

Central Administrative Tribunal
Calcutta Bench

OA 821/97

24-9-2002

Present : Hon'ble Mr.S.Biswas, Member(A)
Hon'ble Mr.S. Raju, Member(J)

Kartick Ch. Indu & Ors

-Vs-

Union of India & Ors

For the applicant : Mr.S.K. Gupta, Counsel

For the respondent : Ms K.Banerjee, Counsel

ORDER

Mr.S.Raju, Member(J) :

By this OA applicants numbering 14 impugned respondents Memo dated 4-4-97 denying them 4 Advance Increments despite qualified in the Departmental Confirmatory Examination. They have sought accord of benefits of increments from their date of entitlement with all consequential benefit.

2. The applicants were appointed in the Pay and Accounts Officers, Ministry of Works Housing & Supply, Ministry of Food & Agriculture, Calcutta. Consequent upon departmentalisation of Accounts, the nomenclature of the office was changed as Office of the Controller of Accounts and the post of the UDC was re-designated as Accountant.

3. Prior to 1981 the scheme of granting 4 advance increments to the UDCs on passing the Departmental Examination was in vogue.

4. The applicants who had passed the Departmental Examination on different dates from 1973 to 1981 preferred representations for grant of 4 Advance Increments in view of the decision of Hon'ble Apex Court in SLP(C) No.12443 of 1990, wherein the observation of the Apex Court was to the effect that the scheme was discontinued from 1981. The findings of the Tribunal was not touched upon.

5. Learned counsel for the applicants states that as per the terms and conditions of service published in Patrika on 30-5-70 the service conditions cannot be unilaterally changed and further states that they are similarly circumstanced to

the decisions in SLP(C) 12443 of 1990 as well as TA 148 of 1988. They have been deprived of 4 increments which was granted to the petitioners of OA 285 of 1995 decided on 21-6-95. It is contended that on making representation the same was rejected on merit and the question of limitation does not attract here.

6. Learned counsel for the applicants further states that denying the benefit to the applicants, the respondents have arbitrarily discriminated the applicants, which is violative of Articles 14 and 16 of the Constitution of India.

7. On the other hand, the respondents have controverted the contentions of the applicants. The learned counsel states that the applicants were UDC. On decentralisation they have been absorbed on Civil Accounts Organisation. In view of Rule 3(I)(b) that the Group C employee who were already working in the organisation of the Chief Pay and Accounts Officer shall become member of the service as part of the initial constitution. Those were to be recruited subsequently were belong to the second category i.e. future maintenance of service. There are either Junior Accountants (redesignated as Accountants) or Senior Accountants in the Central Civil Accounts Service. According to them those belonging to the 'initial constitution' had already passed DCE before coming over to the Central Civil Accounts Service, while those appointed as Junior Accountants under the category 'future maintenance' passed after their appointment. Passing of DCE is a condition of appointment, failing which the person concerned may be terminated or reverted to lower post. A number of provisions exist in Rule 5(2) of the Central Civil Accounts Service (Group C) Recruitment Rules, 1978. All persons recruited to the grade of Junior Accountant shall have to pass a Departmental Confirmatory Examination. It is also stated that direct recruits to the grade of Junior Accountants who have not passed the Departmental Confirmatory Examination within the time specified under Clause (e) shall be liable to be discharged from service. It is stated that at the time of their passing the DCE, there was no provision for grant of advance increments to them. The applicants were required to pass the DCE because it was the condition for the appointment as Junior Accountants. Only in 1982, the Government decided vide OM dated 18-10-82 and 25-9-82 to grant qualification pay of Rs15/- to the Junior Accountants working in the Civil Accounts Organisation.

8. Respondents counsel took exception to the fact that the application is barred by limitation. It is further stated that the cause of action arose in the present case in 1973 when the Government discontinued payment of four advance increments. Alternatively the cause of action arose three years prior to the establishment of the Tribunal on 1-11-1985 and therefore by virtue of Section 21(2) of the Administrative Tribunals Act, 1985, the matter is beyond the jurisdiction of the Tribunal. The learned counsel also states that decision of the Court cannot be a cause of action to claim relief and she relies upon the decision of Hon'ble Apex Court in Bhoop Singh (1992 (21) ATC 675) and also in Tamilnadu Defence Accounts Association V. Union of India (1994 (28) ATC 20).

9. We have carefully considered the rival contentions and perused the materials on record.

9. In our considered view, the plea of limitation does not attract in the case of the applicants as in the present case the applicants are similarly circumstanced and their claims have been allowed by different decisions rendered by different Benches. The issue was decided by Calcutta Bench in TA 148 of 1988, OA 285 of 1995 and also Hon'ble Apex Court while dealing with the identical issue in SLP 9631 of 1994 (Supra) made a specific observation regarding payment of 4 advance increments till 1-6-81. In this view of the matter that the applicants have cleared their departmental examination, they are legally entitled to get the benefit of 4 advance increments as extended to their counterparts identically situated.

10. We have carefully perused the decision of the Benches and we find that the applicants are covered by the ratio of the decision of Hon'ble Apex Court and in view of Constitutional Bench of the Apex Court's decision in ^WR.C. Sharma & Ors V. UOI & Ors. (JT (1997) Vol.VII SC 58) applicants cannot be denied the benefit of the scheme.

11. In so far as Bhoop Singh's case is concerned the same is not applicable in the present case. In the present case the applicants preferred representations which has been considered and disposed of on merits on 4-4-97 and the present OA has been

filed within a period of one year. In the result, the OA is allowed. The order impugned is quashed and set aside. The respondents are directed to give 4 advance increments to the applicants from the dates when it became due with all consequential benefits within a period of three months from the date of receipt of the order. No costs.

S. Raju
(S. Raju)
Member(J)

S. Biswas
(S. Biswas)
Member(A)