

7

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 13 OF 2000  
Cuttack this the 20th day of June, 2001

Chandramani Pradhan & Others ...

Applicants

- VERSUS -

Union of India & Others ...

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 42.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*20.6.01*

*20.6.01*  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)

8  
CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 13 OF 2000  
Cuttack this the 20th day of june/2001

CORAM:

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

1. Chandramani Pradhan, aged about 53 years,  
Son of Kangali Charan Pradhan
2. D.K.Giri, aged about 56 years, Son of Rakhal Giri
3. K.M.Kar, aged about 55 years, Son of Late  
Dharanidhar Kar
4. B.C.Mehanty, aged about 57 years,  
Son of Late Nityananda Mehanty
5. M.R.Samantray, aged about 57 years,  
Son of Late Radhakrishna Samantray
6. Gepinath Jena, aged about 56 years,  
Son of Late Suryamani Jena
7. Bansidhar Das, aged about 52 years,  
Son of Raghunath Das
8. Kithe James, aged about 55 years  
Son of James
9. Balaram Nayak, aged about 52 years,  
Son of Kusan Charan Nayak
10. B.N.Kandi, aged about 53 years,  
Son of Jayaram Kandi
11. Aparti Rout, aged about 57 years,  
Son of Braja Rout
12. Babaji Charan Bhuyan, aged about 55 years,  
Son of Alekha Charan Bhuyan
13. Biswanath Panda, aged about 51 years,  
Son of Damodar Panda
14. Pravakar Maharana, aged about 49 years,  
Son of Fagu Maharana
15. Duryedhan Dash, aged about 59 years,  
Son of Late Giridhari Dash
16. Sibaram Samal, aged about 57 years,  
Son of R.Samal
17. Bansidhar Behera, aged about 55 years,  
Son of Giridhari Behera
18. Geondra Bairagi, aged about 52 years,  
Son of Late Geondra Ramaya

9

19. Tika Ram, aged about 55 years,  
Son of G.Prasad
20. Juplanand, aged about 56 years,  
Son of Rupram Painuti
21. Ram Pratap, aged about 49 years,  
Son of Late Ramphal
22. Vijay Kumar Vij, aged about 48 years,  
Son of
23. G.Sabesan, aged about 48 years,  
Son of Late Govinda Swamy
24. Bhayan Choudhury, aged about 48 years,  
Son of Late Teter Choudhury
25. Sadasiba Patra, aged about 50 years,  
Son of Late Brundaban Patra
26. Kanhu Charan Sethi, aged about  
54 years, Son of Late Narayan Sethi
27. B.C.Das, aged about 54 years,  
Son of Late M.M.Das
28. Kamaraj Nayak, aged about 52 years,  
Son of Late Bhima Nayak
29. Surjung Choudhury, aged about 55 years,  
Son of Late Basdev Choudhury

Sl.Nos. 18 to 28 are at present working in  
A.R.C., New Delhi and Sl. No. 29 is a  
retired Senior Field Assistant, who was  
working in A.R.C., New Delhi

...

Applicants

By the Advocates

M/s.B.S.Tripathy  
M.K.Rath,  
R.K.Singh &  
Miss.P.Das  
Choudhury

-VERSUS-

1. Union of India represented by the Secretary,  
Cabinet Secretariat, South Block, New Delhi
2. Director General of Security, Aviation Research  
Centre, Cabinet Secretariat, New Delhi
3. Director, Aviation Research Centre, Office of the  
Cabinet Secretariat, Block-5, East R.K.Puram,  
New Delhi - 66
4. Deputy Director (Admn), Aviation Research Centre,  
At/P.O - Charbatia, Dist-Cuttack-754028
5. Deputy Director (Admn), Aviation Research Centre,  
H.Q., New Delhi
6. Sri Bichitra Nanda Mohanty, Son of Keshab Charan Mohanty
7. Sri Indramani Mohanty, Son of P. Mohanty

10

- 8. Sri Gelak Behari Nath, Son of Narayan Nath
- 9. Sekhar Chandra Ghosh, Son of S.G.Ghosh
- 10. Sri Dijabar Sahoo, Son of
- 11. Sri K.K.Sharma, Son of
- 12. Sri Brajagopal Das, Son of
- 13. Sri R.K. Sinha

