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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH :CUTTACK.

ORIGINAL APPLICATION NO.191 OF 1986.

Date of decision : April 22, 1987.

Dr. (Smt.) Sushila Mishra ... Applicant.

Versus

Union of India and others ... Respondents.

M/s. P. Palit, R. Mohapatra,
A.K. Bhagat, G.S. Mantour,
D. Mohanty, Biswajit Mohanty,
Advocates. ... For Applicant.

Mr. A. B. Mishra, Senior Standing
Counsel (Central) ... For Respondents 1 to 3

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 order passed in Annexure-1 refusing to consider her case to give her the higher scale of pay prescribed under the Rules.

2. Succinctly stated, the applicant is a Lady Doctor posted at Cuttack and attached to the P & T Dispensary. The applicant was appointed on 20th April, 1968. According to Rules (which is not disputed) a particular employee after having served for five years he/she is entitled to the higher scale of pay namely i.e. Rs. 1100-1600/- which was the scale of pay previous to the revision of the pay scale. The applicant when came up with such a prayer, she was told under Annexure-1 that her case will be considered only after the finalisation of the disciplinary proceeding initiated against her. Being aggrieved by this order contained in Annexure-1 the applicant has invoked the jurisdiction of this Tribunal for interference.

3. Before we deal with the respective contentions of the counsel appearing for either side, it is worthwhile to state the previous history of the case so that the contentions put forth by learned counsel for both sides shall be better appreciated. Admittedly, a disciplinary proceeding was drawn up against the applicant and after charges were delivered to the applicant, she invoked the extraordinary jurisdiction of the Hon'ble High Court of Orissa by filing an application under article 226 of the Constitution praying

therein to quash the proceeding namely, the proceeding and the charges framed in the said proceeding. This formed subject matter of O.J.C.No.1287 of 1979. This application under article 226 of the Constitution was disposed ^{of} by the Hon'ble High Court of Orissa on 1.10.1985 quashing the charges and the proceeding. Some time later the applicant was not allowed to cross the Efficiency Bar on the ground that there was a contemplated proceeding against her and being aggrieved by the order passed by the competent authority refusing to allow her to cross the Efficiency Bar, the applicant again invoked the extraordinary jurisdiction of the Hon'ble High Court of Orissa praying therein to command the Respondents to allow her to cross the Efficiency Bar. This formed subject matter of O.J.C.No.975 of 1979. This case was ultimately transferred to the Central Administrative Tribunal, Calcutta Bench for disposal according to law and Calcutta Bench holding circuit at Cuttack heard the matter on merit and allowed the application and directed the competent authority to allow the applicant to cross her Efficiency Bar. The said case has been reported in A.T.R. 1986 C.A.T.433 (Dr.Smt.Susila Misra v. Union of India and others). While disposing of that case, the Bench ordered as follows :

" In the result, the application succeeds and it is hereby directed that the applicant be allowed to cross the efficiency bar in the scale of pay of Rs.700-1300/- . "

Incidentally, it may be mentioned that the applicant was initial

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appointed in the scale of pay of Rs.650-1200/- and in the said scale she had met the Efficiency Bar on 1.5.1978 at the stage of Rs.810/- and having been allowed to cross the efficiency bar the applicant reached the stage of Rs.845/-. Ultimately the applicant was asked to exercise option to move to the Revised scale and she having opted to move to the revised scale she was entitled to the pay scale of Rs.700-1300/- but ^{she} _{ln} was not allowed to cross the efficiency bar at the stage of Rs.900/- for the reasons stated above and for which she had approached the High Court in O.J.C. No.975 of 1979 which was disposed of by the Circuit Bench of Calcutta as indicated above. After disposal of the above mentioned case the applicant has come up again with an application under section 19 of the Administrative Tribunals Act, 1985 which is the ^{subject} _{ln} matter of decision by this Bench in the present case.

