

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO.152 OF 1986.

Date of decision : September 25, 1987.

Paramesh Prasanna Katari, son of Late
Shyam Prasanna Katari, Former Headmaster,
M.E.School under the respondent No.2,
Presently working as Junior Scientific
Assistant, Regional Labour Institute,
Lake Town, Calcutta-700089. ...

Applicant.

Versus

1. Union of India through the Secretary,
Ministry of Home Affairs, Department
of Home Affairs, Rehabilitation Wing,
Jaisalmer House, Mansingh Road,
New Delhi.

2. Chief Administrator,
Dandakaranya Development Authority,
At/P.O./District-Koraput, Orissa.

... Respondents.

M/s.B.Pal, S.C.Parija,
D.B.Das, Advocates. ...

For Applicant.

Mr.A.B.Mishra, Senior Standing Counsel
(Central) ...

For Respondents.

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
 2. To be referred to the Reporters or not ? *yes.*
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the illegality committed by the authorities concerned in denying to pay certain amount to which the applicant is entitled to as Headmaster of a Middle English School in the Dandakaranya Development Project. In this application the prayer of the applicant is to command the respondents to make necessary payment to the applicant for the period during which he has served as Headmaster, M.E. School i.e. between 1.1.1973 and 2.3.1977 in the light of the revised pay scale recommended by the Third Pay Commission.

2. Shortly stated, the case of the applicant is that the applicant worked as a Headmaster, M.E. School in the Dandakaranya Development Project from 1.1.1973 to 2.3.1977. Further case of the applicant is that the Third Pay Commission report was made effective from 1.1.1973 and therefore, the applicant has prayed for settling his pay according to the revised pay scale with effect from 1.1.1973.

3. In their counter, the respondents maintained that the case is barred by limitation under article 137 of the Limitation Act, and Sections 20 and 21 of the Administrative Tribunals Act, 1985. It was further maintained by the respondents that the applicant is not entitled to higher scale of pay as the post in question was segregated.

4. Before we deal with the questions of law relating to limitation urged by learned Senior Standing Counsel (Central), we would like to first dispose of the question of

fact which is sought to be repudiated by learned Senior Standing Counsel (Central) namely, the applicant on questions of fact is not entitled to a higher scale of pay. Before we discuss the arguments advanced at the Bar it would be worthwhile to state certain facts preceding filing of this case so that the contentions put forward at the Bar on questions of fact would be better appreciated. Soon after the Third Pay Commission report was accepted by the Government of India a couple of Headmasters of M.E. Schools were not given the pay scale as prescribed by the Third Pay Commission and accepted by the Government of India. Hence, they had invoked the extraordinary jurisdiction of the Hon'ble High Court of Orissa by filing an application under Article 226 of the Constitution for grant of necessary relief. Those two cases formed subject matter of O.J.C.No.658 of 1979 and O.J.C.No.402 of 1984. In both the cases Their Lordships held that the petitioners having occupied the posts of Headmasters of M.E.School were definitely entitled to the pay scale at the rate of Rs.550-900/- prescribed by the Third Pay Commission and accepted by the Government of India. In compliance with the writ issued by the Hon'ble High Court of Orissa in both the cases, Government of India passed sanction order wherein the Deputy Secretary to the Government of India, Ministry of Home Affairs has specifically mentioned as follows :

" In pursuance of judgment of Orissa High Court Court, Cuttack in O.J.C.Nos. 658/79 and 402/84, I am directed to convey the sanction of the President to the revision of the scale of pay

of the following categories of teachers of Primary School/Middle School/High School of DNK Project for the period they held the appointment in their respective posts from 1.1.1973.

It was not disputed before us in this case that in pursuance thereto the petitioners in both the O.J.Cs. have been given higher scale of pay with effect from 1.1.1973. Matters of similar nature came up before this Bench forming subject matter of Transferred Application No.45 of 1986 (arising out of O.J.C.No.2060 of 1985), Original Application No.60 of 1986 (both the cases having been disposed of on 4.8.1986), O.A.59 of 1986 disposed of on 4.8.1986 and O.A.142 of 1986 disposed of on 18.3.1987. In O.A.59 of 1986 we adopted the view taken by the Hon'ble High Court of Orissa in O.J.C.No.658 of 1979 and O.J.C.No.402 of 1984 and accordingly we granted the prayer of the petitioners in all the above mentioned cases entitling them to higher scale of pay - Rs.550-900/- with effect from 1.1.1973. It is worthwhile to mention that in O.A.142 of 1986 (S.C.Khare vrs. Union of India and others disposed of on 18.3.1987) counter affidavit had been filed on behalf of the respondents in which it was stated that the revised pay scale of Headmaster of M.E.School is being processed and very soon the applicant, S.C.Khare would be paid the emoluments in the higher scale of pay and this counter submitted on behalf of the respondents was supported by learned Senior Standing Counsel (Central), Mr.A.B.Mishra and accordingly we directed that the applicant, S.C.Khare would be entitled to the revised pay scale with effect from 1.1.1973. We are surprised to find that a different stand is sought to be taken

particularly on questions of fact so far as the present case is concerned even though admittedly the present applicant has served as Headmaster for the period stated above. After having adopted the view taken by the Hon'ble High Court of Orissa in the above mentioned O.J.C. and in view of the fact that basing on the sanction order passed by the Government of India in pursuance to the judgment of the Hon'ble High Court of Orissa and similar view having been taken by us in the aforesaid cases disposed of by this Bench on the dates mentioned above we find no justifiable reason to make a departure from the same view in regard to this particular case especially when the fact of the applicant having rendered service as Headmaster M.E.School for a particular period not having been disputed before us. We would therefore hold that the applicant is entitled to higher scale of pay according to the revised pay scale as prescribed by the Third Pay Commission namely, Rs.550-900/- with effect from 1.1.1973 till the date on which he relinquished the Headmastership, subject to law of limitation.

