

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration O.A. No. 395 of 1993

Y.S. Negi and others Applicants.

Versus

Union of India
and others Respondents.

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Hon. Mr. S. Das Gupta, Member (A)
Hon. Mr. T.L. Verma, Member (J)

(By Hon'ble Mr. S. Das Gupta, Member (A))

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking relief of issue of a writ or direction in the nature of certiorari quashing the order dated 4.10.1992 (Annexure- A 9) by which it has been intimated that the effective date for implementation of the revised scale of pay of Rs. 1320-2040 to earstwhile computers shall be 6.9.1991 and also the order dated 25.9.1992 (Annexure- A 10) by which the representation of the first applicant has been turned down. It has also been prayed in this Original Application that a writ or ~~direction~~ in the nature of mandamus be issued directing the respondents to grant the entire benefits of arrears of salary w.e.f. 1.1.1973 in accordance with the judgment dated 3.2.1992 passed by this Tribunal in O.A. No. 652 of 1987. The applicants have also prayed for grant of consequential benefits and promotion to the next higher post with retrospective effect when their juniors were promoted to the next higher post.

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2. The facts of the case giving rise to this application are that the applicants were designated as Computers in the Forest Research Institute and College, Dehradun. This organisation also has another category of posts designated as Research Assistant computers and the Gr.II. The applicants claim that all the Research Assistant Gr. II were given the same scale of pay and a common seniority list in respect of both the categories was being maintained prior to 1.1.1973 and both these posts were treated as at par with each other and persons belonging to both these categories were being promoted to the ~~post~~ higher post i.e. Research Assistant Gr.I from the common seniority list.

3. According to applicants relativity between the two categories was disturbed while implementing the recommendations of the IIIrd Central Pay Commission. When the respondents allegedly discriminated against the applicants and did not give the same scale of pay to the computers as was given to the Research Assistant Gr.II. Being aggrieved with this alleged discrimination, the applicants filed an Original Application before this Tribunal and the said application bearing No. 652 of 1987 was decided by its order dated 3.2.1992. According to the applicants their application was allowed by the judgment and order dated 3.2.1992. A copy of the judgment has been annexed as Annexure- A 1 to this application. In compliance with the directions contained in the said

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judgment and order dated 3.2.1992, the respondent no. 2 issued a circular dated 13.7.1992 (Annexure-A8) stipulating there-in that the cadre of computers is merged with the cadre of Research Assistant Gr.II and that all the computers would, hereinafter be referred to as Research Assistant Gr.II(General). Thereafter the Assistant Registrar(E), F.R.I. Dehradun issued impugned order dated 4.9.1992 (Annexure-A 9) stipulating that the effective date for the implementation of the revised scale of pay of Rs. 1320-2040 to the earstwhile computers shall be 6.9.1991. Subsequently, the respondent no.2 issued the impugned letter dated 25.9.1992 (Annexure- A 10) stating that the operative portion of the judgment delivered by this Tribunal in O.A. No.652 of 1987 has already been implemented in September,1991 from which date the scales of computers and Research Assistant Gr. II have been equated and the computers are re-designated as Research Assistant Gr.II (General). The applicants represented by their letter dated 13.11.1992 (Annexure-A 11) that there has been no compliance of the judgment of this Tribunal. Since the entire benefits have not been given retrospectively w.e.f. 1.1.1973 as claimed in the Original Application No. 652 of 1987, The applicants thereafter, filed this application praying for the reliefs mentioned in the opening paragraph .

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4. The case of the petitioners is based on the claim that the reliefs claimed by them in the Original Application No. 652 of 1987 were allowed by this Tribunal and the Tribunal had clearly laid down that all the applicants have been performing the same duties as Research Assistant Gr. II ~~as~~ members of the same cadre. They contend that in view of the clear findings which have become final, not being challenged by the respondents in any higher court, it is obligatory on the part of the respondents to specifically implement this judgment and treat the computers/ Research Assistant as members of the same cadre ~~and~~ giving the entire benefits of the same scale of pay w.e.f. 1.1.1973 as claimed in the main petition and also granting the same promotion on the basis of the common seniority list.

5. In the written statement filed on behalf of the respondents, it has been contended that the petitioners prayed for revised pay scale retrospectively w.e.f. 1.1.1973 in the original application No. 652 of 1987 and since ~~and~~ it was not granted by this Tribunal, it is not now open for the petitioners to claim the same relief in the present petition. It has also been contended that since the grant of this relief was refused by the Tribunal in O.A. No. 652 of 1987, this would act as res-judicata between the parties and the

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petitioners are debarred from raising the same issue in the present petition. The respondents claim that they have complied with the direction of the Tribunal by giving the petitioners, the pay scale of Research Assistant Gr. II w.e.f. 6.9.1991. An additional point which has been made is that the petitioners are no longer employees of the respondent no.1 i.e. Union of India. The question of limitation has also been raised contending that the petitioners are debarred from asking arrears for last 20 years.

