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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No. 452 of 2007
Cuttack, this the 19th day of May, 2010

Suresh Ch. Pradhan & 2 others Applicants
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(M.R. MOHANTY)
VICE-CHAIRMAN


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.452 of 2007

Cuttack, this the 19th day of May, 2010

C O R A M:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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1. Suresh Ch. Pradhan, aged about 41 years son of Late Damodar Pradhan, woking as ALS-C Equipment Wing, PXE-DRDO, Chandipur, Balasore.
 2. Sridar Bindhani, aged about 44 years Son of Narendranath Bindhani at present serving as ALSC (Asst. Laboratory Service), Grade-C office of Range Wing, PXE-DRDO, Ministry of Defence, Chandipur, Balasore.
 3. Harish Chandras Masanta, aged about 48 years, son of Chandaeswar Masanta at present working as TIRC (Technical Information and Research Centre, PXE, DRDO, Chandipur, Balasore.

.....Applicants

Legal practitioner :M/s. Sameer Ku. Das, S.K.Mishra, Counsel.

- Versus -

1. Union of India represented through its Secretary to the Ministry of Defence, Central Secretariat, New Delhi.
2. Director General, Research and Development Organization Cum Scientific Advisor to the Ministry of Defence, New Delhi 110 011.
3. Director Proof and Experimental Establishment, Chandipur, Balasore.

....Respondents

Legal Practitioner :Mr.U.B.Mohapatra, SSC.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

There are three Applicants in this Original Application. All of them are working in different wings of Chandipur, Balasore. While Applicant No.1 (Suresh Ch. Pradhan) is working as ALSC in equipment wing of PXE DRDO, Chandipur, Balasore, Applicant No.2&3 (S/Shri Sridhar Bindhani and Harsih Chandra Masanta) are working as ALSC in the Range Wing, PXE, DRDO of Chandipur Balasore and TIRC PXE,DRDO, Chandipur, Balasore respectively. From Annexure-A/4 series it reveals that while the applicant No.1 was initially appointed as Tradesman E w.e.f. 13th May, 1989, applicant Nos.2&3 were initially appointed as Tradesman E w.e.f. 14.08.1989 &23.5.1991 respectively. Their grievance is that though they have sought removal of the

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injustice/discrimination caused to them in the matter of fitment in higher scale as provided in Government of India, Ministry of Defence, New Delhi No.3183/DS-(O&M) Civ-I/84 dated 15.10.84 & letter No.96532/IE/GTRE/RD-Pers-3 4692/D(R&D) dated 17.11.93, the Respondents without due application of mind rejected their grievance and communicated the same under Annexure-A/6 series thereby allowing the injustice to perpetuate. . Hence by filing the present Original Application u/s.19 of the A.T. Act, 1985, they have prayed for direction to the Respondents to fix the pay of the applicants from the initial dates of their service in the revised scale of pay of Rs.260-400/- consequent upon the up-gradation of unskilled grade to the skilled grade by quashing the order under Annexure-6 series and to direct the Respondents to calculate the differential arrears upon such revision of scale from their date of initial appointment and grant them the promotional benefits thereon within a stipulated period.

2. Respondents filed their counter opposing the prayer of the Applicants. It has been averred that with similar relief, two of the applicants earlier approached this Tribunal in OA No.94/1995 and this Tribunal, after examining the matter including the Government India, Ministry of Finance Letters dated 15.10.84 & dated 17.11.93, in order dated 26th day of July, 2000 rejected the same along with many other cases filed by similarly situated employees with similar prayers. Therefore, the present Original Applicant with similar facts and relief is not maintainable at all. Besides on merit, the Respondents have also questioned the very maintainability of this Original Application on the ground of limitation.

