

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 64/93
XXXXXX

199

DATE OF DECISION 15.1.1993

M.Vasu _____ Applicant (s)

Mr.M.R.Rajendran Nair _____ Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary, Min. of Home Affairs,
New Delhi & another.

Mr.N.N.Sugunapalan, _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.Dharmadan, Judicial Member

The Hon'ble Mr. R.Rangarajan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Ye
2. To be referred to the Reporter or not? Ye
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

The applicant is at present working as a Male Nursing Orderly under 2nd respondent. He is aggrieved by the refusal of respondents to grant him Island Special Pay and Compensatory Allowance at 80% and 10% respectively on the basis of the judgments of this Tribunal rendered in OA 1274 and 1355/91.

2. The Government of India as per order dated 28.3.58 sanctioned a special pay of 80% of the basic pay subject to a maximum of Rs.350/- per month to an officer who was on deputation from the mainland to Island. On 21.1.70 the special pay was declared by the Government of India to be treated as special pay under F.R.9(25) and not a local allowance. Later the special pay was revised. A large number of applicants approached this Tribunal by filing OA

1274/91, OA 1355/91 and connected cases. They were allowed. Annexure-I is the judgment.

3. After the judgments in the above cases, the applicant submitted a representation dated 10.11.92, Annexure-II, before second respondent, Director of Medical and Health Services, requesting him to grant the benefits of the judgments in the above OAs and to disburse to him special pay and compensatory allowance due to him in accordance with law.

4. At the time when the case was taken up for final hearing, learned counsel for the applicant submitted that in spite of the fact that Annexure-III order has been passed by second respondent extending identical benefits to similarly situated persons, the same was denied to the applicant without any satisfactory or acceptable reasons. The respondents have no case that the applicant is not similarly situated like the applicant in OA 1355/91. Learned counsel for the respondents also did not distinguish the facts of the case and deny the statement that the applicant is similarly situated person like the applicants in Annexure-I judgment.

5. Under these circumstances we are of the view that this is a case in which the administrative authority before whom the representation has been filed has a duty to decide whether the applicant is similarly situated like the applicants in Annexure-I judgment and if so to grant the same relief to him without driving him to a Court or Tribunal. This Tribunal in OA 702/90 considered the issue and held as follows:-

"6. Recently we have deprecated this tendency of the department while considering the question of granting the benefits based on the declaration and dicta laid down in judgments to similarly placed officials in order to prevent miscarriage of justice, expenditure and time of the concerned parties as well as waste of time of the Court or Tribunal. We, the same bench, held as follows:-

xxxxx xxxxx xxxxx

"4. A law laid down by the Tribunal is binding on the administrative authorities and they are bound to apply the same to all others who are not parties to the judgments but at the same time are similarly placed unless of course it is indicated in the judgment itself that it is only binding inter parties and settling the disputes between them alone. The law thus laid down by this Tribunal while deciding the disputes between the parties are intended to be followed by the lower authorities either judicial, quasi-judicial or administrative authorities in a similar identical or analogous situations and cases. Then if they do not follow the judgment and apply in similar matters they are failing in their duties to be discharged in connection with decision taking process. The failure of the respondents to realise this position and extend the benefit of the judgments to persons who approach these authorities with identical grievances increases the number of cases by adding additional volume of work to this Tribunal and causes inconveniences leading to unbearable expenses to the public servants. All these can be avoided if the authorities adopt a pragmatic approach to the problems of the public servants when they approach them with judgment of the Tribunal or courts for getting some relief."

