

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

DATED: THIS THE 1st DAY OF DECEMBER, 1998

Coram : Hon'ble Mr. S. L. Jain JM
Hon'ble Mr. G. Ramakrishnan AM

ORIGINAL APPLICATION NO. 407/95

Naththoo Lal son of Narain Lal
T.No.717/N, Cook, Welfare Canteen,
O.C.F. Shahjahanpur resident of
Mohalla Baru-Zai, Distt: Shahjahanpur

2. Manni Lal son of Chhotey Lal,
T.No.718/N, Cook, Welfare Canteen,
O.C.F., Shahjahanpur, resident of
Roshangunj, District Shahjahanpur.

----- Applicants

C/A K. S. Saxena

Versus

1. Union of India through Secretary,
Ministry of Defence, New Delhi.

2. O.F. Board, 10 Auckland Road,
Calcutta.

3. General Manager, O. C. F.,
Shahjahanpur. ----- Respondents

C/R Km. Sadhna Sivastava.

ORDER

By. Hon'ble Mr. G. Ramakrishnan AM

This is an application under section 19
of the Administrative Tribunals Act, 1985 by S/Shri
Naththoo Lal and Manni Lal working as Cooks, Welfare



Canteen, O.C.F., Shahjahanpur against the order of the General Manager, O.C.F., Shahjahanpur dated 30.4.1984 refusing to correct the fixation of pay of the applicants on the basis of the order of Central Administrative Tribunal, Allahabad in O.A.No.694/87 decided on 4.3.1993 correcting the pay fixation of Mohd. Asif, Cook similarly placed on common government orders governing him as well as the applicants.

2 Regarding the following facts, there is no dispute.

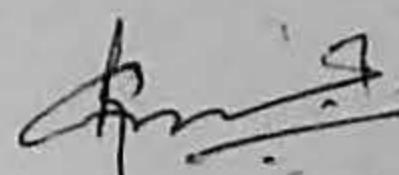
2.1 The applicants stated that they, who were former employees of the canteen, registered under the Societies Act were declared as government servants vide MOD letter no.18(2)/81/D (JCM) dated 21.9.1982. Under that letter, Cooks who were in pay scale of Rs.70-1-85-EB-2-95 were sanctioned new pay scale of Rs.200-3-212-4-232 EB-4-240 made effective with effect from 22.10.1980 and the persons already working on that day were allowed fixation of their pay in the new pay scale of the appropriate stage in accordance with the rules. Before 22.10.80, the Canteen employees were sanctioned adhoc increases of pay from time to time and as on 1.4.1980, the total of such adhoc increases in pay was Rs.154/- per month. O.C.F. Shahjahanpur fixed the pay of the applicants at the rate of Rs.223/- per month plus Re.1/- per month with effect from 22.10.1980, vide letter no.FO-Part II No.143 dated 23.1.1984. Subsequently the General Manager, O.C.F., Shahjahanpur reduced the pay of the applicants fixed earlier, to Rs.200/- per month at the minimum of scale of pay with effect from 22.10.1980 vide F.O.letter dated 14.2.1985. One another Cook Mohd. Asif Khan filed O.A. no.694/87 in this bench of the Tribunal alongwith others and this Tribunal allowed the application on 4.3.1993 and ordered that the order dated 25.2.1986 passed by



the General Manager, O.C.F., Shahjahanpur in that O.A. be quashed with directions to the respondents to fix the pay of the applicants in accordance with law on the basis of the verdict given by the Tribunal. Applicants applied to the respondents to refix their pay as in the case of Mohd. Asif Khan. Respondent no.3 refused to correct their pay vide impugned order dated 30.4.1994 on the ground that O.F. Board, Calcutta (respondent No.2) had informed that the order of the Central Administrative Tribunal, Allahabad being against government policy and Statutes, has no general applicability and as such pay of the applicants cannot be fixed on the basis of the judgment of Central Administrative Tribunal, Allahabad.

3. The applicants pleaded that the reply of the respondents vide G.M., O.C.F., Shahjahnpur, dated 30.4.1994 is against the provisions of Article 14 of the Constitution of India. Further the reduction has been done vide letter dated 14.2.1985 without giving an opportunity and is contrary to rules. Further according to correct application of the rules, the initial fixation of pay of the applicants in the new pay scale should have been more than Rs.228/- plus Re.1/- personal pay per month and that the pay should be fixed in the new scale as per the rules.

4. The respondents stated in their counter affidavit that since the applicants were not party in the O.A. No. 694/87 decided on 4.3.1993, they would not be entitled to be given the benefit of the judgment. Further they also contended that petition was time-barred and on the ground of limitation, was liable to be dismissed. The respondents also stated that in the letter dated 30.4.94 reference to the decision of O.F. Board, Calcutta pertained to a different matter and had no relevance to the petitioners' case. They prayed for the dismissal of this petition.



5. In the rejoinder affidavit, the applicants stated that Local Accounts Officer was not the approving authority for pay fixation under FR 19 and revision of pay fixation at the minimum of the scale was against FR 22(2) and further because the judgment of this Tribunal in O.A. No. 694/87 had become final, the same would apply to all similarly placed employees under Article 14 of the Constitution. They also did not agree with the view that the petition is time barred by limitation. They stated that the cause of action arose when the pay was restored to the applicants in the earlier O.A. as a result of the judgment of this bench of the Central Administrative Tribunal.

6. During the arguments, learned counsel for the applicants cited several decisions of the Hon'ble Supreme court and the different benches of this Tribunal in support of the case of the applicants especially in regard to equal pay for equal work and on the question of limitation. Some of cases relied upon are :-

(i) 1993 SCC (L&S) 544 Gopal Krishna Sharma and others v/s State of Rajasthan and others with Yamuna Shank Sharma v/s State of Rajasthan and others.