3. No rejoinder has been filed by the Applicants. We have heard learned counsel for both sides and perused the materials placed on record including the earlier order of this Tribunal dated 26.07.2000 in OA No.94 of 1995 filed by Applicant Nos.1&3. As it appears from record (Annexure-A/6 series) the Respondents rejected the cases of the Applicants not being covered by the aforesaid orders of the Government. We find that this was also the ground taken by the Respondents in the earlier OA. After taking note of the aforesaid letters of the Government of India and the decision of the Hon'ble Apex Court relied on by the

Applicants, the Division Bench of this Tribunal in order dated 26th July, 2000 dismissed the prayer for fitment in higher scale of the applicants. Relevant portion of the order of this Tribunal dated 26th July, 2000 is quoted herein below:

“9. Learned Counsel for the applicants has referred to the decision of the Hon’ble Supreme Court in the case of Bhagawan Shahy (supra). There, the Hon’ble Supreme Court considered the circular dated 15.10.1984 (Annexure-1 to the OA No.94/95) in which 11 jobs were upgraded from semi skilled (Rs.210-290/-) to Skilled grade (Rs.260-400/-) w.e.f. 15.10.1984. In Bhagawan Shahy’s case, the petitioners before the Apex Court made a grievance that while certain categories of employees in different trades have been upgraded giving them higher scale of pay from an earlier date members of other trades have been upgraded from a later date and their observations that this violates equality clause was upheld by the Apex Court. This up gradation was based on fitment of tradesman in five grades from 16.10.1984. In Bhagawan Shahy’s case two categories of persons those who were given up gradation from an earlier date and the applicants before the Apex Court were both holding the lower post at the same time. This is not the case here. Therefore, this decision of the Apex Court has no application to the facts of these OAs. However, the applicants in these four applications as we have already noted joined service much after 15.10.1984. The recruitment rule for different categories of Tradesman were amended w.e.f. 7.8.1981 and applicants have joined much after this date in the grade of Tradesman E. The automatic up gradation of tradesman E to Tradesman C was allowed as an one time measure in order to give effect to various decisions of the Tribunal only in respect of those Tradesman E who are in position as on 15.10.1984. In these cases, applicants have admittedly joined much after 15.10.1984, in accordance with the Recruitment Rules which came into force on 7.8.81. They have accepted the appointments as Tradesman E and thereafter because of they are having qualifications of tradesman C, they cannot claim that their posts should be upgraded to the post of Tradesman C. We also note that the very same point came up for consideration before the Bangalore Bench in OA Nos. 886, 984 to 991 of 1994 and the Bangalore Bench of the CAT in their order dated 21.9.95 rejected the prayer on the sole ground that the applicants before them were not in position as Tradesman E as on 15.10.1984. On the same logic and on the same ground, we hold that the applicants in these OAs having joined as Tradesman E much after 15.10.1984 as mentioned by us earlier, are not entitled to be upgraded to Tradesman C from the date of their initial appointments as Tradesman E.

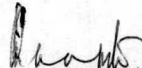
10. In the result, these Original Applications are dismissed. There shall be no order as to costs.”

4. It is not the case of the Applicants that the aforesaid order of this Tribunal has been reversed either by the higher court on appeal or by this Tribunal on review. In B.N. Sinha Vs. Union of India, (AIR 1998 SC 2600) the Supreme Court observed that the Courts

and Tribunals should not attempt to legislate on a subject which is not its business; and neither the Rule of statutory interpretation nor rules relating to interpretation of Sub-ordinate legislation, empower any judicial or quasi judicial body to apply the law to a situation or object which was not completed by the legislature while making a law, or by the Government while making the Rule. This apart, it is trite law that earlier decision of Division Bench is binding on Bench of Coordinate strength. As the principle of *res judicata* is applicable the Tribunal has no jurisdiction to reopen the issue.

5. This being the position of facts and law, we find no merit in this Original. Application. Hence this OA stands dismissed by leaving the parties to bear their own costs.


(M.R. MOHANTY)
VICE-CHAIRMAN



(C.R. MOHAPATRA)
MEMBER (ADMN.)