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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION No.165 of 1990.

Date of decision: 1st.August, 1991.

J.N.Talukdar & Ors. ... Applicants.

Versus,

Union of India & Ors. ... Respondents.

For the applicants: Mr.C.A.Rao, P.K.Parida, Advocates.

For the Respondents: Mr.T.Dalei,
Addl.Standing Counsel(Central).

ORIGINAL APPLICATION No.164 of 1990.

S.K.Dani ... Applicant.

Versus,

Union of India & Ors. ... Respondents.

For the Applicant: ... Mr.P.K.Parida,
Mr.C.A.Rao, Advocates.

For the Respondents: Mr.T.Dalai,
Addl.Standing Counsel
(Central)

C O R A M :

THE HON'BLE MR. N.SENGUPTA: MEMBER (JUDICIAL)

1. Whether reporters of Local papers may be allowed to see the Judgment ?

2. To be referred to the reporters or not ? No

3. Whether their lordships wish to see the fair copy of the Judgment ?

J u d g m e n t.

N.Sengupta, Member (J).

Since the facts and questions of law involved in the two cases are similar, I am disposing of these applications by this common judgment.

2. It is not necessary to state all the facts averred in the applications and the counters filed in the cases, it would be sufficient to state that the applicants in both the cases were working as Senior Accountants in the Dandakaranya Project.

One of them i.e. Surya Kumar Dani had filed an application, O.A.182/86 claiming to get pre-revised pay scale of Rs.550/- to 900/- in which the Senior Accountants of other departments of the Government of India were drawing their pay and allowances. This Tribunal in that Original Application, disposed of on 5th May, 1988, stated that the Government was to ~~re-~~ consider the matter and pass necessary orders entitling the petitioner therein to get the pay scale of Rs.550- 900/-. In pursuance to the aforesaid judgment, the Government of India, Ministry of Home Affairs, Rehabilitation Department have fixed the pay of all Senior Accountants in the Pre-revised scale of Rs.500- to 900/- by their order dtd. 22/25.1.90. In that order it has further been mentioned that the Senior Accountant would be entitled to that scale with effect from the date of delivery of Judgment in O.A.182/86 though their pay has to be fixed notionally with

*Act. Expt 12
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effect from the date they began working as Senior Accountants.

3. The stand of Respondent is that the applicants are not entitled to have the pre-revised scale of pay of Rs.550 to 900/- which is meant solely for the persons belonging to the Sub-ordinate Accounts Service. Their stand **further is** that no sanction ~~accorded~~ can be ~~accorded~~ retrospectively. Therefore, the claim of the applicants to get enhanced money from ~~the~~ date prior to 5.5.88 is not entertainable. A plea of limitation has also been raised on behalf of Respondents.

4. Mr.Rao for the applicants has contended that there was a decision by this Tribunal in O.A.182/86 to fix the pay of the Senior Accountants, to which category the present applicants belong in the scale of pay of Rs.550 to 900/-. Mr.Dalei on the other hand wants to counter this argument of Mr.Rao by contending that all that this Tribunal directed the Respondents was to consider the ^{claim of} applicants, Senior Accountants of Dandakaranya Project, for being given the scale of pay of Rs.550 to Rs.900/- and ~~they~~ did not really direct that the Senior Accountants of Dandakaranya were entitled to scale of Rs.550 to 900/-.

*Manoj Singh
1/8/91.*

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Mr. Dalei's contention is not acceptable because what this Tribunal in O.A.182/86 stated was", we think this is a fit case where the Government should re-consider the matter and pass necessary orders entitling the petitioners to get the pay scale of Rs.550-900/-!

I have underlined the portion to bring in ~~to~~ sharp focus what the direction ^{of} the Tribunal was. The prefacing of the direction by the words "reconsider the matter" was not to give a discretion to the respondents to fix the pay of the applicant therein in a scale lower than Rs.550/- to 900/-, what this tribunal really meant was that in view of the reasoning given in the body of that Judgment the respondents were obliged to ~~re~~consider the matter in that light and pass ~~box~~ orders as per the direction.

