of the applicants is barred

by time because the cause of action arose to the applicants at the time of their absorption in the year 1966, whereas the present O.A. has been filed in the year 1998.

6. Learned counsel for the applicants has on the other hand contended that the similar plea of claim of the applicant being time barred was raised before the Principal Bench of this Tribunal, which was rejected, and similarly in O.A. No. 95 of 1993 Govind Ram and Others Vs. U.O.I. & Others filed by the similarly situated persons before this Tribunal, the plea of limitation was raised, which was rejected by the order dated 01.11.1996.

7. It can be mentioned here that it is not in dispute that the applicants of the present O.A. and those of the O.A. before the Principal Bench and other Benches are the similarly situated persons. It is, however, pointed out by the learned counsel for the respondents that in the O.A. before the Principal Bench the applicant of that O.A. had approached the Labour Court as early as in the year 1986 and ultimately the Central Government had rejected the application of the applicant on reference made by the Labour Court vide order dated 30.03.1989. The Tribunal, therefore, held that the period of limitation would be counted from the date of rejection by the Central Government, but in the present case the applicants had not approached the Labour Court.

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However, we find that in the order dated 01.11.96 passed in the O.A.No.95 of 1993 , similar question was raised on behalf of the respondents and this Tribunal vide para-7 of the Judgment observed as under:-

"As far as the question of limitation is concerned the applicants have pointed out that their representations have been rejected by the respondents vide their letter dated 20.08.92. The applicants filed their representation on 23.04.92 taking note of the fact that the case relates to the pay scale of the applicants which gives a recurring cause of action and the fact that the representation was replied to by the respondents on 20.08.92, the application is treated as having been made within the period of limitation."

8. We find in the present case that although admittedly no order of rejection of the representations made by the applicants has been filed, it is however, mentioned by the learned counsel for the applicants that the applicants too made a representation before the respondents on 06.01.1997 and since no order was passed within the period of 6 months from the date of submitting such representations, they have approached this Tribunal. Learned counsel for the applicants has also relied on the decision of the Apex Court in M.R. Gupta Vs. U.O.I. & Ors. 1995 S.C.C.(L&S) 1273', where the grievance of the applicant regarding his fixation of pay as per rules was raised and the Tribunal had rejected the same being time barred. It was held that the ..pg.6/-

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appellants grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action. He was paid salary which was not computed in accordance with the rules and so long as the appellant is in service a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to the rules.

9. It is also argued by the learned counsel for the applicant that since the applicants are seeking relief on the basis of similar earlier orders passed in favour of similarly situated persons, the question of limitation does not arise, as has been observed by the Hon'ble Supreme Court in the case of Ashwani Kumar Vs. State of Bihar 1997 S.C.C(L&S) page 267'. The relevant observation of the Hon'ble Supreme Court is as under:-

"Nor can we say that benefit can be made available only to 1363 appellants before us as the other employees similarly circumscribed and who might not have approached the High Court or this Court earlier and who may be waiting in the wings would also be entitled to claim similar relief against the State which has to give equal treatment to all of them otherwise it would be held guilty of discriminatory treatment which could not be countenanced under Articles 14 and 16(1) of the Constitution of India."

10 In view of these decisions we are also inclined to hold that the present O.A. cannot be

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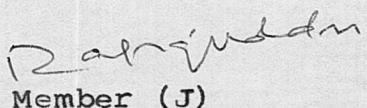
rejected being barred by time and the cause of action would arise from the date of expiry of 6 months from the date of filing of the representation. The O.A. having been filed within this period is held to be within period of limitation.

11. As regards the merit of the case we find that the applicants of two other O.A.s are similarly situated and, therefore, these applicants are entitled to the same relief. We find that this Tribunal in O.A.No. 95 of 1993 after accepting the ratio of decision of the case of D.R. Gulari, held that the applicants were entitled to pay of Rs.110-155/- on their transfer to Ordnance Factory, Kanpur.

12. We accordingly dispose of the present O.A. with the direction to the respondents to place the applicants in the pay scale of Rs.110-155/- from the date of their transfer to Ordnance Factory, Kanpur. The applicants shall also be entitled to interest at the rate of 9% from the date of filing of this O.A. i.e. 01.06.1998. The order shall be complied with by the respondents within a period of four months. There shall be no order as to costs.

  
Member (A)

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Member (J)