4. We have heard Mr. Palit, learned counsel for the applicant and learned Senior Standing Counsel (Central) on merits of the case. It was contended by Mr. Palit that the view taken by the Calcutta Bench should be adopted by this Bench also because extraneous matters cannot be taken into consideration while giving service benefits to a particular employee for a particular period. The crux of the contention of Mr. Palit is that the authorities have denied to consider the case of the applicant for giving her the higher scale because her case has not been cleared from vigilance angle. It would also be necessary and profitable to quote the particular order in relation to which the applicant feels

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aggrieved and it runs thus :

" As regards your placement in the Senior Class I scale of Rs.1100-1600 you have not been cleared from vigilance angle. Your case will be considered only after the finalisation of disciplinary proceedings initiated against you. "

The proceedings referred to in Annexure-1 has been admittedly initiated on 5th September, 1986. Mr. Palit relied upon the observations of the Calcutta Bench which runs thus :

" The grounds taken on the second occasion was that another departmental enquiry was under contemplation. But the facts, on the basis of which the second departmental enquiry was under contemplation, occurred much later than the relevant date, i.e., 1.5.1978 on which the applicant met the efficiency bar. While judging the suitability of an incumbent for crossing the efficiency bar on a particular date the authorities are entitled to consider only facts prior to that relevant date and taking into consideration certain facts occurring after that relevant date will amount to importing extraneous consideration and, therefore, would be flagrant violation of principles of equity, fair play and natural justice. "

It was further contended by Mr. Palit that in the present case at the time when the applicant was entitled to the higher scale of pay no proceeding was pending against her and therefore the authorities were completely wrong in taking into

consideration extraneous circumstances and thereby declined to give necessary relief to the applicant. At the risk of repetition we may say that ~~from~~ the year 1978 upto 4.9.1986 there was no proceeding pending against the applicant. This is undisputed. Therefore, taking into consideration the fact that a proceeding is pending against the applicant since 5.9.1986, it is nothing but an unjustifiable ground over which the competent authorities have tried to tread ~~upon~~^{AN} and that is because of the proceeding pending from 5.9.1986 the applicant would not be allowed to be entitled for the higher scale. We may again repeat the words of the Calcutta Bench that this approach of the competent authority is against all cannons of justice, equity and fair play. Law is well settled that extraneous consideration can^{not}_{AN} be taken into consideration for a period in which there was no dirty linen lying against a particular employee. In the present case there being no proceeding pending or any dirty linen of any nature pending against the applicant it would not be justifiable to act upon the proceeding initiated on 5.9.1986 and withhold the entitlements of the applicant. In order to repudiate the contention of Mr. Palit it was urged by learned Senior Standing Counsel (Central) that this application is liable to be dismissed solely on two grounds; i.e. (i) the applicant should have put forward this grievance in O.J.C.No.975 of 1979; and (ii) she not having chosen to put forth her grievance in the said O.J.C. it is no longer open to her to put forth this grievance before this Bench at a belated stage because it is barred under section 11 of the Code of Civil Procedure (res judicata). In

order to substantiate his argument learned Senior Standing Counsel (Central) relied upon a judgment reported in 1973 (1) CWR 63 (Shri Biharilal Shyamsundar v. Sales Tax Officer, Cuttack and others). A Division Bench of the Hon'ble High Court of Orissa held that certain matters which ought to have been adjudicated in a particular case- not having been agitated constructive res judicata operates and therefore it is ^{now} ~~now~~ pleaded that constructive res judicata operates ⁱⁿ so far as the present case is concerned and the principles laid down by Their Lordships in the aforesaid case apply in full force to the present case. We have gone through the judgment of the Hon'ble High Court. In the said case the petitioner was a registered dealer as defined under the Orissa Sales Tax Act. Their Lordships held the case to be barred under constructive res judicata because previous to the case decided by Their Lordships challenge was made regarding the assessment for a particular period on certain matters and ^{said} after the ~~case~~ was disposed of the petitioner again came up for the assessment made in regard to the identical period and since it was assessment for the identical period Their Lordships held that constructive res judicata operated in the said case. After giving our anxious consideration to the principles laid down and the facts constituting the said case we are of opinion that it is clearly distinguishable because of the following reasons. In the case decided by Their Lordships the moot question that weighed with Their Lordships was that the identical period which was involved in both the cases. But in the present case one would find that the issues are completely different from one another. In the case bearing O.J.C.No.975 of 1979

