

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 601 OF 1996

Present : Hon'ble Mr. B. P. Singh, Administrative Member
Hon'ble Mr. Nityananda Prusty, Judicial Member

1. Jayanta Kr. Chatterjee
2. Narendra Nath Ghosh
3. Asit Kr. Chatterjee
4. Arup Kr. Ghosh
5. Ajit Kr. Baidya
6. Mrs. Sukriti Ghosh
7. Asok Kr. Sen
8. Sekhar Dutta
9. Mrs. Pranati Goswami

.... Applicants

VS

1. Union of India through the Secretary, Deptt. of Statistics, M/o Planning, Sardar Patel Bhavan, New Delhi-1
2. The Finance Secretary, M/o Finance, North Block, New Delhi-1
3. Director General, Central Statistical Organisation, Sardar Patel Bhavan, New Delhi-1
4. Director, Central Statistical Organisation, Sardar Patel Bhavan, New Delhi
5. The Joint Director, Central Statistical Organisation (Industrial Statistical Wing) 1, Council House Street, Calcutta-1

..... Respondents

For the applicants : Mr. P. Chatterjee, Counsel
Mr. K. C. Saha, Counsel

For the respondents : Mr. M. S. Banerjee, Counsel

Heard on : 19.9.2003 : Order on : 19.9.2003

O R D E R

Nityananda Prusty, J.M.:

This is a joint application filed by 9 applicants, who are working as Data Processing Assistants, in the Central Statistical Organisation (Industrial Statistics Wing), Calcutta, praying for grant of the revised pay scale of Rs. 1350-2200/- w.e.f. 1.1.86 instead of 11.9.89 with consequential benefits in the promotional scale.



2. The case of the applicants is that all of them had been working in the capacity of Computer (Sr. Scale) under the respondents in the pay scale of Rs. 330-560/- from prior to 1.1.86. They were granted revised replacement scale of Rs. 1200-2040/- on the basis of recommendation of the 4th Central Pay Commission from 1.1.86. The 4th Pay Commission while recommending revised pay scales for various categories of employees of the Central Govt. expressed the view that it was desirable to have a cadre of experienced employees trained in EDP and other related areas of works and as such it was recommended that the Department of Electronics should examine the matter and suggest reorganisation of the existing posts and prescribe uniform pay scales and designations in consultation with the Deptt. of Personnel & Training. Accordingly, a Committee was constituted under the Chairmanship of Dr. N. Seshagiri, popularly known as "Seshagiri Committee" in the year 1986. The said committee made its recommendations. Based on such recommendations, the Ministry of Finance by an OM dated 11.9.89 introduced new pay structure with revised designation in respect of EDP personnel in various departments. Based on the said OM, the Ministry of Planning (Department of Statistics) issued a circular dt. 2.7.90 for revision of designations and scales of Group B and Group C EDP personnel. Accordingly, the respondents department circulated the revised pay scales to all employees belonging to group B and Group C EDP posts together with list of functions etc. and calling for options vide letter dt. 25.1.91.

3. The grievance of the applicants is that they have been granted the upgraded pay scale of Rs. 1350-2200/- prescribed for Data Entry Operator, Gr. B w.e.f. 11.9.89 instead of 1.1.86. Similarly, they were also granted higher pay scale of Rs. 1600-2660/- in the promotional post of Data Processing Assistants with effect from 11.9.89 or from the date of their promotion to the higher grade subsequent thereto. According to the applicants, they were given the replacement pay scale of Rs. 1200-2040/- w.e.f. 1.1.86 as an interim



measure pending finalisation of the Expert Committee's recommendation i.e. the Seshagiri Committee. It is their case that when the revised scales were introduced w.e.f. 1.1.86, they should also get the higher scale of Rs. 1350-2200/- from that date and not from 11.9.89.

4. The applicants state that various Benches of the Tribunal, viz. Nagpur Bench, Calcutta Bench, Cuttack and Hyderabad Bench have decided the issue and held that the benefit of upgraded pay scale should be effective from 1.1.86. Copies of some judgements of the Tribunal have been annexed to the application. The applicants claim that since they are similarly circumstanced employees, they should also get the benefit of the said judgements. Claiming thus, they have approached this Tribunal for the reliefs mentioned above.

