

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated: This the 08<sup>th</sup> day of NOVEMBER 2005.

Original Application No. 1056 of 2004.

Hon'ble Mr. K.B.S. Rajan, Member (J)  
Hon'ble Mr. A.K. Singh, Member (A)

Indrapal, S/o Sri Sahadeo Prasad,  
R/o House No. H-14, Central Excise & Income Tax,  
Colony, 6 Muir Road,  
ALLAHABAD.

...Applicant.

By Adv: Sri S. Mandhyan

V E R S U S

1. Union of India through Chairman,  
Central Board of Direct Taxes,  
Department of Revenue,  
Ministry of Finance, Govt. of India,  
NEW DELHI.
2. Chief Commissioner of Income Tax,  
Ashok Marg,  
LUCKNOW.
3. Chief Commissioner of Income Tax,  
38, MG Marg,  
ALLAHABAD.
4. Commissioner of Income Tax,  
38, MG Marg,  
ALLAHABAD.

...Respondents.

By Adv: Sri S. Singh

O R D E R

By K.B.S. Rajan, Member (J)

Sri S. Mandhyan learned counsel for the applicant and Sri A. Dwivedi brief holder of Sri S. Singh learned counsel for the respondents.

2. The short question involved in this case is whether the applicant who joined the respondents' organization has a contingent paid typist, is

*b*

entitled to the same benefits as afforded to a similarly situated person in whose case, the benefit was given in the wake of a judgment of this Tribunal. In other words, whether the benefit of the judgment in one case should percolate to the applicant who is similarly placed. The contention of the respondents is that since in the other case the Tribunal has afforded the benefit to the applicant in that OA, the same cannot be extended to the applicant in this OA.

3. The capsulated facts of the case, mostly admitted by the respondents, are that the applicant joined the department on 08.08.1984 as a contingent paid typist. As of 1.11.1991 the applicant's services were regularized in Group 'D' and he joined the said post on 12.11.1991 but admittedly continued to perform the duties of a typist only all through.

4. In the case of **U.P. Income Tax Department contingent paid Staff Welfare Association Vs. Union of India, AIR 1988 SC 517**, the Apex Court has held that contingent paid employees are entitled to the minimum of the pay scale attached to the respective posts i.e. Group C or Group D as the case may be. One of the claims of the applicant is that he should be paid the pay and allowance in accordance with the aforesaid judgment of the Apex Court for the period he had worked as contingent paid typist, i.e. from 08-08-1984 to 01-11-1991.

b/w

5. One Ashok Kumar Srivastava, another contingent paid employee performing the function of the Group 'C' official filed OA No. 928 of 1990 claiming for regularization from the date of initial engagement (29.11.1984) with all consequential benefits and this Tribunal passed the following order: -

*"In effect, the applicant shall be offered Group D post employee as per rules and given seniority for all purposes including selection by promotion from Group D to Group C from his date of joining on 20.10.83. The applicant shall also be paid arrears of wages on the principles given in paragraph No. 8 above."*

6. This order of the Tribunal was implemented vide order dated 04.02.2002.

7. The applicant moved a representation dated 17.02.2002 claiming arrears of salary as per the direction given by the Apex Court in the case of U.P. Income Tax Department contingent paid Staff Welfare Association Vs. Union of India, AIR 1988 SC 517 and also seniority as in the case of Ashok Kumar Srivastava referred to above. The Income Tax Commissioner Allahabad by letter dated 17.02.2004 addressed to the Chief Commissioner of Income Tax (CCA) Lucknow recommending as under:-

*"जैसा कि वरि० प्राथिकृत प्रतिनिधि आयकर अपीलीय अधिकरण, इलाहाबाद ने अपने पत्र दि० 18.8.1984 द्वारा यह सूचित किए हैं कि श्री इन्हपाल को दि० 8.8.1984 से टाइपिस्ट कार्य के लिए नियुक्त किए हैं। माननीय उच्चतम न्यायालय द्वारा रिट पिटीशन नं० 1670 आफ 1986 में पारित आदेश दि० 4.12.1987 के निर्देशानुसार समान कार्य के लिए समान वेतन के आधार पर दि० 8.8.1984 से चौकीदार के पद पर नियुक्ति दि० 12.11.1991 के पूर्व तक अपर श्रेणी लिपिक के न्यूनतम वेतन को स्वीकृत किया जा सकता है तथा मा० को प्रा० प्रा० इलाहाबाद द्वारा ओ० ऐ० नं० 928 आफ 1990 में पारित आदेश दि० 29.09.1994 जो श्री अशोक कुमार श्रीवास्तव से सम्बन्धित है के*

*✓*

अनुसार पूल नियुक्ति की तिथि 8.8.1984 से समूह ध की वरिष्ठता दी जा सकती है। यहां यह भी उल्लिखित करना आवश्यक है कि उपरांत आदेशों के अनुसार सामन्यतः अन्य नियुक्त दैनिक वेतन भोगी कर्मचारियों को न तो समान कार्य के लिए समान वेतन के आधार पर समूह ध का न्यूनतम वेतन दिया गया है न ही समूह ध में प्रारम्भिक दैनिक वेतन भोगी कर्मचारी की नियुक्ति की तिथि से वरिष्ठता।"