6. On the merits of the case, the respondents have stated in the counter reply that ~~the~~ different scales of pay were given to the computers and Research Assistant Gr. II on the basis of the recommendations of the successive pay commissions namely; IIIrd Pay Commission and IVth pay Commission. They have stated that the IIIrd Pay Commission had given better scale of pay to the Scientific/ Research Personnel as against the general/technical personnel. It has been stated that the functions of the Research Assistants Gr. II and computers are different in as much as while Research Assistants are engaged in research activities of various Forestry disciplines, the functions of the Computers largely relate to carrying out the computations of the data collected by various research workers in the field/laboratories.

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7. We have heard the learned counsel for both the parties and carefully gone through the records of the case.

8. During the course of arguments, Sri N.B. Singh, learned Senior Standing Counsel stressed on the maintainability of this petition both on account of the fact that the claim is barred by limitation and also by res-judicata. He also raised the point that this Tribunal is lacking in jurisdiction. In this case since the petitioners are no longer employees of the Union of India. They are presently employees of registered society and the same has not been notified as one of the societies which would come under the Jurisdiction of the Central Administrative Tribunal. On the merits of the case, he reiterated the points already made in the counter reply i.e. inferior pay scales were granted to the computers in comparison to Research Assistant Gr. II by successive Pay Commissions.

9. Arguing on behalf of the petitioners, Sri M.S. Negi contended that the present petition arises out of non-implementation of the Tribunal's judgment and order in O.A. No. 652 of 1987 which was allowed. He, however, stated that the petitioners are at present pressing only for the arrears of pay w.e.f. 1.1.1973 by virtue of their being treated at par with Research Assistant Gr. II. He sought to rely ^{on} the decision of the Supreme Court in the case of Purshottam

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Lal Vs. Union of India, reported in AIR ,1973 SC 1088
Sri N.B.Singh, learned Senior Standing Counsel, however,
on the other hand sought reliance on the decision
of the Supreme Court in the case of Prabhat Kiran
Maithani and others Vs. Union of India and another,
reported in A.I.R., 1977 SC, 1553.

10. The first question which we addressed ourselves to is whether the petition is barred by limitation or res-judicata. The cause of action in this case has ~~arisen~~ arisen on the issuance of the impugned orders 4.10.1992 and 25.9.1992 which are stated to have been issued in compliance of this Tribunal's judgment and order dated 3.2.1992. The claim in the present petition, therefore, got a fresh lease ~~and~~ of life by the issuance of the impugned orders, and as such, the petition is well within the period of limitation. Also, from the judgment and order dated 3.2.1992, we do not find that there is specific decision rejecting the prayer for grant of benefits retrospectively w.e.f. 1.1.1973, ~~As~~ such, the judgment and order dated 3.2.1992 cannot be construed as ~~the~~ constituting res-judicata for such prayers in the present petition. With regard to the point raised by the respondents that this Tribunal lacks jurisdiction in hearing this petition on account of the petitioners having become employees of society, we are of the view that such a plea has little force in view of the fact that the claim pertains to a period when the applicants were employees of the Union of India and there is

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no bar ¹⁹⁸⁵ under the Central Administrative Tribunals Act on ex-government employees approaching the Central Administrative Tribunal for reliefs pertaining to the periods during which they were Central Government Employees.

11. Having disposed of the preliminary objections with regard to the maintainability of the petition, we now come to the merits of the case. It would be pertinent at this stage to quote the relevant portion from the judgment and order dated 3.2.1992 having a bearing on this petition.

12. The operative portion of the order reads as follows;

"Accordingly, in view of what has been stated above, the respondents are directed to consider the case of the applicants treating that the Research Assistants Gr.II and Computers are members of the same equal substantially. It is for the government to consider their pleas itself or to set up an Ex-parte Committee for looking into the matter and to come to the conclusion that they are to be placed in the same scale/cadre or the scale to which they are entitled. This matter be decided within a period 4 months from the date of communication of this order."

13. In the body of the judgment, the Tribunal made certain observations regarding the parity between the computers and Research Assistant Gr.II. The relevant portion is quoted below;

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"The facts stated above make it clear in the light of the admission also made by the respondents before the Supreme Court in their affidavit which they have tried to explain by saying that it was a reference to that case indicates that the Research Assistants and Computers were the members of the same cadre and the seniority list was also the same and they were also doing the research work and also promoted to the higher grade. Undoubtedly, some of the duties are rather equal or there may be some difference but over all it may even tend to show that there is not much difference between the duties, there may be some difference in their functions but they are related to the research work. The plea raised by the applicants gets support from the admission by the respondents before the Supreme Court and it may not be said that the government makes different admissions in different cases and there is no fixity in the plea taken by the government in various cases, may be on the same point. It appears that the case of the applicants was not considered by the Fourth Pay Commission and that is why the government has also not considered it. The Research Assistants or Computers cannot be put on the same par as Upper Division Clerks and duties and responsibilities vary altogether, as such this application deserves to be allowed in part."