5. The respondents have contested the application by filing a written reply. The facts averred by the applicants have not been disputed. The case of the respondents is that the new pay scale with revised designation for EDP personnel was given effect from the date when the Ministry of Finance issued the order on 11.9.89. It is also stated that since the applicants have already exercised option in the year 1990 accepting the revised pay scale, they cannot now claim the benefit from an earlier date because option once exercised should be treated as final. They have also raised the question of limitation. It is contended that when the applicants were granted the revised pay scale in 1990, they cannot file the instant OA in the year 1996 i.e. with five years' delay.

6. We have heard the learned counsel for both parties and perused the pleadings.

7. Mr. P. Chatterjee, 1d. counsel for the applicants contended that since various Benches of the Tribunal have already decided the issue and directed that the revised pay scale should be made applicable from 1.1.86, the respondents cannot deny similar benefits to the applicants, who are equally situated. On the point of limitation, it is contended that the applicants are seeking the benefit of the decisions of the Nagpur Bench and Calcutta Bench of the



Tribunal which were rendered in 1995-1996. Since the application has been filed in 1996, there cannot be any question of limitation, especially when the applicants have been discriminated. Mr. Chatterjee has also relied on the decisions of the Hon'ble Apex Court in the case of K.I. Shephard & Ors -vs- UOI & Ors, AIR 1988 SC 686 and the case of Appabhai & Anr -vs- State of Gujarat, AIR 1988 SC 696 and the case of Inder Pal Yadav & Ors -vs- UOI & Ors, 1985 SCC (L&S) 526 to contend that those who did not approach the court of law, cannot be denied the benefits of a decision if they are similarly circumstanced. He has also relied on a very recent decision of the Calcutta Bench in the case Chandan Chakraborty & ors -vs- UOI & Ors (OA No. 634 of 2000) decided on 26.2.2002 wherein exactly similar points were decided.

Mr. Chatterjee has submitted that this Tribunal in a recent decision in similar case viz. O.A. 602 of 1996 (Kalyan Kr. Mukherjee & Ors -vs- UOI & Ors) decided on 30.8.02 has granted relief to the applicants therein. These applicants being exactly similarly situated, similar benefit may be granted to the applicants as well.

8. Mr. M.S.Banerjee, 1d. counsel for the respondents, on the other hand, reiterated the objections raised in the reply and submitted that since the applicants have already given option and accepted the revised pay scale from 1989, they cannot claim the benefit from 1.1.86. He has also raised the question of limitation.

9. The only point to be decided in this case as to whether the applicants are entitled to get the benefit of upgraded pay scale with revised designation w.e.f. 1.1.86 instead of 11.9.89. Since the dispute already stand settled by decisions of various Benches of the Tribunal, particularly in OA 602/96 (supra), we do not think it necessary to discuss the rival contentions.

10. On a perusal of the decision of this Bench in the case of Chandan Chakraborty & Ors -vs-UOI & Ors (OA 634 of 2000) decided on 25.2.2002, we find that almost all the points raised in this OA have been discussed elaborately therein. It may be pertinent to mention



here that one of us (Hon'ble Mr. B.P.Singh) was a party to the said decision rendered by a Division Bench of this Tribunal. The relevant portion of the said decision is quoted hereunder :

