

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.172/10

Wednesday this the 18th day of January 2012

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. Thulasi B,
D/o.Gangadharan,
Peon cum Chowkidar (Group D),
Nehru Yuva Kendra Sangathan,
Zonal Office, Trivandrum, Kerala Zone.
Residing at Makairan House, Punakkadu,
Neyyattinkara, Trivandrum.

2. Rosily Antony,
D/o.late Rappai,
Peon cum Chowkidar (Group D),
Office of the District Youth Co-ordinator,
Nehru Yuva Kendra Sangathan,
Thrissur District, Kerala Zone.
Residing at Ponnari House,
Vattanathara PO, Alagappanagar, Thrissur.

3. Shylaja V.K.,
D/o.Pokkan,
Peon cum Chowkidar (Group D),
Office of the District Youth Co-ordinator,
Nehru Yuva Kendra Sangathan,
Kozhikode District, Kerala Zone.
Residing at Thurtham House,
Chelavoor PO, Kunnamangalam, Kozhikode.

...Applicants

(By Advocate Mr.R.Premchand)

V e r s u s

1. Union of India represented by the Secretary,
Ministry of Youth Affairs and Sports,
Govt. of India, Sasthri Bhavan,
New Delhi – 110 001.

2. The Director General,
Nehru Yuva Kendra Sangathan,
2nd Floor, Core-4, Scope Minar,
Laxmi Nagar District Centre,
Vikas Marg, New Delhi – 110 092.

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3. The Zonal Director,
Nehru Yuva Kendra Sangathan,
Kerala Zone, Trivandrum,
Near Press Club, Trivandrum – 695 001. ...Respondents

(By Advocate Mr.M.K.Aboobacker,ACGSC)

This application having been heard on 11th January 2012 this Tribunal on 18th January 2012 delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

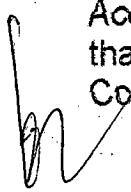
The first applicant in this O.A was appointed as Group D in 1983 and the second applicant in 1992. Similarly the third applicant was appointed as Group D in 1993. The appointments of the applicants have been regularized from the initial date of their joining as could be seen from Annexure A-1 (Sl.No.5, 60 and 64 respectively). Seniority list of Group D employees was published on 29.5.2009 and the applicants figure in at Sl.No.511, 500 and 515 respectively vide Annexure A-2. This final seniority list is a combined seniority list of Group D employees posted all over India. Other than the dates contained in Annexure A-1, which are the dates of regularization of respective Group D employees there is no other date indicated in the final seniority list at Annexure A-2. As such, Annexure A-1 and Annexure A-2 should be read together.

2. O.A.1347/91 was filed by certain deputationists to declare that they are eligible for all service benefits as available to the Central Government employees under the then Ministry of Human Resource Development, Department of Youth Affairs and Sports. The Tribunal allowed the O.A. Annexure A-3 refers. This judgment was based on an earlier judgment in the case of **Suraksha Markande and others Vs. Union of India and**

another of the Principal Bench reported in 1989 (1) CAT 462. This judgment of the Principal Bench related to grant of service benefits to Youth Co-ordinators while the judgment of the Ernakulam Bench related to Accounts Clerk cum Typist under the Nehru Yuva Kendra Sangathan. Certain direct recruits approached the Hon'ble High Court of Allahabad seeking identical reliefs on the strength of the relief granted to the deputationists and the same was allowed by the Allahabad High Court also. When the respondents took up the matter before the Apex Court, the Apex Court vide para 9 of its judgment dated 12.7.2007 held as under :-

"Now, these appeals have come up for hearing. We find that the nature of duties being discharged by the Youth Coordinators who have come on deputation and have been absorbed as such and those who were directly recruited on fixed term are discharging the same duties. The only difference is their source of recruitment. Once the deputationists are discharging the same duties and are being paid salary and other allowances then there is no reason to deny the same benefits who are discharging the same duties and functions. Those deputationists now absorbed obtained the order from this Court but the direct recruits did not approach this Court, they were treated as a class apart because of their source of recruitment. Once these persons are already working for more than two decades discharging the same functions and duties then we see no reason why the same benefit should not be given to the respondents.

Looking to the nature and duties of these respondents we are of opinion that there is no reason to treat them differently. However, at the time of admission this Court on 1.5.2000 confined the relief from the date of filing of the writ petition before the High Court. In fact, these directly recruited Youth Coordinators approached the Court in earlier point of time but they were advised to approach the Government and they did approach the Government but the Government denied them the same relief as was given to the deputationists. Therefore, there is no reason not to grant them the same scale pay and as such this Court at the time of admission has confined the relief that why it should not be granted from the date of the filing of the writ petition in the High Court. Accordingly, we dispose of these civil appeals with a direction that the same benefits as were being given to the Youth Coordinators who were initially on deputation and were



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absorbed, should be given to the respondents from the date of filing of the writ petition in the High Court of Allahabad. Hence, the order of the High Court of Allahabad is affirmed with minor modification as indicated above. There would be no order as to costs."

Annexure A-4 refers.

3. Pursuant to the above judgment, the respondents issued order dated 26.2.2009 granting all service benefits as well as retirement benefits including pension, gratuity etc. which were given to pre Sangathan Youth Coordinator, to all Sangathan recruited Youth Coordinators also. Annexure A-5 refers.

4. Annexure A-6 is an office order dated 22.7.2009 which was passed in pursuance of the judgment dated 1.7.1993 in compliance with the order of this Bench in O.A.1347/91. By this order, all service benefits including retirement benefits as applicable to Group D employees working under the Government of India were extended to the 13 applicants in the aforesaid O.A.

