

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

O.A.No.260/01061 of 2012Date of Order: 19th June, 2017

CORAM

HON'BLE SHRI A.K. PATNAIK, MEMBER (J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

1-Raghunath Majhi aged about 56 years S/o Late Shri Ratan Majhi, S/3, 703, Niladri Bihar, PS Chandrasekharpur, Bhubaneswar-21, District Khurda, at present working as Chief Draftsman, Survey of India, JGDC, Ranchi.

2-Bandita Pattnaik, aged about 52 years, W/o Batakrushna Pattnaik, Plot No. 653, Brameswar Patna, PS Lingaeraj, Bhubaneswar-18, District Khurda, at present working in DP and GIS Wing, Survey of India, Survey Bhawan, PO R.R.Lab, Bhubaneswar, District Khurda.

3-Prabhat Kumar Luha aged about 48 years, S/o Rabindra Nath Luha, S/3, 588, Niladri Bihar, PS Chandrasekharpur, Bhubaneswar-21, District Khurda, at present working in APGDC (HQ) Survey of India, UPPAL, Hyderabad-39.

4-Jyotirmayee Batu aged about 56 years, W/o Shri A. Batu, S/3, 507, Niladri Bihar, PS Chandrasekharpur, Bhubaneswar-21, District Khurda, at present working in APGDC (HQ), Survey of India, UPPAL, Hyderabad - 39.

5-Biswanath Pradhan aged about 55 years S/o Late Shri Sanatan Pradhan, S/3, 234 & 235, Niladri Bihar, PS Chandrasekharpur, Bhubaneswar-21, District Khurda, at present working in DP and GIS Wing, Survey of India, Survey Bhawan, PORR Lab, Bhubaneswar - 13, District Khurda.

6-Smt. Meena Jena aged about 53 years, W/o Shri A.N. Jena, Plot No. 64, Madhusudannagar, Unit IV, PS Kharavelanagar, Bhubaneswar, District Khurda, at present working in DP and GIS Wing, Survey of India, Survey Bhawan, PORR Lab, Bhubaneswar - 13, District Khurda.

7-Smt. Ratna Manjari Nayak, aged about 52 years, W/o Rama Chandra Nayak, Plot No. 351, Sector - 5, Niladri Bihar, PS Chandrasekharpur, Bhubaneswar-21, District Khurda, at present working in DP and GIS Wing, Survey of India, Survey Bhawan, PORR Lab, Bhubaneswar - 13, District Khurda.

8-Smt. Susama Nanda aged about 57 years, W/o Shri Debendranath Nanda, H.No. LP 250, Prasantibihar, PS Chandrasekharpur, Bhubaneswar, District Khurda, at present working in DP and GIS Wing, Survey of India, Survey Bhawan, PORR Lab, Bhubaneswar - 13, District Khurda.Applicants

By the Advocate- Mr. S.C.Rath

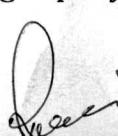
-V E R S U S -

- 1- Union of India represented through Secretary, Department of Science and Technology Bhawan, Mehrauli Road, New Delhi - 15.
- 2- Surveyor General of India, Hathibarkala Estate, Dehradun, Uttarakhand-1.
- 3- Director, Survey of India (OGDC), Survey Bhawan, Bhubaneswar, Dist. Khurda.Respondents

By the Advocate-Mr. D.K.Mallick

ORDERPer R.C.MISRA, MEMBER(A):

Eight number of applicants working as Draughtsman Grade-I under the Surveyor General of India, respondent No. 2 in this application, have joined together to move the Tribunal making a prayer that the order dated 21.9.2012



passed by the respondents may be quashed and the respondents be directed to grant the pre-revised scale of pay of Rs. 1600-2660 corresponding to the revised scale of pay of Rs. 5500-9000 to the applicants w.e.f. the date applicable in case of each applicants.