"7. We find that the Patna Bench of the Tribunal, in O/A No. 94 of 1998 (K.M.Sahay & Ors -vs- UOI & Ors) by its order dt. 25.1.2001 granted identical relief to the similarly placed officials like the present applicants. Then we have the decisions of different Benches of the Tribunal on the same issue in favour of the respective applicants therein viz. Cuttack Bench in OA No. 249/91 (Minaketan Mishra & ors -vs-UOI & Ors) decided on 6.4.92, Lucknow Bench in OA No. 389/91 (Shivanand Pathak & Ors -vs-UOI & Ors) decided on 10.12.92, Hyderabad Bench in OA No. 957/90 (Y. Jaganmohan Reddy & Ors -vs-UOI & Ors) decided on 9.7.92, Ernakulam Bench in OA No. 146/96 (B.Sahadévan & Ors -vs- UOI & Ors) vide order dt. 23.10.97, Bangalore Bench in OA No. 90/98 (M.S.Gururaghavan & Ors -vs-UOI & Ors) decided on 9.10.98, Mumbai Bench in OA No. 122/98 (Smt. A.A.Kadam & Ors -vsUOI & Ors) decided on 15.1.99, Jaipur Bench in OA No. 357/95 (Narendra Singh Naruka & Ors -vs- UOI & Ors) decided on 25.11.99, and the Principal Bench in OA Nos. 2454/97 & 2650/97 (Jai Prakash & Ors -vs-UOI & Ors) decided on 2.2.2000 whereby similarly placed employees like the applicants were given the revised pay scale of Rs. 1350-2200/- w.e.f. 1.1.86 with all consequential benefits including arrears.

We also find that very recently this Calcutta Bench vide its decision dated 18.2.2002 in OA No. 18 of 2001 (Ajay Mukherjee & ors -vs- UOI & Ors) (in which one of us viz. Hon'ble Mr. B.P.Singh, A.M. was a party) has granted identical reliefs to the applicants therein. The relevant portion of the order is reproduced hereunder :-



" 4. Mr. Panda, learned counsel, on the other hand submitted that the applicants were not vigilant and they have approached the Tribunal more than 14 years after the 4th Pay Commission report and, therefore, no relief should be given to them.

5. We have given the contentions our anxious consideration. It is now no more in dispute that the similarly situated Data Entry Operators, Grade B of the Census Department have been granted the pay scale of Rs. 1350-2200/-with effect from 1.1.86 on the basis of the decisions rendered by various Benches of this Tribunal. Mr. Panda, learned counsel for the respondents, was not in a position to say as to on what ground the respondents can be justified in discriminating the cases of the applicants. The Jaipur Bench of this Tribunal has considered the matter in great detail. A copy of the decision is Annexure-A/2 on record. The Principal Bench has also relied on the decision rendered by the Jaipur Bench. The other Benches of the Tribunal including Hyderabad, Mumbai and Lucknow have also taken similar view. Since the decision of the Tribunal that the Data Entry Operators, Grade B are entitled to pay in the pay scale of Rs. 1350-2200/with effect from 1.1.86, the respondents themselves ought to have issued orders in respect of the Data Entry Operators, Grade B posted through out the country. It is surprising that the respondents have chosen to raise the plea of limitation. In such matters the plea of limitation cannot be allowed to be successfully raised, where the judgements of the various Benches of this very Tribunal relating to the same category of the employees.

6. It is not necessary on our part to discuss the matter in detail. Suffice it to say, that the applicants are entitled to have the benefit of the judgement rendered by the Jaipur Bench and also the Principal Bench."

8. Thus, from the above it is quite evident that different the Benches of the Tribunal have consistently granted relief to the respective applicants from 1.1.86 with all consequential benefits including arrears.

9. We have also noticed that in one or two cases, the respondents filed SLPs which came to be rejected by the Apex Court. However, the learned counsel for the respondents pressed on the questions of limitation, delay and laches so far as the claim of the present applicants is concerned. Ld. counsel for the respondents has brought to our notice the decisions of the Apex Court in the cases of State of Karnataka & Ors -vs- S.M.Kotrayya & ors, (1996) 6 SCC 267 and Bhoop

Singh -vs- UOI & Ors. (1992) 21 ATC 675, in support of his contention that there is no need to enter into the merit of the case as there has been inordinate and unexplained delay in the matter of filing of this OA and as such it should be dismissed on this ground alone. His contention was that while deciding OA 18/2001 (Ajoy Mukherjee & Ors. -vs- UOI & Ors) (supra) this Bench of the Tribunal had not decided this issue and as such that judgement should be ignored and the present OA should be decided taking into consideration the law laid down by the Apex Court in the decisions cited by him.