(ii) (1995) 3 ATC 774 (Supreme court) Wazi Singh, JBT teacher and others v/s State of Haryana and others.

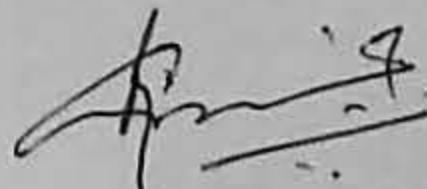
(iii) (1993) 23 ATC 461 (Calcutta) Sunilendu Chaudhary and others v/s Union of India and others.

(iv) (1991) 15 ATC 402 (Madras) S. Govindaraj and others v/s Union of India and others

(v) (1989) 11 ATC 722 (Chandigarh) S.M. Bhatti v/s Union of India and others

(vi) (1988) 8 ATC 180 (New Bombay) Suresh Laxman Bartare and others v/s Union of India and others

He quoted FR 22 (i) and (ii) for fixation of pay of the applicants.





7. Learned counsel for the respondents cited the following cases during arguments mainly on the question of limitation/laches :-

(i) (1992)²¹ ATC 675 (Supreme court) Bhoop Singh versus Union of India and others.

(ii) (1994) 28 ATC 20 (Madras) Tamil Nadu Divisional Accountants Association and others versus Union of India and others

(iii) (O.A.No.936/1990 (C.A.T.Allahabad) decided on 15.12.1994.

In the light of the rival pleadings and the arguments of the learned counsel for the parties and careful consideration thereof, we have framed two issues for adjudication.

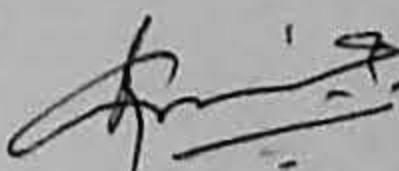
(i) Whether this O.A. should be dismissed because of limitation.

(ii) Whether the applicants are entitled for the relief asked for.

8. In O.A. No. 694/87, this bench of Tribunal had after making a finding held that the adhoc amount sanctioned to the Canteen employees from time to time had not been shown to have been withdrawn, quashed the order dated 25.8.1986 passed by the General Manager, Ordnance Factory, Shahjahanpur reducing the pay of the applicants in that case, one of whom was a Cook and directed the respondents to fix the pay of the applicants in accordance with law. Accordingly G.M./O.C.F. refixed the pay vide Factory order dated 18.6.1993 (as observed from annexure A-1). The applicants have represented on 7.3.1994 to the Secretary, Ordnance Factory Board quoting this F.O., requesting for refixation of their pay. On getting a negative reply from the respondents, petitioners have filed this O.A. on 23.4.1995 which is within limitation.

8.1 The Supreme court judgment cited by the learned counsel for the respondents (Bhoop Singh versus Union of India and others) is a case of Delhi Armed police Constable whose service was terminated in August, 1967 and who approached the courts for redressal after about 22 years. The Hon'ble Supreme court had observed that collateral entry of a person, who chose to remain silent for many years, at a higher point without the benefit of actual experience can affect the acquired rights of those who have been working during the interregnum and gained experience. In this case the applicants are claiming parity in wages for similar duties. Therefore, we are of the view that in the circumstances of this case, the above ratio is not applicable.

8.2 The judgment of the Madras bench of the Tribunal cited by the Learned counsel for the respondents is based on the Supreme court's judgment mentioned above. Apart from that, the bench had also found the claim of the applicants in that O.A. not tenable on merit but had rejected the claim on limitation, as their finding on merit was in conflict with the Chandigarh bench of the Tribunal. Moreover, in this O.A. the applicants had made a representation to the appropriate authority arising out of the judgment of the Chandigarh bench of the Tribunal. It had been observed by the Madras bench of the Tribunal that the judgment of Chandigarh bench or any other bench of this Tribunal would not give rise to a cause of action but only orders of the authority concerned based upon which limitation has to be computed under section 21 of the Administrative Tribunals Act 1985. In the present case, the refixation of pay of a colleague who is similarly placed as the applicants, has given rise to the cause of action and hence the limitation has to be computed from the date of that event.

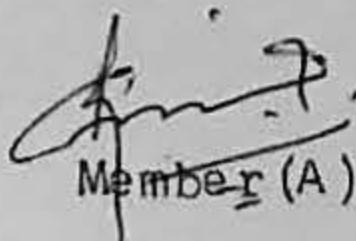


8.3. The ratio of the judgment of this bench of the Tribunal in O.A. 936/1990 is also not applicable for the present case, as in O.A. 936/90 if the applicants' claim had been entertained, it would have affected others.

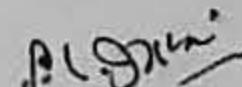
8.4. In view of the foregoing, our findings on the first issue is in the negative.

9. As regards the second issue, as has been stated earlier, this bench of the Tribunal in O.A. No. 694/87 concluded that the adhoc amount sanctioned to the Canteen employees from time to time, which had been treated as pay for all purposes had not been shown to have been withdrawn and has directed the respondents to fix the pay according to law. When the respondents have refixed the pay of the applicants of that O.A. according to law, the other similarly placed employees of the Canteen are also entitled to the same treatment on the principle of equal pay for equal work. In the light of the above, findings ^{on} ~~on~~ the second issue is in the affirmative.

10. In the result the O.A. succeeds. The respondents are directed to refix the pay of the applicants' in accordance with law as has been done in the case of the applicants in O.A. 694/87 within a period of three months from the date of receipt of this order. No order as to the costs.



Member (A)



Member (J)