Respondents 6 to 13 are at present working as Field Assistants/Security Guards in Aviation Research Centre, At/PO-Charbatia, Dist - Cuttack

Respondents

By the Advocates

Mr.A.K.Bose  
Sr.Standing Counsel  
(Central)Res.1 to 5

-----  
O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): 29 applicants and Private Respondents 6 to 13 were appointed as Constables in Aviation Research Centre, under the Cabinet Secretariat in the pay scale of Rs.85-110/-, on different dates, i.e. 12.6.1967 to 1.4.1977, as mentioned in Annexure-1 and not disputed in the counter. All of them are Non-Matriculate Constables at the time of appointment. Initially the pay scale of Constables, whether Matriculates or non-Matriculates was Rs.85-110/-. By Memorandum dated 24.2.1975 of the Cabinet Secretariat under Annexure-2, distinction was made in respect of pay scales between Matriculate Constables and non-Matriculate Constables. The pay scale of Matriculate Constables, as per that Memorandum was Rs.225-308/-, whereas the pay scale prescribed for non-Matriculate Constables was Rs.210-270/-. But Constables employed on orderly duties were not allowed the pay scale prescribed for Matriculate Constables. These pay scales were so prescribed on the recommendations of the 3rd Pay Commission giving effect to retrospectively from 1.1.1973. Thereafter through notification dated 26.4.1976

vide Annexure-3, A.R.C./S.E.F. (Field Officers) Service Rules, 1976 (in short Rules, 1976) framed in exercise of powers under Article 309 of the Constitution were brought into force. Under these Rules the Constables were redesignated as Security Guards and classified as Class-IV. Scale of pay for Matriculates was maintained at Rs.225-308/- and for non-Matriculates at Rs.210-270/-. These Rules were also made applicable with effect from 1.1.1973.

Private Respondents 6 to 9 in Original Application No.57/86 challenged the application of lower pay scales pursuant to Memorandum dated 24.2.1975 (Annexure-2) and the Service Rules, 1976 (Annexure-3). This was vehemently opposed by the Department (Respondents). The then Division Bench of this Tribunal allowed the Original Application 57/96 by judgment dated 6.2.1992 (Annexure-9). We may, as well quote the operative portion of the judgment as hereunder:

" In view of the discussions made above we hold that the provisions contained in the ARC/SFF (Field Officers) Service Rules, 1976, not having any retrospective operation and being prospective, has no application to the present applicants. Furthermore, we hold that for the reasons stated above, the memorandum bearing No.XII-35880 dated 27.2.1975 contained in Annexure-2 is not sustainable, it is hereby quashed. We further hold that the applicants are entitled to a pay scale of Rs.225-308/- and accordingly each of them be paid with effect from 1.1.1973. Arrears to which the applicants are entitled be calculated and each of them be paid within 90 days from the date of receipt of a copy of this judgment".

Annexure-2 referred in that order is also the Annexure-2 of this application, through which Cabinet Secretariat letter dated 24.2.1975 was circulated in Memorandum dated 27.2.1975. The Department challenged this judgment before the

12  
 Apex Court in Civil Appeal No.3567/93. By order dated 24.11.1998, the Apex Court dismissed that appeal holding that the order of this Tribunal is correct and requires no interference (Annexure-10). Thereafter under Annexure-11 dated 1.01.1999, the Cabinet Secretariat issued Circular stating that the benefit of this judgment in O.A.57/86 would not be extended to non-Matriculate Constables/F.A.s, who had not filed that Original Application. Applicant No.5, viz., Hemant Samantray, under Annexure-12 dated 24.7.1999 represented for extension of the benefit of the judgment, but without any response.

Hence this application has been filed for quashing the order under Annexure-11 and for issue of direction to the departmental respondents to grant/extend the benefit of the judgment in O.A.57/86, mainly on the ground that non-extension of the benefit of the judgment in case of non-Matriculate Constables/F.A.s, who had not filed that Original Application is discriminatory inasmuch as the judgment passed in that O.A. is in the nature of judgment in rem.