5. We would now consider the arguments advanced by learned Senior Standing Counsel (Central) urging that the case is barred under section 20 of the Administrative Tribunals Act, 1985. There is absolutely no force in this contention because the present applicant along with others had filed ^{an} application under ^{the} Article 226 of the Constitution before the Hon'ble High Court of Orissa forming subject matter of O.J.C.No.1818 of 1985 praying therein to command the respondents to pay the petitioner according to the revised pay scale as recommended by the Third Pay Commission which ^{has} report has been accepted by

government of India. This matter came up for admission before the Calcutta Bench on circuit at Cuttack and vide order dated 7.12.1985 the Calcutta Bench on circuit held that the case was barred under section 20 of the Administrative Tribunals Act, 1985 as admittedly the representation filed by the petitioner along with others was pending consideration of the Chief Administrator, Dandakaranya Development Authority. Hence, while dismissing the application forming subject matter of O.J.C.No.1818 of 1985 the Chief Administrator was directed to dispose of the representation which was disposed of as rejected vide Annexure-6 dated 4.2.1986. In such circumstance, we cannot comprehend as to how this case is barred under section 20 of the Administrative Tribunals Act, 1985 and therefore we find no substance in the argument advanced by learned Senior Standing Counsel (Central).

6. Next, coming to the question of limitation relating to article 137 of the Limitation Act we are of opinion that such provision has absolutely no application to the facts of the present case. It prescribes that when any other application for which no period of limitation is provided elsewhere in this division, limitation would run after expiry of three years from the date on which the right to apply accrues. This provision will have no application because period of limitation is prescribed under the Administrative Tribunals Act, 1985. The Third Division (Part I) of the Limitation Act envisages or provides limitation to be computed in

regard to different nature of applications covered under different articles beginning from Article 118 to Article 136. The list not being exhaustive, an additional provision was made under article 137 of the Limitation Act prescribing the period of limitation in respect of applications which have not been specifically enumerated in Articles 118 to 136. The present application being under section 19 of the Administrative Tribunals Act, 1985 and the period of limitation in respect of such application being only covered by the provisions contained under section 21 of the said Act, in our opinion, article 137 of the Limitation Act would have no application to the present case.

7. Lastly, it is now to be considered as to whether section 21 of the Administrative Tribunals Act, 1985 would operate against the applicant and whether the argument of learned Senior Standing Counsel (Central) that this case is barred by limitation is tenable. After delivery of the judgments by the Hon'ble High Court of Orissa the petitioners were ordered to be paid in the higher scale. In pursuance to the orders of the Hon'ble High Court, the applicant demanded that the said judgments should be made applicable to him and he should be paid higher scale of pay which being denied to him, the applicant along with others filed an application under Article 226 of the Constitution which formed subject matter of O.J.C.No.1818 of 1985, which, as already mentioned, was dismissed on 17.12.1985 awaiting disposal of the representation pending before the Chief Administrator, Dandakaranya Development Authority, and such representation having been dismissed on 4.2.1986 the present applicant being aggrieved by the said order came up before this Bench for necessary redress and relief. In such circumstances, we are of opinion that the cause of action for the applicant arose

On 4.2.1986. It was not disputed at the Bar that the period of limitation has to be computed from the date on which the cause of action arises. The date of disposal of the representation being the date on which the cause of action arose, this case cannot be said to have been barred by limitation as it was filed on 6.10.1986. In view of the facts mentioned above, we have no hesitation in our mind to hold that the judgments reported in A.T.R.1986(2) C.A.T.299, A.T.R.1986(2) C.A.T.449 and A.T.R.1986(2) C.A.T.602 have no application to the facts of the present case.

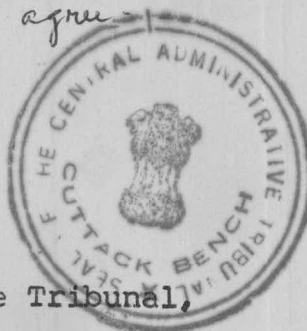
8. Our final conclusion is that the applicant is entitled to the higher scale of pay in the scale of Rs.550-900/- with effect from 1.1.1973 till he relinquished the Headmastership of M.E.School and we would further direct that the applicant be paid accordingly within 4 months from the date of receipt of a copy of this judgment.

9. Thus, this application stands allowed, leaving the parties to bear their own costs.

ksacc
25/9/87
.....
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

9 agree



B.R. Patel
25-9-87
.....
Vice-Chairman.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
September 25, 1987/S.Sarangi.