

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 1st day of November 1996.

Original Application no. 95 of 1993.

Hon'ble Mr. T.L. Verma, Judicial Member  
Hon'ble Mr. S. Dayal, Administrative Member.

1. Govind Ram, Ticket No. 94-B, aged about 60 years, S/o Late Sri Ramaya Ram, Working as Mechanic 'A' with Small Arms Factory, Kanpur, R/o 22/2, Charan Singh Colony, Kanpur.
2. Moti Singh, Ticket no. 101-B, aged about 57 years, S/o Late Sri Mohan Singh, working as Mechanic 'A' with small Arms Factory, Kanpur.
3. Bhagat Singh, Ticket no. 92-B, aged about 50 years, S/o Sri Lal Chand, working as Mechanic 'A' with Small Arms Factory, Kanpur.

... Applicants.

C/A Sri Rakesh Verma.

Versus

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

... Respondents.

C/R Sri A. Mohiley.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicants seeks following reliefs:-

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- i. quashing of order dated 20.08.92 passed by respondent no. 2, rejecting the representation of the applicants.
- ii. direction to the respondents to pay the arrears of pay and allowances to the applicant's calculated on the basis of their entitlement to the pay scale of Rs. 110-155/- as confirmed in the judgement of the Central Administrative Tribunal, Principal Bench, New Delhi, dated 01.09.92 with 18% interest.
- iii. award cost of the application.

3. According to the facts contained in the application, the applicants were working as Vehicle Mechanic w.e.f. 29.01.63 in the pay scale of Rs. 110-155/- . They appeared to have been rendered surplus and were transferred to Small Arms Factory, Kanpur on 01.11.65, in the pay scale of Rs. 75-95 in their new jobs with their L.P.C showing Rs. 116/- as last pay drawn. The applicants represented against the payment of lower pay scale to the respondent no. 2 on 23.04.92 but their representation was rejected by the order of respondent no. 2 dated 20.08.92.

4. The argument of Sri Rakesh Verma learned counsel for the applicant and Sri Ashok Mohiley learned counsel for the respondents, have been heard.

5. The main ground on which the applicants have sought relief is the Judgement in the case of D.R. Gulati Versus Union of India and others in OA 270/89 delivered by

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Principal Bench of the Tribunal on 01.09.89. The judgement is said to be <sup>in a case in which</sup> of <sup>a</sup> one colleagues of the applicant, who was similarly placed, <sup>was the applicant</sup>. The ratio of the judgement shows that the applicant in the case cited was allowed wages at the pay scale which applicants were getting in Delhi Cantonment Work Shop, because another applicants similarly placed have been allowed payment in the pay scale of Rs. 110-155/- at the level reached by them when they <sup>were</sup> ~~have~~ transferred <sup>out</sup> ~~to the post~~ <sup>after</sup> ~~of~~ having been rendered surplus from Delhi Cantonment Work Shop to Jabalpur because it was the case of transfer and applicants were given alternative appointment and not new appointment and also because colleagues <sup>a</sup> who were not selected in the interview and remained behind <sup>in</sup> Delhi Cantonment Work Shop continued to draw the pay scale of Rs. 110-155/-.

6. Learned counsel for the respondents mentioned in the counter affidavit that the applicants are not entitled to any relief because they were getting pay of Rs. 77/- pm in the pay scale of Rs. 75-95/- w.e.f 10.11.66, 15.11.66 and 30.06.66 respectively without any protest or complaint. It ~~has~~ also been mentioned that the posts of Vehicle Mechanics in the pay scale of Rs. 110-155/- were not existing in <sup>the</sup> Ordnance Factory, <sup>at Kanpur</sup>. The plea of limitation has also been raised because there has been a gap of 27 years. It is also mentioned that the applicants were struck off from the strength of Parent unit with effect from 13.07.65, 18.11.65 and 13.07.65 respectively. It has also been mentioned that the applicant after having been declared surplus in the parent unit, were permanently transferred to Small Arms Factory, Kanpur and were absorbed as Mechanics in the pay scale of Rs. 75-95/- as

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indentical pay scale was not available in the Small Arms Factory. The question of estoppel have been also raised because the applicant had accepted the non matching pay scale at the time of their<sup>absorption</sup> in the Small Arms Factory Kanpur. The respondents have mentioned the judgement of Allahabad High Court in which the High Court had set aside the award of higher pay scale to some workmen of Ordnance Parachute Factory, on the ground that once the employee had agreed to work in the particular pay scale and changed their position they were estopped from claiming higher pay scale. It is contended in the counter reply that the Principal Bench of the Central Administrative Tribunal had not correctly appreciated the question of limitation.

7. 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. It is certified in the counter reply that the correct date of appointment of Sri Govind Ram was 20.01.63, of Sri Moti Singh 06.11.63 and of Sri Bhagat Singh 26.03.63 and that all of them were not appointed on 29.01.63 as mentioned in their application. They were struck off the strength of their parent unit on 13.11.65, 18.11.65 and

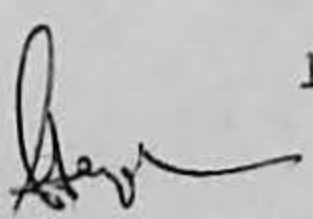
.....5/-



13.11.65 respectively,

9. The respondents have stressed the contention that the judgement of the Principal Bench of the Tribunal was erroneous and that the ratio of the judgement of Allahabad Bench of the High Court is more appropriate and correct legally. We have perused the judgement of Allahabad High Court and the facts of the case as narrated in that judgement are that a conscious decision was taken not to retrench the Tailors Grade 'C' working in Ordnance Prarchute Factory after cessation of Chinese aggression but absorb them in another grade if they chose to accept it. In the instant case, there is no dispute that the Vehicle Mechanics were transferred and that those who remained in Delhi continued in the higher pay scale. Therefore, the judgement of the Principal Bench in D.R. Gulati's case (Supra) is more appropriate to this case. The respondent has also cited judgement dated 09.01.95 in the OA 936/90 delivered by a Division Bench of Allahabad branch of Central Administrative Tribunal. The facts of this decided case differ from the matter before us in so much as the applicant who was a civilian school master in the decided case was offered the post of Lower Division Clerk on being declared surplus and he accepted it. Such an offer and acceptance is not forth coming from the facts of the case before us except by way of inference because the applicants kept on working on the lower pay scale for more than twenty years.


10. We, therefore, accept the ratio of the decision

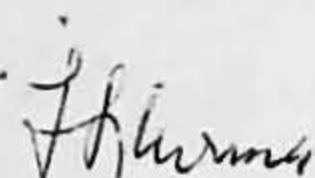


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of the case of D.R. Gulati (Supra) and hold that the applicants were entitled to the pay scale of Rs. <sup>110-155</sup>~~110-115~~ on their transfer to Small Arms Factory, Kanpur. We, therefore, quash the impugned order dated 20.08.92. The respondents are directed to place the applicants in a scale of Rs. <sup>110-155</sup>~~110-115~~ from the dates of transfer as given by the respondents in their counter reply. This scale shall be personal to the applicants. The applicants shall also be entitled to an interest of 12% from 18.01.93 onwards which is the date on which they filed this OA. This order shall be complied within a period of three months from the date of intimation of the order by the applicants.

11. There shall be no order as to costs.

  
Member-A

  
Member-J

/pc/

Corrected  
by order  
dated 17-1-97  
17-1-97