2. Private respondents neither entered appearance nor filed any counter in spite of notices.

The departmental respondents in their counter maintain that the circular dated 1.11.1999 is a policy decision of the Government having financial implications and the same should not be interfered with. Further, this Original Application is hopelessly barred by limitation and is also bad for mis-joinder of several applicants in a single application, without having a common cause of action.

3. No rejoinder has been filed by the applicants.

4. We have heard Shri B.S.Tripathy, the learned counsel for the applicants and Shri A.K.Bose, learned Senior Standing Counsel appearing on behalf of Res. 1 to 5.

5. We do not agree with the objection raised in the counter that the cause of action in respect of each of the applicants is different. The cause of action in the instant case arises because of Annexure-11, the circular, extending the benefit of the judgment in O.A.57/86 only in respect of non-Matriculate Constables who were applicants in that O.A. In fact in Misc.Application No.10/2000, these 29 applicants sought permission to prosecute this O.A. jointly and this prayer was allowed in order dated 12.1.2000. Hence, the objection raised by the Department on this score is of no merit.

6. It is now clear that the judgment of this Bench in O.A.57/86 has not been interfered by the Apex Court in the S.L.P. preferred by the Department. In order dated 24.11.1998 (Annexure-10), the Apex Court held that the order of the Tribunal is correct and requires no interference. This Bench, through final order dated 6.2.1992 in that O.A. clearly held that ARC/SFF/(Field Assistants) Service Rules, 1976 are not retrospective in operation but prospective in operation. The Bench also quashed this Memorandum under Annexure-2. In other words, the Memorandum under Annexure-2 for all purposes is legally non-existent. Hence lesser pay scales in case of non-Matriculate Constables (Security Guards) as mentioned in the Rules, 1976 (Annexure-3) cannot be made applicable prior to the date of commencement and/or operation of the Rules. The aforesaid order passed with reference to

prayers made in O.A.57/86 would undoubtedly mean that the the judgment is in rem and not in personem. When a competent Court of Law/Tribunal quashes a particular order/circular and/or orders of the Government holding a particular statutory rules will not have retrospective operation, it would not mean that the benefits flown from that ruling would not be conferred on the employees who stand in a similar footing and would be conferred only to the employees who moved that Court/Tribunal for adjudication of the dispute. It may be that the decision under Annexure-11 is based on policy of the Government having financial implications. But policy decision contrary to ruling of the Competent Court/Tribunal quashing a relevant circular/order of that Government and holding a particular statutory rule would have no retrospective operation, cannot be sustained. Annexure-11 dated 1.11.1999, as the content reveals is an administrative order passed by Respondent No.2. It has been held by the Full Bench of C.A.T. Hyderabad in the case of Smt. Saku Bai vs. Secretary, Ministry of Communications, reported in A.T. F.B. (1991-93) (KALARS) at Page-80 that executive authority cannot neutralize a binding decision of a Tribunal by means of an executive order. In view of this legal position we have no hesitation to hold that Annexure-11 dated 1.11.1999, which in effect nullifies the rulings of this Bench in O.A.57/86, holding that Rules, 1976 would not have any retrospective operation but have prospective in operation, cannot be legally sustained.

7. So far as point of limitation as urged by the is concerned departmental respondents, we are of the view that the decision of the Constitution Bench by the Apex Court in the case of

15

K.C.Sharma vs. Union of India reported in 1998 (1) AISLJ 54 will make the legal position clear. The Apex Court held in that case that the applications filed by similarly placed persons should not be rejected <sup>as</sup> for barred by limitation. In this reported decision the appellants were employed as Guards in Northern Railways and retired as Guards between 1980-88. They were aggrieved by the notification dated 5.12.1988, whereby Rule-544 of the Railway Establishment Code was amended and for the purpose of calculation of average emoluments the maximum limit in respect of running allowance was reduced to 45% in respect of the period from 1.1.1973 to 31.3.1979 and to 55% for the period from 1.4.1974 onwards. Some such retired Guards, like the applicants, filed O.A.Nos. 395 - 403 of 1993 and the Full Bench of the Tribunal by judgment dated 16.12.1993 held that the said notification in so far as giving retrospective effect to the amendments to be invalid. When the appellants sought the benefit of the decision of the Full Bench, the railway administration turned a deaf ear. When they approached the Tribunal seeking relief in April, 1994, the application was dismissed as barred by limitation. But the Apex Court held that limitation would not arise in applications of such nature. In this Apex Court decision the judgment of the Full Bench was a judgment in rem inasmuch as retrospective operation of the notification was held to be violative Articles 14 and 16 of the Constitution. Division Bench of C.A.T., Mumbai in Hanumantappa S. Kattimani vs. Union of India & Ors. reported in 2001 (2) C.A.T. AISLJ CAT 57 in Para-22 at Page-61 also held that the judgment of the Apex Court in the case of K.C.

