

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE ¹⁵28th DAY OF AUGUST, 1995

Original Application No. 1723 of 1994

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAS GUPTA, MEMBER(A)

1. Khem Raj, s/o Late Dhani Ram
2. Babu son of Iddu Bux
3. Munna Ansari, s/o late Bashir
4. Kailash Nath Tiwari, s/o Late Ram Lakhan Tiwari
5. Jagannath son of late Rameshwar
6. Mehandi Hasan son of late Habib Ahmed
7. Amisal Hasan son of late Bakridi
8. Ram Chandra son of late Sunder Lal
9. Murlidhar, son of late Nathui Ram
10. Mani Ram, s/o late Durga Prasad
11. Purushottam, s/o Late Ram Ratan
12. Ram Swarup, s/o late Parmai
13. Jaggu Prasad, s/o Late Ganeshi Lal
14. Ram Kishore Jaiswal, s/o late Putan Lal JaISWAL
15. Manni Lal s/o Late Chhedhi Lal
16. Pratap Narayan s/o Late Ram Swarup Singh
17. Tapeshwari s/o late Mahabir Prasad
18. Mednath s/o late Govardhan Lal
19. Ram Dulare, s/o late Chitai
20. Rajendra Prasad s/o late Rameshwar
21. Dhani Ram, s/o late Ram Lal
22. Hira Lal s/o late Badhu Ram
23. Sesh Narayan s/o late Baldev Pd.
24. Jagmohan Lal s/o Devi Charan
25. Mewa Lal s/o Late Jhallu
26. Ram Sumer, s/o late Sri Ram Pd.
27. Ashok Kumar s/o late Sriram Samujh

28. Mahadeo s/o late Devi Dayal
29. Ishwar Din s/o Late Gaya Din
30. Sai Narayan Pandey s/o Shiv Narayan Pandey
31. Shakti Pd. s/o late Laltu
32. Hari Shanker s/o late Babu Lal
33. Iqbal Shanker s/o late Shiv Narayan
34. Kishan Singh, s/o late Babu Singh
35. Vijai Shanker Trivedi s/o late Govardhan Pd. Tiwari
36. Om Prakash Nigam, s/o late Jagat Narayan
37. Altabh Husain s/o late Hazi Ashiq Husain
38. Prem Shanker Sahu s/o Late Mangal Prasad Sahu
39. Sri Ram s/o Sri Sukhai
40. Mangal Pd s/o Sri Methi Lal
41. Gopi Chand s/o late Radhu Mal
42. Abdul Hamid, s/o Sri Abdul Nai
All C/o Hari Shanker, 169/10
New Labour Colony, Kidwai Nagar, Kanpur

Applicants

BY ADVOCATE SHRI ARVIND KUMAR

Versus

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1. Union of India, through the Secretary
Ministry of Defence, Govt. of India,
New Delhi.
2. Director General, Ordnance Factories
6, Esplanade East, Calcutta
3. General Manager, Ordnance Equipment
Factory, Kanpur.

...Respondents

BY ADVOCATE SHRI S.C. TRIPATHI

Order(Reserved)

JUSTICE B.C. SAKSENA, V.C.

This OA came up for orders as regards admission. We have heard the learned counsel for the applicants. The applicants are 42 in nos. The applicants are working as Tailors in the Ordnance Equipment Factory, Kanpur. In this OA they have prayed that the respondents may be directed to treat the applicants as Tailors Gr.'A' from the date of their initial appointment with all consequential benefits including arrears of pay and promotion etc. The applicants own case is that at the time of their initial appointment during 1960-63 Tailors were classified into 4 categories viz (i) Gr.A in the scale of pay of Rs.110-143, (ii) Gr.B in the scale of pay of Rs.85-110, (iii) Gr.C in the pay scale of Rs.(pay scale has not been indicated), (iv) Gr D in the scale of pay of Rs.75-85. The applicants claim is that the work performed by the different categories of Tailors was absolutely of the same nature and as prescribed in the Employment Exchange Demand for Recruitment for all the four categories was similar viz Experience certificate issued by a recognised tailoring house. The test taken for recruitment for all categories was making a kit bag. The averments in the OA are vague inasmuch as the date of appointment and the names of the applicants and grade to which they

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were appointed had not been indicated. It has vaguely been stated that all the applicants were recruited in Gr.B. Certain others were recruited on Gr.C&D. However most of the applicants were recruited in Gr.D. The further case of the applicants that there was no fixed criteria laid down for promotion to Gr.A. It has further been alleged that some of the tailors who joined their services as Gr.D were given promotion as Gr.C within few months of their appointment. However, some of the applicants were not lucky enough to get this kind of promotion.

2. It has further been averred that with the implementation of the IIIrd Pay Commission Recommendation in 1973 'A' Gr. Tailors were given pay scale of Rs.260-350 and the other grades (Gr.B,C&D) were merged into one common grade known as Gr.B with the pay scale of Rs 210-290. The applicants allege that they made representations that all the four categories were performing the identical work there would not be justification in prescribing the different pay scales and all the applicants should be given the scale of pay which was given to Grade 'A'. Having failed to persuade the respondents to ^{to} accede/their requests the applicants alleged that they have filed an application u/s 33(c) (ii) of the Industrial Disputes Act before the Central Industrial Tribunal at Kanpur for computation of their proper wages and payments of arrears. The said Tribunal vide order dated 24.1.79 rejected the claim on the ground that the Industrial Tribunal has no jurisdiction to re-classify grades u/s33(c)(ii) of the Industrial Disputes Act.