5. When the applicants in the present O.A approached the respondents for extending identical benefits to them, the same was refused and hence this O.A seeking the following reliefs :-

1. To declare that the applicants are eligible and entitled to get all service benefits including retirement benefits as applicable to Group D employees working under the Government of India, as has been done in the case of other similarly placed Group D employees as per Annexure A-6 order.

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2. To issue a direction to the 2nd respondent to grant all service benefits including retirement benefits to the applicants, as applicable to Group D employees working under the Government of India.

3. To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

6. Respondents have contested the O.A. The facts as contained above have not been disputed. (The O.A.No.1347/91 was stated to be wrong as 13 Group D employees who were extended the service benefits by order dated 22.7.2009 were the applicants in O.A.1428/91). It has been stated in the reply that the orders contained in the aforesaid O.A were applicable only to the applicants therein and as such the same cannot be extended to the applicants. It has also been stated that such an order cannot be automatically made applicable to all other Group D employees.

7. When the case came up for hearing, counsel for the applicant, after describing the brief facts of the case has brought to our notice a copy of the common judgment in O.A.675/09 and other batch matters passed by the Chandigarh Bench of the Tribunal. The operative portion of the said order of the Tribunal reads as under :-

" In view of the above, O.A.No.675/PB/2009 is allowed and the applicants are held entitled to the benefit of the order dated 22.7.2009 as at Annexure A-6 as per rules and the same be extended to them by passing a speaking order within a period of 3 months from the date of receipt of a copy of this order. Further, this order applies mutatis mutandis to the rest of the 5 other cases also.

All the 6 O.As stand disposed of in the above terms. No costs."

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8. Counsel for the applicant submitted that an identical order deserves to be passed in the case of the applicants as well.

9. Counsel for the respondents has not disputed the facts as also the judgment and orders implementing such judgment. As regards Chandigarh Bench judgment, it has been stated that since the said judgment is accompanied by a M.A, perhaps the respondents may be given an opportunity to file a reply.

10. Arguments were heard and documents perused. M.A filed by the applicants is purely to take on record the copy of the judgment of the Chandigarh Bench of the Tribunal. For taking on record the judgment no M.A is required. As such, it is not felt necessary to give any opportunity to the other side to respond to the M.A. In fact, the said M.A has been closed in a docket order of the Tribunal stating "the judgment annexed with the M.A has been taken on record."

11. As regards merit of the matter, it is seen from Annexure A-3 and Annexure A-4 judgments as well as Chandigarh Bench judgment that the employees of the Nehru Yuva Kendra are treated at par with other Central Government employees. The two judgments have been fully complied with by issue of orders vide Annexure A-5 and Annexure A-6. It is a settled law that the decision of the Coordinate Bench unless ~~disputed~~^{for} has to be respected and adopted. In this regard the decision by the Apex Court in the case of Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644, is relevant to be cited wherein the Apex Court has held as under :-

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"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel* while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus :

*The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in *Pinjare Karimbhai* case and of Macleod, C.J., in *Haridas* case did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority.* Gajendragadkar, C.J., observed in *Bhagwan v. Ram Chand* :

'It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that inquiry sitting as a Single Judge, but

should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

12. The judgments which have been implemented cannot be considered to be a judgment in personam as identical employees cannot be treated differently. If the department means that for deriving the benefits as available to the applicant in other O.A, other individuals should move the Court, such a view is not supported by any authority. Rather, the The Apex Court as early as in 1975 in the case of Amrit Lal Berry v. CCE, (1975) 4 SCC 714, held as under :-

" We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court."

13. The V Central Pay Commission in its recommendation, in regard to extension of benefit of court judgment to similarly situated, held as under :-

"126.5 **Extending judicial decisions in matters of a general nature to all similarly placed employees.** - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case

as well as in numerous other judgments like G.C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

14. In a latter case of Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.,(2006) 10 SCC 346, the Apex Court has referred to the decision in the case of State of Karnataka vs C Lalitha (2006) 2 SCC 747 as under :-

"29. Service jurisprudence evolved by this 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."

15. Taking into account of the above facts it can be safely said that the applicants are entitled to all the service benefits as available to the counter parts in the Central Government Departments. As a matter of fact it has to be held that this judgment should be treated as judgment in rem so that the benefits as available to the applicants in this O.A are extended to identically situated other employees of the respondents without any need for them to knock at the doors of the Court for claiming such benefits.

16. Counsel for the respondents, at the time of hearing, made a submission that in so far as pensionary benefits are concerned as there is a change inasmuch as with effect from 1.1.2004 those who are recruited to

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the service are entitled to contributory pension scheme only and not for any pensionary benefits under CCS (Pension) Rules, 1972, the applicants may be considered for such benefits available to post 1.1.2004 recruits. The contentions of the counsel for the respondents cannot hold good as the regularization of the applicants had taken place much earlier to 1.1.2004 as could be seen from Annexure A-1 order of regularization. As such, as regards pensionary benefits all the applicants and similarly situated individuals are entitled to pensionary benefits under CCS (Pension) Rules, 1972. We reiterate here that this order is passed keeping in view the provisions of Rule 24 of the C.A.T (Procedure) Rules which include that power to make such orders (to secure ends of justice) treating this judgment as judgment in rem in consonance with para 126.5 of the 5th Pay Commission extracted above.

(Dated this the 18th day of January 2012)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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