10. It is true that attention of this Bench of the Tribunal was not drawn to the aforesaid two decisions of the Hon'ble Supreme Court while deciding OA No. 18/2001, and as such no finding on this point appears to have been given by this Bench, as is evident from the judgement dt. 18.1.2002, relevant portion of which has been quoted above. But it may be pertinent to add here that both these authorities were taken into consideration by the Jaipur Bench as well as by Mumbai Bench of the Tribunal in their decisions dt. 25.11.99 in OA No. 357/95 and 15.1.99 in OA No. 122/98 respectively. The Jaipur Bench while considering the decision in Bhoop Singh's case (supra) observed in para 6 as below :-

"6. The learned counsel for the respondents relied on the case of Bhoop Singh vs Union of India reported in JT 1992 (3) SC 322 and the judgement dated 27.8.1998 of the High Court of Judicature for Rajasthan, Jaipur Bench in Civil Writ petition No. 1922/1998 (Union of India -vs- The Central Administrative Tribunal, Jaipur & Ors). We do not think these help the cause of the respondents because of the special facts and circumstances of this case."

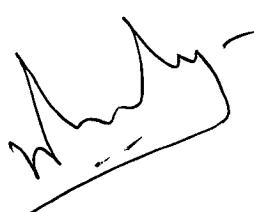
Similarly the Mumbai Bench while considering the decision of the Apex Court in State of Karnataka & Ors. -vs- S.M.Kotrayya & Ors (supra) has observed in para 7 as follows



" Respondent's counsel invited our attention to the decision of the Supreme Court in the case of State of Karnataka & Others v/s S.M.Kotrayya and Ors reported at 1996 SCC (L&S) 1488 where no doubt Supreme Court has observed that the applicant filed the belated application immediately after coming to know that in similar claims relief has been granted by the Tribunal and held not a proper explanation to justify condonation of delay. That was not a case where a general principle was involved. The facts show that certain Teachers had availed LTC benefits without performing the journey and Government ordered that the amount should be recovered, and the order came to quashed. In that case before Supreme Court another Teacher had come to Tribunal for similar relief and, therefore, in such circumstances, the Supreme Court observed that in view of the delay, the claim cannot be granted. There is no question of general principle involved in that case."

11. Thus, different Benches of the Tribunal have already taken note of the aforesaid decisions of the Apex Court, on which reliance has been placed on behalf of the respondents and despite such objection, the delay in the filing of the respective OAs was condoned.

12. Similarly, the contention of the learned counsel for the respondents that the applicants had exercised option accepting the redesignated post of Data Entry Operator with revised pay scale of Rs. 1350-2200/- w.e.f. 11.9.89 vide option dt. 24.1.91 annexed to the reply as annexure-R1, and hence they cannot be granted the revised scale with revised designation w.e.f. 1.1.86, also merits no consideration in view of the fact that after the decisions of the various Benches of the Tribunal (earliest one being of Cuttack Bench dt. 6.4.92 i.e. after the exercise of option by the applicant No. 1 of the present OA on 24.1.91) whereby the benefit of revised pay scale was extended to the Data Entry Operators w.e.f. 1.1.86 and in one or two cases, the SLPs filed by the Government were also dismissed, it was incumbent upon the respondent authorities to ask for fresh option from the Data Entry Operators. Since the respondents have failed



to ask for fresh option pursuant to the aforesaid decision of the Tribunal, which reached its finality, they cannot be heard to say that option exercised vide Annexure-R1 should be treated as final one.