2. Shorn of unnecessary details, the facts submitted in this OA are that the applicants were appointed as Draftsman in the establishment of the Survey of India and were subsequently promoted to the post of Draughtsman Grade IV, Draughtsman Grade III and Draughtsman Grade II. The service conditions and pay scales of the Draughtsman working in various departments of the Government, were quite dis-similar and, therefore, there was discontent among the Draughtsmen. A dispute raised by the Draughtsmen of the CPWD was referred to the Board of Arbitration and the Board gave an Award for rationalizing the grades and scale of pay of the Draughtsmen working in CPWD. The Government of India also set up a high level committee which gave a report that the Award passed by the Board of Arbitration should be implemented in respect of all the Draughtsmen and uniformity about scale of pay, should be ensured. Various departments of the Government of India accepted this report and revised the pay scales of the Draftsmen accordingly. The Government of India, Ministry of Science and Technology issued a letter dated 1.11.1994 to the respondent No.2 i.e. Surveyor General of India enclosing a letter dated 19.10.1994 issued by the Ministry of Finance regarding revision of pay scales of Draughtsman Grades-I, II & III in all Government of India offices on the basis of the Award of Board of Arbitration in the case of CPWD. The applicants made a representation to the respondents praying that they may be placed in the pre-revised scale of pay of Rs. 1600-2660 revised to Rs. 5500-9000 in accordance with the OM dated 19.10.1994. These representations were not considered and, therefore, the applicants approached the Tribunal by filing OA No. 368/95 ventilating their grievance. This O.A. was disposed of by the Tribunal by an order dated 18.3.2002. The Tribunal in its order observed that it is not for the Tribunal to sit as an appellate authority to decide as to which class of government servants will get which scale of pay and, therefore, the applicants were given liberty to make representation through their administrative department to the Finance Ministry for redressal of their grievance. On the other hand, the respondent department was also directed to consider such representation if they are filed. In the meantime, the office of the Surveyor



General by letter dated 6.11.2000, wrote to the Additional Surveyor General, Eastern Zone, Kolkata that the orders of the Gauhati Bench of the Tribunal in OA No. 52/96 may be implemented in respect of 76 petitioners after verifying the service records of those petitioners. It was directed that the benefit of the revision of scale of pay may be given effect to from 13.6.1982 notionally and actually from 1.11.1983 in view of the Ministry of Finance OM dated 19.10.1994. The respondents in obedience to order passed by this Bench in OA No. 368/1995, did not implement the order but went for a review before the Tribunal, which was dismissed by this Tribunal by an order dated 26.11.2002. Since the order dated 18.03.2002 was not complied with, the applicants also filed a Contempt Petition during the pendency of which, respondents by order dated 17.3.2003 disposed of the representation and rejected the prayer of the applicants on the ground that the pay scale of Rs. 5500-9000 is available to Draughtsmen Grade I and not to Draughtsman Grade- II. Alleging that the respondents did not comply with the order dated 18.03.2002 in its ~~letter~~ and spirit, the applicant filed another Contempt Petition No. 80/2003 and the Tribunal by order dated 25.6.2009 dropped the said contempt proceedings on the ground that the orders dated 18.03.2002 has been complied with by the respondents. In the meantime, similarly placed 63 number of Draughtsman Grade II approached Gauhati Bench of this Tribunal in OA No. 14/2002 and, the Tribunal by order dated 30.5.2003 allowed the application and directed the respondents to grant the revised scales of pay w.e.f. dates as applicable to each applicant. Some other Draughtsman also approached the Tribunal in the Kolkata Bench by filing OA No. 184/2005. The Kolkata Bench also by passing an order dated 21.8.2009 held that the Draughtsman Grade - II were entitled to the pre-revised pay scale of Rs. 1600-2660 revised to Rs. 5500-9000. The Kolkata Bench in its order came to the following conclusion :

"Under the circumstances since there is nothing further to adjudicate but only to reiterate the earlier orders given by the Gauhati Bench in OA No. 14/2002 dated 30.5.2003 and state that the applicants in the present case being similarly situated should be given same benefits within a time frame of three months from the date of issue of the order. The O.A. is allowed and disposed of accordingly. There will be no order as to costs"

