

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ORIGINAL APPLICATION No.367/1995

DATED THIS THE 20<sup>th</sup> DAY OF Feb. 2002.

HON'BLE Mr. JUSTICE R.R.K. TRIVEDI .. VICE CHAIRMAN

HON'BLE Mr. MAJ.GEN. K.K. SRIVASTAVA .. MEMBER(A)

Miss Anju Nigam,  
Aged about 32 years,  
D/o Sri B.S. Nigam  
R/o 109/413, Nehru Nagar,  
Kanpur,  
Presently posted as  
Senior Superintendent,  
R.M.S., Kanpur Division,  
Kanpur.

... Applicant

(By Advocate Shri K.C. Sinha)

Versus

1. Union of India,  
through Secretary,  
Department of Personnel, Pension  
& Public Grievance, (Department of  
Personnel & Training), Govt. of India,  
New Delhi.

2. Director General (S.P.G.),  
Dak Bhawan, New Delhi.

3. Secretary, Department of Posts,  
Dak Bhawan, New Delhi.

4. Chief Post Master General,  
U.P. Circle, Lucknow.

... Respondents

(By Advocate Shri Satish Chaturvedi)

O R D E R

Hon'ble Mr. Justice R.R.K. Trivedi, Vice Chairman :

By this O.A. under Section 19 of the A.T.Act, 1985,  
the applicant has prayed to quash the order dated 18.4.94,  
26.5.94 (Annexures-5 and 6), by which the claim of the  
applicant for pay protection has been rejected. She has

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also prayed to quash para 4 of the O.M. dated 7.8.1989 (Annexure-5). A direction has been prayed to respondents to grant pay protection to the applicant counting her service rendered in the State Bank of India from 1.10.1985 to 13.5.1989 under the O.M. dated 7.8.1989.

2. The facts in short giving rise to this application are that the applicant initially joined as Probationary Officer in the main branch of the State Bank of India, Kanpur and served there from 1.10.1985 to 13.5.1989. While she was serving as Probationary Officer, she with the permission of the Bank authorities appeared in the Civil Services Examination 1987, conducted by Union Public Service Commission. She was selected for I.A.S. (Allied) and she joined the Department of Posts on 15.5.1989 as Indian Postal Service (Professional Group 'A'). At present, the applicant is serving as Senior Superintendent, R.M.S., Kanpur Division. After joining Government service, she made a representation on 19.12.1993 claiming pay protection on the basis of the O.M. dated 7.8.1989. The claim of the applicant had been rejected vide order dated 18.4.1994, aggrieved by which, the applicant has approached this Tribunal by filing this O.A. on 17.4.1995.

3. The case of the applicant is that as Officer in the State Bank of India, she was drawing the pay and allowances at the following rate:

Basic Pay	-	Rs.3,060.00
D.A.	-	Rs. 989.01
H.R.A.	-	Rs. 300.00
C.C.A.	-	Rs. 198.90
Total	-	<u>Rs.4,547.91</u>

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Whereas, as Officer in the Indian Postal Services - Group 'A' the applicant was authorised to draw pay and allowances in the following manner.

Basic Pay	-	Rs.2,200.00
D.A.	-	Rs. 638.00
H.R.A.	-	Rs. 450.00
C.C.A.	-	Rs. 100.00
Total :		<u>Rs.3,388.00</u>

4. The claim of the applicant is that under the O.M. dated 7.8.1989, she was entitled for the Basic Pay of Rs.3,200/- and D.A. Rs.736.00. Thus, she was suffering a loss of Rs.1,098.00. It has been stated that for an application of the benefit under the O.M. dated 7.8.1989, cut off date 1.8.1989, had been arbitrarily fixed which has no connection with the object and purpose behind issuing the order dated 7.8.1989. It is stated that the claim of the applicant had been illegally rejected.

5. The counter affidavit has been filed by respondents denying the claim of the applicant. It has been stated that her claim for pay protection has been rightly rejected as her case is not covered by O.M. dated 7.8.1989, which is applicable from 1.8.1989. It is also stated that the claim of the applicant is barred by limitation as she raised the claim for the first time vide her representation dated 19.12.1993, though the cause of action arose to her in 1989 itself. It has been claimed that the O.A. is liable to be rejected on the ground of limitation. It has been pleaded by the respondents that O.M. dated 7.8.1989, does not suffer from voice of discrimination and it does not in any way violate Article 14 of the Constitution.


6. We have heard Shri K.C. Sinha, learned counsel for the applicant and Shri Satish Chaturvedi, learned counsel appearing for the respondents.