the only issue which was sought to be decided is to allow the applicant to cross the efficiency bar. In the present case the issue to be decided is whether the applicant is entitled to the higher scale of pay. Both the issues are completely different from each other- They stand poles apart. Learned Senior Standing Counsel (Central) contended that in the case forming subject matter of O.J.C.No.975 of 1979 the applicant could have urged for higher scale. In our opinion there was no scope for the applicant to urge on that point or seek relief on that point because her efficiency bar not having been cleared she could not have been entitled to the higher scale. Hence the issues of both the cases are different and the judgment of the O.J.C. referred to above has no application to the facts of the present case. It was next contended by learned Senior Standing Counsel (Central) that the present case is grossly barred by limitation and the petition is liable to be dismissed on the ground that it is barred by limitation.. In order to substantiate this contention, learned Senior Standing Counsel (Central) relied upon the judgment of the Hon'ble Chairman reported in A.T.R.1986 C.A.T.28 wherein the Hon'ble Chairman has held that any matter coming up before Bench- cause of action of which has arisen three years prior to the enforcement of the Act would be held to have been barred by limitation. We are bound by the view propounded by the Hon'ble Chairman but it must have relevance to the facts of the present case. It was not disputed by learned Senior Standing Counsel (Central) that the period of limitation would start from the date on which the cause of action arises or the date on which the incumbent feels aggrieved by a particular order passed by the authority.

Therefore we have to look into the date on which the cause of action arose in favour of the applicant. According to learned Senior Standing Counsel (Central) the cause of action for the applicant arose in the year 1979- the year from which she claims to be entitled to the higher scale. We are unable to accept this submission of learned Senior Standing Counsel (Central) because according to the applicant the cause of action arose only on the date on which her prayer has been refused and from Annexure-1 we find that on 30.9.1986 the applicant was told that her case will be considered only after finalisation of the disciplinary proceeding initiated against her. Therefore, on 30.9.1986 the applicant knew that her claim is either denied or it is being deferred on some ground or the other. Therefore, according to our opinion, the cause of action arose on 30.9.1986. The cause of action having arisen on 30.9.1986 the case cannot be held to be barred by limitation. Therefore, we find no merit in the contention advanced by learned Senior Standing Counsel (Central). We have already held that extraneous considerations cannot be taken notice to deprive the legitimate dues and we have already held that the proceeding initiated on 5.9.1986 cannot be taken into consideration for giving certain service benefits to the applicant for a period when there was no proceeding pending against her. At the risk of repetition we may say from 1978 upto 4.9.1986 there was no proceeding pending against the applicant and the only proceeding pending against the applicant had been quashed by the Hon'ble High Court of Orissa on 1.10.1985 as mentioned above. Hence the applicant is entitled to the higher scale with effect

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from the date on which her juniors had been given the higher scale subject to the condition that the applicant is found to be suitable and for this purpose we would direct ^{that} a review Departmental Promotion Committee be convened and after adjudicating her suitability the applicant be given the higher scale of pay of Rs. 1100-1600/- as per Rules. This review D.P.C. should be convened within two months from the date of receipt of a copy of this judgment and the recommendation of the review D.P.C. be given effect to within one month from the date of said recommendation.

Before we conclude we would like to indicate that so far as the review D.P.C. is concerned, it would take into account the performance of the applicant on due date i.e. the date on which her juniors were entitled to the higher scale.

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

g agree.
g agree.
 22.4.87
 Member (Judicial)

B.R. PATEL, VICE-CHAIRMAN,

g agree.
 22.4.87
 Vice-Chairman

Central Administrative Tribunal,
 Cuttack Bench, Cuttack.
 April 22, 1987/S. Sarangi.