3. This order of the Tribunal was also implemented by the respondent authorities. The submission made by the applicants therefore is that in view of the aforesaid orders of the Tribunal, Hon'ble High Court and also the Hon'ble Apex Court, there is no reason as to why the applicants shall not be given the revised scale of pay of Rs. 5500-9000 as due and admissible to Draughtsman

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Grade - II. The applicants had a legitimate expectation that similar benefits would be extended in their case. However, such steps were not taken by the department for which the applicants had filed OA No. 350/2012 in the Tribunal. By order dated 14.5.2012 the Tribunal directed the respondents to consider the pending representation of the applicants. This representation was disposed of by an order dated 21.9.2012 by the respondent authorities. In this order, the respondents referred to the earlier OA No. 368/95 which was already decided by the Tribunal and even respondents have submitted their compliance. With regard to the applicants' prayer that the applicants be given the benefits as given by the Kolkata Bench of the Tribunal, the respondents submitted that the orders of the Kolkata Bench was in respect of only the applicants of OA No. 184/2005 and the same has been already complied with in respect of those applicants. It is further mentioned in this order that the applicants wrongly approached the Tribunal in OA No. 350/2012 for the same relief which was already decided by the same Court vide order dated 18.3.2002 in OA No. 368/1995 and duly complied with by the respondents by issue of order dated 17.3.2003. It is also submitted that this is a clear case of res judicata for which the applicants should be punished. It is further submitted that this Bench had delivered the judgment dated 14.5.2012 without hearing the view point of Government respondents. Finally, respondents have mentioned in the order that they have considered the representation in depth and after the above critical examination of the case they had concluded that the scale of pay of Rs. 1600-2660 revised to Rs. 5500-9000 w.e.f. 1.1.1993 cannot be granted to the applicants of OA No. 350/2012. This order has been challenged by the applicants by filing this O.A.

4. In the counter affidavit filed by respondents it is pleaded that this OA is barred by the principles of res judicata and the same is not maintainable. The orders of the Tribunal in OA No. 368/95 and OA No. 350/12 have been already complied with and the prayer for the revised pay scale of Rs. 5500-9000 has been rejected by issuing speaking orders. The benefits of the Ministry of Finance OM dated 19.10.1994 have been already awarded to the applicants Draughtsmen and they have been placed in a higher pay scale. Further promotion has to be made against the available vacancies if any, to the applicants. In spite of the fact that the applicants' prayer for giving higher pay scale of Rs. 5500-9000 has been rejected in two successive orders as per the



directions of the Tribunal, again the same prayer has been made by filing this present O.A. The respondents in the counter affidavit have cited the decision of the Hon'ble Apex Court dated 6.8.2010 in the case of **UOI Vs. R. Vasudeva Murthy**. It is submitted that the Hon'ble Apex Court has decided that only when Draughtsman are placed in the regular scale they would be entitled to further promotion against the available vacancies in the higher grade and that too in conformity with the normal eligibility criteria as laid down in the recruitment rules. It is further held by the Hon'ble Apex Court that the OM dated 19.10.1994 does not give an absolute and blanket right to the Draftsmen. It is submitted that as and when vacancy arises in the cadre of Grade I Draughtsman, after putting in requisite minimum service as per said notification, then and only then the Draughtsman Grade II would be entitled to the higher pay scale, not otherwise. Thus, the Hon'ble Apex Court allowed the appeals filed by the Union of India and Department of Telecommunication setting aside the orders passed by the lower courts in this regard. The respondents by mentioning these grounds in the counter affidavit have prayed that the OA may be dismissed since it has no merit.

