

9
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 618 & 627/1995
Cuttack this the _____ day of June, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

IN O.A. 618/95

Sayed Mohammed Sidique,
aged 39 years,
Son of Late Sayed Mohammed Ismail,
resident of Village/PO: Tarapada
PS/District - Jagatsinghpur, at
present Lecturer, Institute of Hotel
Management, V.S.S.Nagar, PS: Sahidnagar,
Bhubaneswar - 4, District : Khurda

... **Applicant**

- VERSUS -

1. Government of India represented by
Secretary, Department of Tourism,
Transport Bhawan, 1-Sansad Marg
New Delhi-1
2. Secretary-cum-Principal,
Institute of Hotel Management (Catering
Technology and Applied Nutrition), V.S.S.
Nagar, PS: Sahidnagar, Bhubaneswar-4
District - Khurda
3. C.K.Mohapatra, Lecturer,
Institute of Hotel Management (Catering
Technology & Applied Nutrition),
V.S.S.Nagar, PS: Sahidnagar,
Bhubaneswar-4, District - Khurda

... **Respondents**

IN O.A. 627/95

Tomy Thomas, aged 43 years
Son of A.Thomas, Lecturer,
Institute of Hotel Management,
V.S.S.Nagar, PS: Sahidnagar
Bhubaneswar-4, District-Khurda

... **Applicant**

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Institute of Hotel Management (Catering
Technology & Applied Nutrition)
V.S.S.Nagar, PS: Sahidnagar,
Bhubaneswar-4, District : Khurda
3. C.K.Mehapatra, Lecturer
Institute of Hotel Management (Catering
Technology & Applied Nutrition)
V.S.S.Nagar, PS: Sahidnagar,
Bhubaneswar-4, District - Khurda

...

Respondents

M/s. K.C.Kamuno
P.K.Pataik
S.S.Mehapatra
S.Barik

Mr. U.B.Mehapatra
Addl. Standing Counsel
(Central)(Res. 1 & 2)

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O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): These two Original Applications filed by the Lecturers of Institute of Hotel Management (Catering Technology & Applied Nutrition), Bhubaneswar praying for stepping up of pay under F.R. 22-C (apparently as it stood prior to amendment of this Rule) on the ground that C.K.Mehapatra (Common Res.3) who is junior to them is drawing higher pay, though heard separately are being disposed of through this common order because of the identical nature of facts and relief. These applications were filed in October, 1995.

2. The Institute was originally a joint sponsored Institute of the Government of India and Government of Orissa in the name of Food Craft Institute in 1973. The Government of India, through the Ministry of Tourism had taken over it's management and responsibility for financing and as such at National Level it stands as Institute of Hotel Management (Catering Technology

3

11

and Applied Nutrition). In the year 1984 recruitment rules were framed with effect from 1.1.1984. Government of India in its letter dated 12.6.1984 introduced central scale of pay for various categories of posts with effect from 1.1.1984. The post of Lecturer which by then carried the pay scale of Rs.525/- - Rs.975/- as per the revised pay scale carried the scale of Rs.650 - Rs.960/-. The Evaluation Committee set up by the Institute to consider the individual cases to bring them to revised scale as per the guidelines of the Ministry of Finance did not recommend the names of the applicants to be eligible to the revised scale with effect from 1.1.1984, though recommended the case of Res.3, who is junior to them. This necessitated the applicant in O.A.618/95 and applicant in O.A.627/95 to prefer O.J.C.s 590/87 and 591/97 respectively before the High Court of Orissa praying for revised scale with effect from 1.1.1984 with other consequential allowances and benefits accruing therefrom. As the Respondents 1 and 2, who were Opposite Parties in the Writ Petitions submitted before the High Court of Orissa that the applicants have been allowed central scale with effect from 1.1.1985, the Writ Petitions were finally disposed of on 6.8.1991. These facts are not in dispute.

2. The case of the applicants is that the Evaluation Committee without any rhyme or reason did not recommend their names to be eligible to the revised scale. In the 37th Meeting of the Board of Governors of the Institute held on 16.11.1988 allowed the applicants central pay scale with effect from 1.1.1985 and revised pay scale of Rs.2000 - 3200/- w.e.f. 1.1.1986 with certain conditions that they are to successfully complete the P.G. Course in Hostel Administration or Post Diploma Course

in Food Production conducted by the National Council of Hotel Management & Catering Technology, New Delhi, as early as possible. Pursuant to this direction the applicants proceeded on study leave and completed the Post Diploma Course in Food Production Management securing 1st position in the Examination and thereafter Office Order dated 3.1.1989 (Annexure-1 in both the O.A.s) intimating the central scale and the new revised scale was issued. The applicants were allowed annual increments which have been withheld in terms of Annexure-1 and their pay was fixed at Rs.2300/- as on 1.4.1990 in case of applicant in O.A.627/95 and as on 1.3.1990 in case of applicant in O.A.618/95. The arrears accruing thereon with effect from 1.1.1985 were drawn and disbursed a few days after 18.5.1990. The increments of the applicant in O.A.627/95 due on April of each year had been advanced to March with effect from 1.3.1995. However, Res.3, in view of his drawal of central pay scale with effect from 1.1.1984 is drawing higher pay than the applicants, who are seniors to him. Hence the applicants pray for stepping up their pay with effect from 1.1.1988 and all other consequential benefits accruing therefrom.