7. Learned counsel for the applicant has submitted that the date 1.8.1989 for application of the benefit under the O.M. dated 7.8.1989 had been arbitrarily picked up which has no nexus with the object sought to be achieved by the policy introduced by the O.M. It is also submitted that there is no intelligible differentia between the two groups of the employees who joined on or after 1.8.1989 and those who joined prior to it. It is submitted that in the present case, the applicant joined on 15.5.1989, after being selected by the U.P.S.C. The claim of the applicant has been illegally and arbitrarily rejected. The learned counsel has placed reliance on the following judgments of the Hon'ble Supreme Court in support of his submission.

1. D.S. NAKARA Vs. UNION OF INDIA -1983 SCC (L&S) 145
2. R.L. MARWAHA Vs. UNION OF INDIA & ORS. - 1987 SCC (L&S) 350
3. B.S. ROHILLA Vs. UNION OF INDIA & ORS. - (1992) 22 ATC 321
4. M.C. DHINGRA Vs. UNION OF INDIA & ORS. - 1996 SCC (L&S) 646
5. DHANRAJ & ORS. Vs. STATE OF J & K. & ORS. - 1998 SCC (L&S) 982.
6. SUBRATO SEN & ORS. Vs. UNION OF INDIA & ORS. - 2001 (4) ESC (SC) 609.
7. B. KASTURI Vs. MANAGING DIRECTOR, STATE BANK OF INDIA & ANR. - 1998(8) SCC 30.

8. The learned counsel for the respondents on the other hand submitted that the applicant is not entitled for the pay protection under the O.M. dated 7.8.1989. The fixing of a cut off date for application of a policy is part of

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policy decision and it cannot be challenged for judicial review. It is also submitted that the Government **before** fixing cut off date for 1.8.1989 considered all aspects of the matter and then gave the O.M. a prospective application only to those who joined Government service on or after 1.8.1989. It is also submitted that the claim of the applicant is barred by time and she is not entitled for the benefit. The learned counsel has placed reliance on the following judgments:

1. UNION OF INDIA & ANR. Vs. R, SARANGAPANI & ORS. - 2000 SCC (L&S) 647
2. T.N. ELECTRICITY BOARD Vs. R. VEERASWAMY & ORS. - 1999 SCC (L&S) 717.

9. We have carefully considered the submissions of the counsel for parties.

10. As stated earlier, there is no dispute between the parties so far as the facts of the case are concerned. The only question for determination in the present case is as to whether the cut off date 1.8.1989 as provided under the O.M. dated 7.8.1989 for giving the benefit of pay protection to those who joined Government service after leaving their services in autonomous bodies and Government undertakings as provided in the O.M. is justified or not?

11. The Hon'ble Supreme Court in several cases has laid down the guidelines to judge the correctness of the provisions providing cut off date and thus making a classification. In the case of D.S. NAKARA, the Hon'ble Supreme Court in para 11 has held as under:

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"11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that the differentia must have a rational relation to the objects sought to be achieved by the statute in question (See Ram Krishna Dalmia V. Justice S.R. Tendolkar). The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e., casual connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

12. The Hon'ble Supreme Court in the case of R.L. MARWAHA (supra), while examining the applicability of the O.M. granting new benefit of reckoning past government service towards pension under autonomous bodies from the date of issue of the O.M. held as under:

also

"9. We do not find much substance in the plea that this concession being a new one it can only be prospective in operation and cannot be extended to employees who have already retired. It is true that it is prospective in operation in the sense that the extra benefit can be claimed only after August 29, 1984 that is the date of issue of the government order. But it certainly looks backward and takes into consideration the past event that is the period of service under the Central Government for purposes of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the government order. By doing so the government order will not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on August 29, 1984, under the government order but with effect from August, 29, 1984."

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13. The dispute in the present case has to be considered in the light of the observations of the Hon'ble Supreme Court in the aforesaid two cases.

14. In the counter affidavit, the respondents have not given reasons for which the cut off date 1.8.1989 was chosen by the respondents for applying the benefit under the O.M. dated 7.8.1989. In the counter affidavit, the object sought to be achieved by the O.M. dated 7.8.1989 has also not been disclosed ~~for replying~~<sup>^</sup>. During arguments also the learned counsel for the respondents has not been able to throw light as to how the cut off date provided under the O.M. dated 7.8.1989 satisfies the twin tests as provided by the Hon'ble Supreme Court. However, on a perusal of the O.M. dated 7.8.1989, the object sought to be achieved can be ascertained. In first paragraph ~~of the~~<sup>^</sup> O.M. provides that "but for this pay protection, it has not been possible for Government to draw upon the talent that is available in non Government organisations." Thus, the object sought to be achieved behind giving the benefit vide O.M. dated 7.8.89 appears to be to attract talent to Government service. Now, it has to be seen as to how the cut off date 1.8.89 has a nexus with the object sought to be achieved. We do not find any nexus with the cut off date 1.8.1989 and the object sought to be achieved as stated above. Similarly, there appears no intelligible differentia between the two groups of employees who joined the Government service on or after 1.8.1989 and those who joined before that date. In both cases the past service rendered in the government undertaking or in the Bank in the present case, has to be calculated.