3. The applicants further alleged that thereafter they moved an application before the Conciliation Officer, Kanpur on 27.2.79. The Conciliation officer vide order dated 7.9.79 rejected the application through their Union on the ground that the Union had the avenue of settlement of dispute through the negotiating machinery set up by the Ministry of Defence. The applicants approached the higher authority but they came to know that there was no negotiating machinery set up by the respondents. The applicants thereafter filed a writ petition no.13/81 before the High court at Allahabad. It is stated that the High court vide its order dated 14.9.83 quashed the order of Asstt. Labour Commissioner, Kanpur **and directed** to consider the application for setting the machinery of Conciliation into motion, **by** the Ministry of Labour. Despite several representations and ultimately on 3.1.86 it is averred that the Central Govt. informed the tailors Association that it has decided not to refer the dispute for adjudication as vide order dated 16.1.81 Gr.B has already been merged in Gr.A and therefore no dispute remain between the parties. At this stage it may be indicated that on the recommendation of the IIIrd Pay Commission two Committees viz the Expert Classification Committee and the Committee on common category jobs were set up by the respondents and on their report, vide order dated 16.10.81, the respondents further re-categorised the grades and pay scales in the various Ordnance Factories. Gr.B tailors were merged as Gr.A. However, they claimed that they are entitled to Gr.A from the date of their initial recruitment viz from the year 1960-63. The applicants continued to make the said claim through representations

ultimately it is stated vide order dated 9.11.89 the Central Govt. informed the Secretary of the Tailors Association that the Central Govt. has decided not to change its earlier decision as Ordnance Equipment Factory is not an Industry and therefore the dispute cannot be referred for adjudication under Industrial Disputes Act.

4. The applicants questioned the validity of this decision through their Union by filing a writ petition in the Hon'ble Supreme Court by means of writ petition no.200/91. It is stated that the Supreme Court disposed of the said writ petition vide an order dated 19.10.92 with the following directions.

" the petitioners to approach the Central Administrative Tribunal but if they want reference to Industrial Tribunal, they may approach to the High Court. The writ petition is disposed of accordingly."

It is alleged that the applicants counsel did not inform the applicants Union about the aforesaid decision passed by the Hon'ble Supreme court. In April 1994 they were informed that the writ petition was disposed of vide order dated 19.10.92 and thus the claim petition had been preferred.

5. The learned counsel for the applicant submitted that in view of the order passed by the Hon'ble Supreme Court this petition cannot be treated to be barred by limitation. The order passed by the Hon'ble Supreme Court has been quoted hereinabove. The applicants were no doubt required to approach the Tribunal and if they want a reference to the Industrial Tribunal, they were required to move the High Court. The Hon'ble Supreme Court , however, did not give any

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direction condoning the delay or requiring the Tribunal to entertain the petition condoning the delay. In these circumstances, in view of the provisions of Sec. 21 of the Administrative Tribunals Act in our considered opinion this petition is wholly belated. The claim pertains to the year 62-63. The Tribunal was constituted in the year 1985. No claim petition claiming a relief on a cause of action which accrued before 3 yrs of the Constitution of the Tribunal/ **could be entertained.** The claim of the applicants on their own showing pertains to the year 1962-63. They have approached various judicial Forums as indicated hereinabove, but without success. The learned counsel for the applicant submitted that if the petition is dismissed on the ground of being barred by limitation, the applicants would be remedy less. For this situation the applicants have to blame themselves, they have moved wrong Forums for redressal of their grievances and have allowed so much time to lapse. This Tribunal is a Creature of the Statute and is bound to entertain a petition only if it meets the requirements of Section 21 of the Administrative Tribunal's Act. This petition is highly belated. Even on merits the applicants have no case. The classification of various posts and scale of pay prescribed lies within the exclusive domain of the executive authorities. The classification of the pay scales on the applicants own showing had received consideration by the Third Central Pay Commission and various other Pay Commissions. It has also received attentions by specialised Committees constituted after the IIIrd Pay Commission Report. The claim for Equal pay for equal work' is not applicable when different posts are classified.

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and given separate scales of pay according to job requirements and on the basis of Pay Commission Recommendations (See 1994 24 ATC 264 Surendra Kumar Vs. U.O.I. & Ors) The Hon'ble Supreme Court ~~has~~ also in various decisions has laid down that whether or not parity exists amongst the employees of various grades is a matter to be decided by an Expert body or the Administrative Govt. and not the Tribunal (See 1989 SCC(L&S) 522, 1989 SCC(L&S) pg.71, 1992 SCC(L&S) pg 382. The pay structure is determined by the Commission. This Tribunal on the sketchy averments in the OA is not competent to determine job equivalence in the various grades which have been prescribed.

6. There is no merit in the O.A. It is dismissed summarily.

MEMBER(A)

VICE CHAIRMAN

Dated: August 28, 1995

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