16  
 Sharma case (Supra) is a judgment in rem and benefit of such a judgment to other similarly situated persons, even after the expiry of limitation period cannot be denied.

It is true the Apex Court in State of Karnataka vs. S.M.Kotrayya reported in 1996 SCC(L&S) 1488 held that mere fact that the applicants filed belated application even immediately after coming to know that in similar claims relief had been granted by the Tribunal, is not a proper explanation to justify condonation of delay. But the judgment of the Tribunal in this reported case appears to be a judgment in personem. Amounts drawn during the year 1981-82 for L.T.C. purpose were used otherwise and consequently recovery was made during the year 1984-86. Some of those employees challenged such recovery before the Administrative Tribunal, which allowed their applications in August, 1989. The respondents then filed applications before the Tribunal in August/89 with prayer for condonation of delay. The delay was condoned. But the Apex Court held otherwise. That was not a case where the Tribunal had given a ruling declaring a particular circular/order to be invalid and/or has no retrospective operation, as in the case before us. Hence, this decision of the Apex Court cannot be made applicable to the facts and circumstances of the instant case.

Rules 1976 were notified on 26.4.1976. This not Tribunal held the rules to be retrospective in operation and such of those non-Matriculate Constables, who joined after 26.4.1976, would not get the benefit of the judgment in O.A.57/96. Annexure-1 contains the dates of initial

appointments of the applicants and the private respondents. These dates have not been disputed in the counter. On a perusal of Annexure-1 it will be seen that Aparti Rout in Sl.No.11 (applicant No.11) and Duryodhan Das under Sl.No.15 (applicant No.15) had joined on 1.4.1977 and 8.3.1977, respectively, i.e., after the Rules 1976 had come into force and as such they are bound to get the pay scale as prescribed in the Rules, 1976, in respect of non-Matriculate Constables. The date of joining of Kithe James, applicant No.8 does not find place in Annexure-1. If this applicant Kithe James joined the service as Constable after the Rules, 1976, came into force, then certainly he would not be entitled to the benefit of the judgment in O.A.57/86 and his pay scale shall be governed under Rules, 1976. Barring these three applicants all other applicants have joined service as Constables much prior to coming into force, Rules, 1976 and as such they would be entitled to get the benefit of the judgment in O.A. 57/86.

9. For the reasons discussed above we hold that the application is not barred by limitation and therefore, the same is maintainable. We also quash Annexure-11 dated 1.1.1999 in not extending the benefit of judgment in O.A.57/86 to other non-Matriculate Constables, similarly placed as that of the applicants in O.A.57/86 and direct the departmental respondents to extend the benefit of the judgment to the applicants in this case, excepting applicant Nos.11 and 15, viz. S/Shri Aparti Rout and Duryodhan Das, respectively. So far as Kithe James (Applicant No.8) is concerned, the benefit of judgment in Original Application No.57/86 is

18  
 directed to be extended to him, provided that he has joined the service as Constable prior to coming into force, of the Rules, 1976. Since applicant Nos. 11 and 15 have joined service as Constables after Rules 1976 came into force, they shall not be entitled to the benefit of the judgment in O.A. 57/86.

10. Original Application is disposed of as per observations and directions made above, but without any order as to costs.

*Somnath Som*  
 (SOMNATH SOM)  
 VICE-CHAIRMAN  
*20.6.81*

*20.6.81*  
 (G.NARASIMHAM)  
 MEMBER (JUDICIAL)

B.K.SAHOO//