8. By the impugned order dated 21.05.2004 the respondents have rejected the claim of the applicant stating as under: -

- A. The judgment of Hon'ble Supreme Court in the aforesaid case applies only to Group 'D' category and as such the benefit of the same cannot be extended to the applicant.
- B. As regards seniority since the decision in the case of Ashok Kumar Srivastava is a judgment in personem, the same cannot be extended to the applicant

9. Arguments were advanced by the counsel for both the parties. Counsel for the applicant contended that the applicant being similarly situated as Ashok Kumar Srivastava, the benefit of the judgment in Ashok Kumar Srivastava should have been extended to him as well. In this regard he relies upon the decision of the Apex Court in the case of **Amrit Lal Berry v. CCE, (1975) 4 SCC 714**, has held that "when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court." As regards pay and allowances for the period the applicant functioned as contingent paid typist, the counsel for applicant referred to the order of the

✓  
bh

Tribunal in Ashok Kumar Srivastava whereby the applicant therein was afforded the said relief also.

10. The learned counsel for the respondents has taken us through the major portion of the CA and explained that the Apex Court judgment in the case of U.P. Income Tax Department contingent paid Staff Welfare Association Vs. Union of India, AIR 1988 SC 517 does not apply to the facts of the case and as regards the communication dated 17.2.2004, it is only an internal report sent to the respondent No.

2. He has also taken us through the Suppl. CA wherein the case of the applicant has been distinguished from that of Shri Irshad Ali, who was also appointed alongwith the applicant.

11. We have given our anxious consideration to the entire case and perused the pleadings. As stated at the very outset the question is whether the applicant being similarly situated as another employee is entitled to the benefit of the judgment in the case of the other employee.

12. In the case of Ashok Kumar Srivastava, as in the case of the applicant the relief sought could be bifurcated into two viz. payment of arrears of pay and allowances as of Group 'C' and seniority from the date of inception as contingent paid staff. The first relief was granted by the Tribunal vide para 8 thereof which read as under:-

*"The claim of the applicant for arrears of wages on the principal of equal pay for*

equal work besides being enshrined in Directive Principal has been the guiding principle in a number of legislations enacted by the parliament for protection of workers. The principle has been accepted by the Supreme Court in the judgment cited in paragraph 5 of this judgment. The ratio decidendi of the judgment is applicable in this case. Our attention has been drawn to a judgment of this bench on O.A. No. 402 of 1991. This judgment follows the ratio decidendi of the case decided by the Supreme Court. We, therefore, direct the respondents to pay to the applicant arrears of wages equivalent to the minimum of the pay scale applicable to the regularly employed clerks and typist along with DA and ADA as declared from time to time and other benefits which were being given to him as a contingency paid worker with effect from 29.11.84 after deducting from the total the wages paid to the applicant as a contingency paid worker for the period. The respondents should pay the arrears within a period of three months from the date of communication of this order."

13. As regards the second prayer the same was also allowed as per para 10 already extracted in para 5 above.

14. Apart from the Apex Court's dictum in the case of A.L. Berry (Supra), the V Central Pay Commission in para 126.5 have also recommended as under:-

"We have observed that frequently, in cases of service litigants involving many similarly placed employees, the benefit of judgments is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of the Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others vs UOI and others (OA 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh vs UOI (1992) 19 ATC 94 (SC) dated 20-07-1988; K.I. Shepherd vs UOI (JT 1987 (3) 600); Abid Hussain v s UOI (JT 1987 (1) SC 147) etc., Accordingly we recommend that decisions taken in one specific case

h

either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of government employees is concerned and not in matters relating to a specific grievance or anomaly of an individual employee."

15. In view of the fact that the case of Ashok Kumar Srivastava is identical to that of the applicant there is no reason to deny the benefit of the said order to the applicant. However, the applicant is not entitled to seniority in Group 'C' and thus his relief as prayed for in para 8.3 has to be rejected. He is however entitled to the following:-

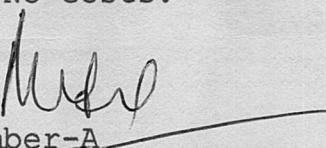
- a. Pay at the minimum of the pay scale applicable to the typist from the date of his joining as contingent paid typist till 01.11.1991, the date of regularization as Group 'D'.
- b. Seniority in Group 'D' post from 08.08.1984, when the applicant was inducted as a contingent paid typist.
- c. Consequent benefits flowing from his antedated seniority as a Group 'D' employee from 8.8.1984 from the purpose of promotion to Group 'C' post.

16. The respondents are therefore, directed to afford the applicant the arrears of pay and allowances at the minimum scale of a typist from 8.8.1984 to 31.10.1991; fix the seniority of the applicant in a group 'D' post from 8.8.1984 and consider his case from further promotion to Group

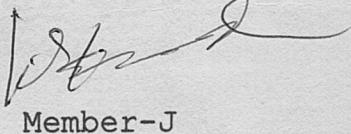
*b*

'C' post from the date his junior has been promoted.

The above drill may be performed within a period of six months from the date of receipt of copy of this order. No costs.



Member-A



Member-J

Pc/-