5. Mr. Dalai for the respondents has very strenuously contended that the applicants cannot get the difference of pay from a date prior to 5.5.88 in view of ~~box~~ Rules 42 and 42(A) relating to sanction for payment of salary etc.. On going through the rules that I may say /they go ~~more~~ against such a contention than support because what the rules say is that ~~no~~ retrospective sanction without concurrence of the Finance Department ~~except~~ very special can be given/ in ~~some~~ circumstances ~~and not advised~~ which means that ~~such~~ a retrospective sanction is at times permissible. Here is a case where the question of

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sanction does not arise because it is a mandate given by a Tribunal, having jurisdiction, to act in a particular manner. Therefore, really no discretion is left to department unless there be any other impediment to give effect to what has been directed. Possibly there cannot be a law prohibiting payment of legitimate dues.

6. The next question for consideration is whether can a plea of limitation be raised against the applicants to get that the difference of pay or re-fixation from the date they began to work as Senior Accountants. Mr. Rao has drawn my attention to a decision of this Tribunal in the case S. Jena-Versus-Union of India In O.A.106/86 decided on 23rd. March, 1988 by a Division Bench. On the other hand Mr. Dalei has referred me to another decision of this Tribunal of Jabalpur Bench in the case of Mandakini Mohitey and Ors. -Versus- Union of India and others in O.A.102/89 and has contended that no direction can be given for payment of arrears from a date prior a date of delivery of Judgment in O.A.182/86. So far as the Judgment of the Jabalpur Bench is concerned, it has no application to the facts of the present case which would be apparent from paras-5 and 6 of that Judgment. In para-6 of the Judgment of Jabalpur Bench it was stated that the counsel of the applicants submitted that pursuant to an order steps were taken by the Respondents for fixation of pay in the revised

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scale, so in the circumstances there remained nothing surviving for adjudication in the application. Thus it is clear that nothing was decided in those cases.

7. Limitation begins to run from the date when the cause of action arises. A cause of action arises only when a person becomes entitled to a right and not prior to that, therefore so long as the fixation of pay had not been made no right to that amount or to that scale could arise and as such limitation will begin to run from the date of fixation of pay. It would really be a logical fallacy to say that a person is entitled to draw pay in a particular scale for holding a post and to deny him to draw pay ~~in that~~ without scale for a particular period without a proceeding, therefore, I am unable to agree with Mr. Dalei that the claim of the applicants for getting difference pay etc. for the period commencing from the date of their respective working as Senior Accountants till 5.5.88 is not tenable.

*Mea culpa
T.8.91.*

8. The last of the contentions that Mr. Dalei has raised is that in O.A.182/86 the applicant was S.K.Dani and not the applicants of O.A.165/90 therefore they cannot now claim to get the scale of pay Rs.550-900/-. Undisputedly S.K.Dani was a Senior Accountant in the Dandakaranya Project and the claim that he made was to ~~they~~ pay scale of Rs.550-900/- as such senior accountant and this Tribunal accepted

his claim that he was entitled to the same scale of pay as was being given to Senior Accountants in other departments of the Government of India. When a person similarly situated is granted ^α relief, such relief is available to all other so situated even though they might not have applied for such a relief. The reason behind this that it is impermissible to make a discrimination between one person and another belonging to same class. Being alive to this position of law, in fact in Annexure-3 it has been mentioned " I am directed to convey sanction to the revision of pay-scale of Senior Accountants Dandakaranya Project". Annexure-3 does not relate to any individual but relates to all in one class of Senior Accountants. To repeat once more, there is no dispute that the applicants were working as Senior Accountants in Dandakaranya Project.

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9. To sum up, the applicants are entitled to the pay in the scale of Rs.550-900/- from the dates of their respective officiation as Senior Accountants till 31.12.85 and in the corresponding revised scale from 1.1.86. There can be no question of notional fixation. Since it will involve some amount of calculation and as the Dandakaranya project is in the

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process of being wound up, the respondents are given six months time to implement the Judgment. There would be no order as to costs.



Hossain/ 1.8.91.

.....
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench/Cuttack.

Hossain/ 1.8.91.