5. Having heard the learned counsel of both sides, we have also perused the records as well as the written notes of arguments filed by the counsels. Since the order dated 21.9.2012 passed by respondent No. 2 is under challenge in this OA, we consider it appropriate to go through this order with reference to the orders passed by the Tribunal in OA No. 350/2012 on 14.5.2012. The Tribunal in that order had observed that the applicants without exhausting the departmental remedy have approached the Tribunal directly and, therefore, the applicants were directed to make individual representations which were directed to be disposed of by the respondents if so filed within a stipulated time frame. It was also directed that the orders of coordinate benches of the Tribunal as reflected in that OA if applicable may be kept in view while deciding the representation. It is plain and obvious that the Tribunal did not consider the merit of this matter. In the impugned order, the respondents have mentioned the orders of the Tribunal in OA No. 368/1995 which were complied with by the respondents by an order dated 17.3.2003. Therefore, the observation of the respondents in the impugned order is that the applicants cannot file the OA for the same relief. The applicants have been given the benefit of higher scale earlier but they are not entitled for another benefit under the OM dated

19.10.1994 because the revised pay scale of Rs. 5500-9000 is meant for the Draughtsman Grade I in the Survey of India. The applicants cannot have an absolute right to claim upgradation or revision in the higher pay scale only on the ground that they have completed the requisite qualifying continuous period of service. In order to be eligible for the scale they have to be first of all promoted to the higher grade of Draughtsman Grade I. With regard to the orders of the Kolkata Bench, the reply of the respondents is that these benefits have been given to the applicants of OA No. 184/2005 and the applicants in this O.A. cannot claim similar benefits arising out of the OA decided by the Kolkata Bench. The respondent No. 2 has also admitted it as a matter of record that the Hon'ble High Court of Kolkata and the Hon'ble Apex Court have dismissed the applications made by the respondent authorities and upheld the orders of the Tribunal passed by the Kolkata Bench. However, they have argued that the benefits as directed by the Kolkata Bench are admissible only to the applicants of that particular OA No. 184/2005. Last but not the least, the respondents argued that the applicants of this OA have wrongly approached the Tribunal in Cuttack Bench since the orders of the Cuttack Bench in earlier OAs No. 368/95 and 350/12 have been duly complied with by the department. In the impugned order, it is argued that it is a clear case of res judicata for which the applicant should be punished. We are of the opinion that the order of the respondent No. 2 is dis-respectful to the Tribunal. The O.A. No. 350/2012 has been disposed of after the Tribunal heard Shri A.K.Mohapatra, learned counsel for applicant and Shri S.B.Jena, learned ACGSC for the respondents. No submission was made by the learned ACGSC for respondents that this OA was hit by the principles of res judicata. However, if the respondents were of the opinion that the application was hit by res judicata it was for them to approach the higher court challenging the order of the Tribunal on that ground. On the other hand they have complied with the order by receiving the representations of the applicants and disposing them by a reasoned order. For them to mention in the reasoned order that, it is a clear case of res judicata, is certainly disrespectful to the Tribunal. Such remarks are not expected from the respondents and they need to be very careful about passing such irresponsible remarks which may make them liable to face contempt proceedings. Further in the impugned order the respondent No. 2 has mentioned that this Bench of the Tribunal has delivered the judgment dated 14.5.2012 without hearing the



view point of the government respondent. On verification of the order dated 14.5.2012 in OA No. 350/2012, it is clearly discernable that the Tribunal has heard the learned counsel for applicant as well as learned ACGSC on whom a copy of the OA was served. Therefore, the remark made by respondent No. 2 in the impugned order is irresponsible and contemptuous. On these grounds alone, the order dated 21.9.2012 being improper and inappropriate is required to be set aside.