14. From the above, it would be clear that while the Tribunal made certain observations en passant with regard to the equality of the duties of the computers and Research Assistant Gr. II notwithstanding certain differences, in the operative portion of the judgment, there is no clear findings in this regard

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nor~~000~~, there is any specific order granting the relief prayed for i.e. two categories should be treated at par and given the same scales of pay etc w.e.f. 1.1.1973. It left the matters squarely with the Government itself to consider the pleas of the applicants or to set up an ~~expert~~ committee for looking into the matter and to come to the conclusion that they are to be placed in the same scale/ cadre or the scales to which they are entitled. In other words, the Tribunal did not come to a definitive conclusion with regards to the claim of the computers that they must be treated as equal in all respects with the Research Assistant Gr. II and granted scales of pay right from 1.1.1973. It gave an option to the Government, ~~either~~ to, on its own, consider the matter or to get the matter examined by an expert body. In the light of these facts, gleaned from the judgment and order dated 3.2.1992, the claim of the applicants that their prayer for grant of same scale of pay w.e.f. 1.1.1973 was accepted by the Tribunal ~~cannot~~ but ring hollow. The Government could have referred the matter to an expert body like the Pay Commission and in that case, there is no doubt that the resolution of the matter would have taken a long time. However, in this case, the Government has chosen to act on its own and granted to the Computers, to same scales of pay as

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is available to the Research Assistant Gr. II and also merged the posts of Computers in the cadre of Research Assistant Gr. II.

15. It would, therefore, be ^a travesty of truth to claim that the respondents did not comply with the directions contained in this Tribunal's judgment and order dated 3.2.1992, since there is nothing in this order which required the Government to grant same scales of pay to the computers as is available to Research Assistant Gr. II, or to grant such scales of pay retrospectively.

16. In the Purshottam Lal's case, the petition was filed by the Research Assistants of the same institute to which the present petitioners belong. Their grievance arose out of fact that they were not granted the same scale of pay as was granted to other Research staff in other departments and that @ subsequently Government granted them the same scale of pay, but the relevant Government Order was to have prospective effect. The Government in this case took a view that the Research Assistant of the F.R.I. were not specifically included in the list of scientific post mentioned in para-28 of the second pay commission report and hence, they could not be considered for grant

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of revised scale of pay retrospectively. On the basis of this fact, the Supreme Court held that implementation of the revised pay scales a particular category of servants from the date later than that recommended by the pay commission and thus non-implementation of its report, only in respect of these persons amounts to violation of Articles 14 & 16 of the Constitution.

17. It would, thus be clear from the Purshottam Lal's case that there was a selective non-implementation of the 2nd pay commission recommendations which was discriminatory in so far as the applicants in that case were concerned. In the case before us, it has not been shown that there has been any selective non-implementation with regard to the petitioners of the recommendations of the IIIrd and IVth Pay Commissions. The decision in Purshottam Lal's case cannot, therefore, be applied to the petitioners in this case.

18. In Prabhat Kiran Maithani's case, ~~000000~~ cited by the learned counsel for the respondents, the ~~computers~~ of Forest Research Institute filed a writ petition claiming to be treated as Research Assistant Grade-II, substantively the same claim as in the present petition. The Supreme Court held that the claim of the Computers lay entirely within the sphere and the functions of the pay Commissions and the Supreme Court could not decide the disputed question on slender material. It was further observed that

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such matters were unfit for determination in writ petition for enforcement of fundamental rights. In coming to this decision, the judgment in the case of Purshottam Lal was noticed but the same was not followed since the decision in that case did not deal with any controversy ^{to} as the correct classification of computers in comparison with Research Assistant Gr. II.

19. It is, thus clear that in the present petition, the decision in Maithani's case is squarely applicable. On the basis of slender material available on record, this Tribunal can hardly adjudicate on the question of correct classification of computers vis-a-vis Research Assistant Gr. II. This was the job of the Pay Commissions, but admittedly, neither the IIIrd Pay Commission nor IVth Pay Commission gave any recommendation classifying the computers of F.R.I. as on par with the Research Assistant Gr. II.

20. In view of the foregoing, we are not in a position to accept the claim of the petitioners for grant of arrears of salary @ w.e.f. 1.1.1973 on the basis of the ^{equation} ~~equivalent~~ claimed ^{with} ~~by~~ the Research Assistant Gr. II with regard to scales of pay. However, the Government may consider making a pointed reference of this issue to the Vth Pay Commission which

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has already been set up, notwithstanding the fact that the petitioners are no longer employees of the Government of India.

21. The petition is disposed of with the above observations; there will be no order as to costs.

J. J. Mune
Member (J)

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Member (A)

Dated: 07 May, 1994.
(n.u.)