The Principal Bench of Central Administrative Tribunal held that the refusal to extend the relief covered by a judgment to similarly situated persons itself would amount to discrimination and violation of principles of Articles 14 & 16 of the Constitution of India. The Tribunal held as follows:-

"..... it would have been just and fair on the part of the respondents to have examined the cases of all Constables similarly placed and passed similar orders of reinstatement in service instead of driving them to file writ petitions and unnecessarily flooding the High Courts with such cases. It would have been most appropriate for the administration to examine all such cases suo motu and grant the same reliefs to similarly placed Constables at least after the judgments of the High Court had become final. It was all the more to examine the case of the petitioners suo motu in view of the assurance given by the then Home Minister in the Parliament. We have, therefore, no hesitation in rejecting the plea of the respondents that the petitioners should be denied the relief only because of delay and laches." "

Very recently the Bangalore Bench of Central Administrative Tribunal (Full Bench in OAs 451 and 548/91 in which one of us, N.Dharmadan, was a party) considered the identical issue. The petitioners in that case felt that though they were not parties to the decision of Madras Bench of CAT which decided similar issue, the Railway has an obligation to extend to them the benefits of the judgment. Accordingly they filed a representation. But it was rejected holding that the benefit of the judgment was applicable only to the parties in Madras case and not to the applicants on the ground that they were not parties to those proceedings and secondly that the said decision is wrong. The Full Bench held as follows:-

"It is well settled law that when a Court or Tribunal declares a rule or an order as void or offending the equality clause under the Constitution the benefit of such declaration enures for the benefit of everyone concerned and not restricted to the parties who brought the action."

The Full Bench also examined the maintainability of a separate original application for relief on the basis of the earlier judgment and observed as follows:-

".... The obligation cast by the judgment on the Railway administration will continue until all the persons who are the beneficiaries of the decision are accorded the benefit. In a situation like this where the Tribunal has directed that the benefit of its judgment should be accorded not only to the parties before it but to others who belong to the same category of persons like the applicants, the said judgment would enure for the benefit of everyone who belongs to the same category. In other words it must be deemed to be a judgment in favour of all persons belonging to the same category. Such of those who have a judgment in their favour cannot agitate the same matter in fresh original proceedings under Section 19 of the Act. If the judgment is not carried out by the parties concerned the remedy available is to enforce that decision in appropriate proceedings. Hence we have no hesitation in holding in these cases that after the Madras Bench directed in the review judgment that the benefit of the earlier decisions should be given to others similarly situate though they were not parties, the petitioners in these cases acquired a right to enforce the same under the Contempt of Courts Act. Without realising the true legal effect of the judgment of the Madras Bench the petitioners filed these applications under Section 19 of the Act. We, therefore, hold that the present applications under S. 19 of the Act are not maintainable."

The authorities invariably take the stand that the decision of the Tribunal in a case would be applicable only to the applicant therein. Whether a decision of the Tribunal is applicable only to the parties of that case or to all similarly situated persons would depend upon the nature of the issue arose for consideration therein and reasonings and the findings in that judgment by which relief was granted. If a particular issue has been considered and settled by the Tribunal conferring its application to the parties therein, it will apply definitely to only the persons therein. Similarly situated persons cannot claim the benefit of the judgment. But the position differs if the judgment is of declaratory in nature; then the respondents have an obligation to grant the benefit of the judgment to all the persons similarly situated without driving them to a Court or Tribunal for getting relief.

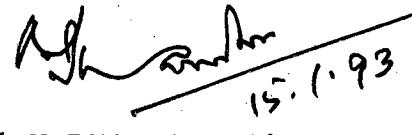
6. On a careful perusal of the facts in this case we are of the view that the respondents have not examined these aspects. They ought to have decided whether the applicant is also entitled to the benefit of Annexure-I judgment and granted the relief if their finding is in his favour.

7. Having regard to the facts and circumstances of the case we are of the view that this application can be disposed of at the admission stage itself. Hence, we admit this application and dispose of the same directing the 2nd respondent to consider and dispose of the representation filed by the applicant at Annexure-II bearing in mind the observations and findings made by the Tribunal in its judgment at Annexure-I. This shall be done as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this judgment.

52

8. Accordingly, we dispose of the application as above.
There will be no order as to costs.


(R. RANGARAJAN)
ADMINISTRATIVE MEMBER


(N. DHARMADAN)
JUDICIAL MEMBER

15.1.1993

v/-