6. The judgment of the Hon'ble Apex Court filed by the learned ACGSC along with the counter appears to be a case relating to the department of Telecommunications. This judgment has not been discussed in the orders passed by the respondent No. 2 with regard to the applicability of the judgment to the present subject for adjudication. The respondent No. 2 could have discussed this judgment in detail with regard to its applicability. However, the respondents have clearly made a submission that the orders of the Kolkata Bench dated 21.8.2009 will be applicable only in respect of the applicants of that OA 184/2005. They have also admitted the fact that this order has reached its finality after the dismissal of the appeal filed by the respondents in the Hon'ble High Court of Kolkata and also of the SLP filed in the Hon'ble Apex Court. Therefore, the stand taken by the respondents in this regard is that they would confine the benefits accruing from the same judgment only to the applicants of that O.A. and not to the similarly placed persons. In this regard, we have considered the position taken by the respondents. However, in a series of decisions, Hon'ble the Apex Court has also held that service jurisprudence evolved by the Court from time to time postulates that all persons similarly situated, should be treated similarly. Only because one person has approached the Court that would not mean that persons similarly situated should be treated differently. This principle has been reiterated by the Hon'ble Apex Court in the case of **K.C.Sharma Vs. UOI & Ors.** reported in (1997) 6 SCC 721, **State of Karnataka Vs. C. Lalita** reported in 2006 (2) SCC 747 and **State of UP and Ors. Vs. Arvind Kumar Srivastava and Ors.** reported in 2015 (1) SCC (L&S) 191. The relevant part of the judgment of the Hon'ble Apex Court in the case of **State of UP and Ors. Vs. Arvind Kumar Srivastava & Ors.**, is quoted below :

"The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied to service matters more emphatically as the service jurisprudence evolved by the Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because

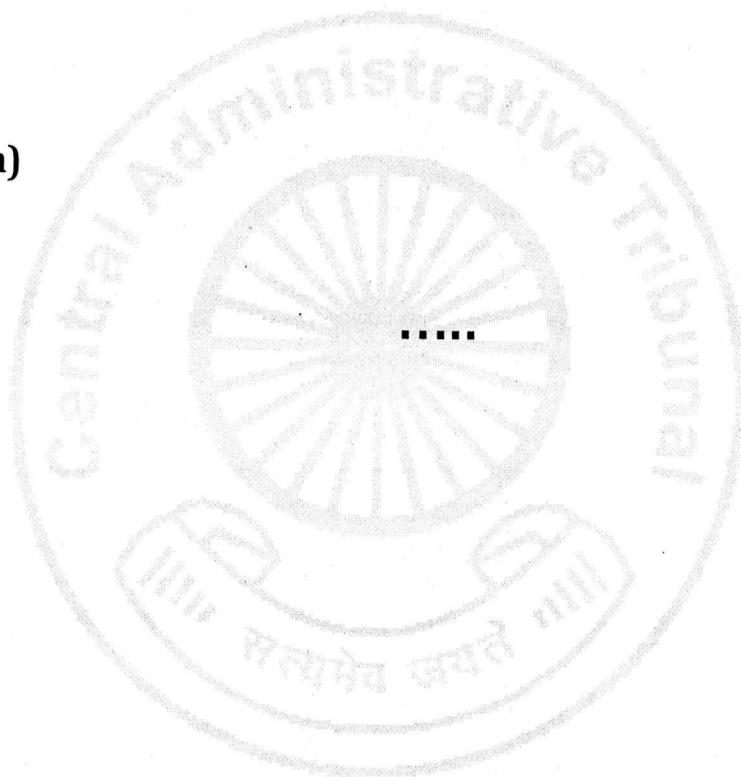
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other similarly situated persons did not approach the Court earlier, they are not to be treated differently."

7. We have discussed in the above paragraphs the improper observations of respondent No. 2 in the impugned order. The judgment of the Hon'ble Apex Court deciding that benefits given to persons who approached the Court, should normally be extended to the other similarly placed persons has also been discussed above. We are of the view that the respondents should give a fresh consideration to the matter and take their decision in view of the above position of law to be communicated to the applicants within ninety days of receiving a copy of this order. They are also cautioned not to make such observations with regard to the various decisions of the Courts of law. The O.A. is accordingly disposed of with no order as to costs.

R.C.Misra
(R.C.Misra)
Member (A)

A.K.Patnaik
(A.K.Patnaik)
Member (J)



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