3. Res.3 though duly noticed had not filed any counter. Respondents 1 and 2 representing the Institute though do not deny seniority of the applicants as Lecturers over Res.3, question the jurisdiction of this Tribunal in entertaining these original Applications in the absence of any notification under Section 14(2) of the Administrative Tribunals Act, 1985 conferring jurisdiction on the Tribunal to decide matters pertaining to service problems of these applicants prior to November, 1999, when for the first time such a notification conferring jurisdiction

on the Tribunal was issued. It is also their stand that the applications are hopelessly barred by limitation under Section 21 of the A.T. Act. No representation(s) was ever received from the any of the applicants for stepping up pay and the averments made in the applications that such representations with reminders were sent to them in the year 1995 are false. This apart the applications, according to Res. 1 and 2 are barred by principles of constructive res judicata inasmuch as the reliefs prayed for in these applications were in a way involved in WCs filed by the applicants in the year 1987 and finally disposed of in the year 1991 by the High Court of Orissa on being satisfied that the Government had taken decision to bring the applicants and others like them to the central pay scale with effect from 1.1.1985. On facts the case of the Respondents 1 and 2, that since Res. 3 was earlier brought to central pay scale his pay would necessarily be higher than the applicants.

4. Rejoinders filed by the applicants ~~xxx~~ more or less contain arguments in respect of their reliefs without any additional facts.

5. We have heard Shri K.C. Kanungo, learned counsel for the applicants in both the Original Applications as well as Shri U.P. Mohapatra, learned Addl. Standing Counsel on behalf of Res. 1 and 2. Also perused the records.

6. There is no dispute that prior to November, 1999, there was no notification issued by the Government pursuant to Section 14(2) of the A.T. Act conferring jurisdiction on the Tribunal in respect of the Institute of Hotel Management. Under Section 14(2) the Central Government may by notification apply with effect from ^{such} date as may be specified in the notification.

the provisions of Sub-Section(3) to local or other authorities within the territory of India or under the control of Government of India and Corporations or Societies owned or controlled by the Government, not being a local or other authority or Corporation (or Society) controlled or owned by the State Govt. Sub sec. 3 of Section 14 further makes it clear that from the date mentioned in the Notification C.A.T. can exercise jurisdiction to any such local or other authority or Corporation.

Question now arises whether this Tribunal still lacks jurisdiction to decide these two O.As. The order-sheets reveal that on the point of jurisdiction the applications were adjourned for hearing much prior to November, 1999. However, the applications could not be heard and in the meanwhile, this Notification of November, 1999 has been issued extending jurisdiction of the Tribunal over this Institute. Therefore, it comes to this when these applications were registered, this Tribunal lacked jurisdiction, but when the same were ripe for hearing, the Tribunal has been vested with the power to decide service problems of the employees of this Institute. If at this stage these applications are returned to the applicants to be filed before the appropriate forum on the ground that in November, 1995, when these were filed and registered the Tribunal lacked jurisdiction, the applicants will have to knock at the doors of High Court of Orissa by filing these very same applications in which case the High Court may not entertain them, because from November, 1999 jurisdiction of the Tribunal has been extended over this Institute and in that case the applicants will necessarily come back to this Tribunal with fresh applications containing the very same facts and reliefs. We are, therefore, not inclined to turn down

these applications at this stage on the ground of lack of jurisdiction by the time they were entertained in the year 1995 and since the applications were still pending by the time Government Notification of November, 1999, extending jurisdiction of the Tribunal over this Institute was issued we are inclined to proceed with the case on other points.

In regard to point of constructive resjudicata the categorical averment in the Original Applications that OJCs of the year 1987 were filed before the High Court of Orissa with prayers that the applicants be brought to the central scale with effect from 1.1.1984 with other consequential allowances and benefits (Vide Paras 4.4 of both the O.As) but the High Court of Orissa, while finally disposing of the Writ Petitions in order dated 6.8.1991 dismissed the OJCs as infructuous, because, both sides admitted that the applicants had since been allowed the central scale w.e.f. 1.1.1985 and had also drawn arrears (Annexure-R/1). There is no mention in this final order dated 6.8.1991 of the High Court of Orissa granting the prayer of the applicants that the central scale should be allowed to them w.e.f. 1.1.1984. This would mean in spite of such prayer the same was not allowed by the High Court.

In *Forward Construction Company v. Pravat Mandol* reported in AIR 1986 SC 391, an earlier Writ Petition challenging the commercial using of a plot reserved for a bus depot was dismissed. Subsequently another Writ Petition for similar purpose challenging commercial using on a different ground not taken in the earlier petition was filed. The Supreme Court held that judgment in earlier petition would operate as resjudicata.