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15. After considering the decisions of various Benches of the Tribunal whereby benefits of the revised scale was granted from 1.1.86 with all consequential benefits including arrears to the similarly placed employees, overruling the contention of the respondents regarding inordinate and unexplained delay in the matter of filing the respective applications, we also feel that the present applicants are entitled to the revised pay scale of Rs. 1350-2200/- w.e.f. 1.1.86 with all consequential benefits including arrears. In our considered opinion, those decisions being *in rem* and not restricted to particular group of applicants, if we deny the same relief to the applicants by departing from the said decisions of various coordinate Benches, it will amount to injustice and discrimination because not only the Data Entry Operators of the Directorates of other States but also some of the Data Entry Operators of the Directorate of West Bengal to which the present applicants belong, have been granted such benefit from 1.1.86 with consequential arrears. We are, therefore, of the opinion that it will be inequitable and discriminatory to depart from the earlier decisions and deny similar benefits to the present applicants only on the ground of inordinate and explained delay."

11. It is also relevant to mention here that impugned orders dt. 2.7.90 issued by the Ministry of Planning in implementation of the Seshagiri Committee's report and grant of upgraded pay scales with revised designation to EDP personnel came to be scrutinised by the Hon'ble Apex Court in the case of Chandraprakash Madhavrao Dadwa & Ors



-vs- Union of India & Ors reported in JT 1998(6) SC 602. After elaborate discussion on various issues, the Hon'ble Apex Court held in the concluding paragraph as under :-

" For all the above reasons, the impugned orders dated 2.7.90 16.3.98 and other orders which have the effect of redesignating the appellants - who were recruited as Data Processing Assistants - as Data Entry Operators in the scale of Rs. 1350-2200/- (or 1400-2300/- by concession of counsel) are arbitrary and illegal, ultra vires and are declared violative of Articles 14 and 16 of the Constitutions of India. The appellants are declared entitled to the designation of Data Processing Assistants, Gr.III (also called earlier as Grade B) in the scale of Rs. 1600-2660/- with effect from 1.1.1986, the date when the IV Pay Commission scales came into force. The appellants are also entitled to the scales of Rs. 5000-8000/- with effect from 1.1.96 in view of the Government orders passed in connection with Vth Pay Commission recommendation"

12. Be it noted that the said case was filed by the directly recruited Data Processing Assistants in the NSSO, Department of Statistics claiming higher pay scale as per their qualification, whereas in the instant case the applicants were Computer (Sr. Scale)/Data Entry Operator and later on promoted as Data Processing Assistants. However, the date of effect of the new pay scale was ordered to be given from 1.1.86 i.e. the date when the IV Pay Commission scales came into force.

13. We further find that this Tribunal in similar case in OA 602 of 1996 decided on 30.8.02 granted benefit of revised pay scales from 1.1.86 following the afore-quoted decisions.

14. In view of the above settled position and by respectfully agreeing with the various decisions of the coordinate Benches of the Tribunal, we are of the opinion that the applicants are entitled to be placed in the scale of Rs. 1350-2200/- w.e.f. 1.1.86 instead of 11.9.89 with all consequential benefits and their claim cannot be ignored on the ground of limitation as the authorities have already extended/allowed similar benefit to other similarly placed persons on the basis of the orders of different Courts and Tribunals. In the earlier cases, the relief claimed was not only confined to the



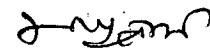
applicants therein alone. As such the same benefit cannot be denied to the present applicants who are similarly placed employees, on the ground that they did not approach the Court earlier. Furthermore, since the relief claimed by the applicants in this OA is on the basis of the decisions of the Courts, the period of limitation has to be counted from the date of those orders/judgements and not from the date of their entitlement for the benefit claimed.

15. Accordingly, the OA is allowed. The respondents are directed to grant the revised pay scale of Rs. 1350-2200/- to the applicants w.e.f. 1.1.86 with all consequential benefits. Those applicants who got promotion to the next higher grade on or after 1.1.86 should also be granted the promotion scale of Rs. 1600-2660/- with effect from the date of their promotion with consequential benefits. This exercise be completed and arrears paid to the applicants within four months from the date of communication of this order. We hope and trust that similarly placed officials may be granted the above benefit by the respondent authorities without compelling them to come before this Tribunal to get an order in their favour for grant of similar relief. There will be order as to costs.



(N. PRUSTY)

MEMBER(J)



(B.P. SINGH)

MEMBER (A)