The observations of the Hon'ble Supreme Court in para 9 of the judgment in R.L. Marwaha's case are squarely applicable in the present case. In our opinion, the cut off date of 1.8.1989 provided under the O.M. dated 7.8.1989 does not satisfy the two conditions that the classification is founded on intelligible differentia and that the differentia has any relation with the object sought. In our opinion, it <sup>is</sup> clearly discriminatory and violative of Article 14 of the Constitution of India.

15. The judgments of the Hon'ble Supreme Court in the case of Union of India & Anr. Vs. R. Sarangapani and Ors. (supra) and T.N. Electricity Board Vs. R. Veeraswamy & Ors. (supra) relied upon by the learned counsel for the respondents are not applicable in the present case as the facts on which basis the cut off date was upheld by the Hon'ble Supreme Court are not found in the present case. As already stated the respondents have not indicated any reasons in the pleadings to justify the cut off date.

16. The next important question is of limitation. The learned counsel for the respondents has submitted that the case of the applicant is barred by time as the cause of action arose to her on 15.5.1989 when she joined the government service and her pay was fixed. But, she filed a representation for the first time on 19.12.1993, i.e., after 4 years of her joining service. When her claim was rejected, she has approached this Tribunal.


17. The learned counsel for the <sup>applicant</sup> ~~respondents~~ on the other hand, submitted that the applicant submitted her representation before the Government when she learnt<sup>ed</sup> about the O.M.



dated 7.8.1989, but her claim was illegally rejected. The O.A. had been filed well within the period of one year from the date of rejection of the representation and the claim is not barred by limitation. For this purpose, the learned counsel for the applicant has placed reliance on the judgment of the Principal Bench of this Tribunal in the case of Kharaitilal Bhalla Vs. Union of India (1992) 22 ATC 327 and submitted that as the applicant was not aware of the existence of the O.M. dated 7.8.1989, she approached immediately after having knowledge of the benefit denied to her.


18. We have considered the submissions of the counsel for the parties. The representation of the applicant dated 19.12.1993 has been considered on merits and rejected on the ground that she is not entitled for the benefit of the O.M. dated 7.8.1989. The claim of the applicant for pay protection has not been denied on the ground of delay. The representation of the applicant was rejected on 18.4.1994. This O.A. had been filed on 17.4.1995, i.e., well within one year period of limitation provided under Section 21 of the A.T. Act, 1985. Thus, the applicant has approached this Tribunal within time from the date of rejection of her claim by the Government. However, the question of delay between 15.5.1989 and 19.12.1993, still has its effect. Though the learned counsel for the applicant during arguments submitted that she approached on having knowledge and has also relied upon the case of Kharaitilal Bhalla (supra), but, this delay in approaching the government

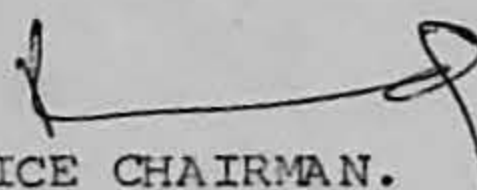
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has not been explained in the O.A. by pleading the ground raised during arguments. In the circumstances, in our opinion, the applicant may gain the benefit from the date she approached the Government by filing representation on 19.12.1993 and the benefit for the earlier period shall be only notional.

19. For the reasons stated above, this O.A. is allowed. The cut off date provided in para 4 of the O.M. dated 7.8.1989 (Annexure-5 to the O.A.) is found to be illegal and discriminatory and violative of Article 14 of the Constitution. The impugned order dated 18.4.1994 - Annexure-6 is quashed. The respondents shall consider the case of the applicant afresh in the light of the observations made above. The benefit for which the applicant is found entitled shall be paid to her with arrears with effect from 19.12.1993. ~~But~~, However, the benefit for the period 15.5.1989 to 18.12.1993 shall be only notional. There will be no order as to costs.

  
MEMBER(A)

  
VICE CHAIRMAN.

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