In *Ajit Prasad Gupta v. State of U.P.* reported in 1997

(4) SLR 641 the Apex Court while disposing of a Writ Petition challenging termination for which his earlier/petition stood dismissed with a strong exception with the following observation.

"We take a serious view of the matter and condemn this practice of filing petition after petition. No litigant has a right to unlimited draught of Court's time and public money in order to get the affair settled in the manner he wishes. Finality of the judicial proceedings must be accepted at some stages. We cannot allow the process of the Court to be abused in the manner it has been done by the petitioner in this case".

In other words the Apex Court in categorical terms held principles of resjudicata squarely apply to the Writ Petitions and that a plea which was taken or ought to have been taken in a previous case cannot be allowed to be reagitated in a subsequent case.

Since, as already observed, the High Court of Orissa in spite of specific prayer in the Writ Petitions of the year 1987 for allowing central scale w.e.f. 1.1.1984 did not allow such prayer while disposing of the writ petitions finally, these two OAs before this Tribunal containing the very same prayers are barred under the principles of resjudicata.

3. Stepping up pay has been claimed under F.R. 22-C. This F.R. 22-C is now incorporated as F.R. 22(1) (a) (i) as per G.I. Department notification dated 30.8.1989 and amended by notification dated 28.11.1990. Application of F.R. 22-C has been held by the Apex Court in Union of India v. Ashok Kr. Banerjee reported in (1998) 5 SCC 242, as quoted in Swamy's News, June Pt. 2000 under Sl. No. at Page-37 requires two conditions. (a) Promotion to a post carrying higher responsibility and (b) promotion must also be from lower scale to higher scale. In the instant cases before us neither the applicants nor the Private Res.3 were promoted from a lower post to higher post involving variation in pay from

lower scale to higher pay. Prior to the application of central pay scales they were Lecturers and only the pay scale of lecturers was revised as per central Govt. pay scale. In view of this ruling of the Apex Court the contention of Shri Kanungo, learned counsel for the applicants that stepping up pay can be made if a junior draws more pay on account of fortuitous circumstances cannot be accepted. Decisions relied on by him in this connection, i.e., S.Santanam v. Union of India reported under Sl. 214 Swamy's C.L. Digest 1994/1 at Page-295; and C.Narayanan v. Union of India reported under Sl. 308 Swamy's C.L. Digest 1995/1 at Page 479 decided by C.A.T. Benches are distinguishable on facts and will not be of any help to the applicants in view of the Supreme Court decision. Hence question of stepping up pay under F.R. 22-C as prayed by the applicants is wholly misconceived.

Q. As to the point of limitation the contention of Shri Kanungo
not
difference in pay/drawn by the applicants being recurring in
nature every month, question of limitation does not arise. In this
connection he places reliance on the Apex Court decision in the
case of M.R.Gupta v. Union of India reported in AIR 1996 SC 669
wherein the Apex Court held so long as the employee in service
a fresh cause of action arises every month when he is paid his
monthly salary on the basis of a wrong computation made contrary
to rules. This case was decided by the two Judges of the Apex
Court. But in a later case of the Apex Court decided by two
other Judges, i.e., in the case of Jayadev Gupta vs. State of
Himachal Pradesh reported in 1998 SC (L&S) 1587 the Apex Court
held that delay in filing of appeal claiming difference in back-
wages and repeated representations is not a ground for filing
application late in the Administrative Tribunal. In that case the

appellant who was appointed as a Studio Artist filed an application in the Administrative Tribunal in May, 1989, claiming Lecturer's pay scale from 1971. The Apex Court did not accept the plea of the applicant that delay was due to repeated representations to the appropriate authorities and observed that there was no reason for not approaching the Tribunal earlier. This being the later to decisions cited by the applicants is binding on us.

Under F. R. 22 - C, difference in pay, if at all is admissible, cannot be allowed ^{beyond the} preceding one year of the date of filing of these applications. In fact the Supreme Court in Jayadev Gupta case while denying the difference in salary from 1971 onwards as claimed, allowed difference in salary as is admissible with reference to Section 21 of the A.T. Act. No application for condonation of delay has been filed by the applicants. Hence question of condonation of delay does not arise as has been held by the Apex Court in Ramesh Chandra Sharma v. Udhain Singh reported in AIR 1999 SC 3837, wherein even the Apex Court went to the extent ^{of} observing that under such circumstances the Tribunal could not have admitted the application and disposed of the same on merits.

In view of the legal position discussed above, we have no hesitation to say that these two O.A.s are time-barred in respect of periods preceding more than one year of filing of these applications. As already stated, difference in pay ^{cannot be allowed} preceding one year of the filing of the applications is also not admissible under F.R. 22 - C as discussed above.

To sum up though we hold that at this stage we have jurisdiction to deal with these two applications, in view of the

19

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discussions held above, we disallow the claims of the applicants on the ground of resjudicata, limitation and non-applicability of P.R. 22-C to the facts of these O.A.s. In the result, two O.A.s are dismissed, but without any order as to costs.

4/- Somnath Som
Vice-Chairman

Sd/- G. Narasimhan
Member (Jud)

B.K.SAHOO//