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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH
CAMP NAGPUR

O.A. No. 198
T.A. No. 176/87

DATE OF DECISION 26-3-1990

Shri Paluru Ramkrishnaiah Petitioner

Ms. N. S. Jog Advocate for the Petitioner(s)

Versus

Union of India, through Secretary Respondent

Ministry of Defence, New Delhi.

Mr. Ramesh Darda, Advocate Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. S. CHAUDHURI, MEMBER (A) *✓*

The Hon'ble Mr. J. P. SHARMA, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the Judgement? } Yes

4. Whether it needs to be circulated to other Benches of the Tribunal? }

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CAMP:NAGPUR

Tr.A.No.176/87

(14)

Paluru Ramkrishnaiah,
Resident of Quarter
No.18-D/IV/V
Ordnance Factory Chandrapur
& Others.

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Applicants

V/s

- 1)Union of India, through
Secretary Ministry of
Defence, New Delhi
- 2)The Director General,
Ordnance Factories, Calcutta.
- 3)The General Manager,
Ordnance Factory, Chandrapur.

Appearances:

Ms. N.S. Jog Advocate
for the applicant.

Mr. Ramesh Darda, Advocate
for the respondents.

Coram: Hon'ble Mr. P.S. Chaudhuri, Member (A)

Hon'ble Mr. J.P. Sharma, Member (J)

Dated: 26-3-1990

Oral Judgement
(Per: Mr. P.S. Chaudhuri, Member (A))

This application originated as W.P.No.1210/80 under Article 226 of the Constitution filed in the Nagpur Bench of the Bombay High Court on 28-4-1980. By order dated 12-9-1986 it was transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985. It was taken on the board of this Bench as Tr.A.No.176/87. In this writ petition, the 15 petitioners (Applicants) pray for

- (i) the issue of a writ quashing the Govt. O.M. dated 29.11.1975 at annexure 5 to the petition, Govt. letter dated 10.5.1977 and Factory Order dated 18-5-77 at annexure 10 to the petition and Govt. corrigendum dated 2-11-1977 and Factory Order dated 14-11-1977 at annexure 11 to the petition;

(15)

- ii) alternatively, the issue of a writ commanding the respondents to extend the application of annexure 5 to the petition to the petitioners so that they also have the option of choosing between the old scales with rent-free accommodation or the revised scales with compensation in lieu of rent free-accommodation (for short , CILQ);
- iii) the grant of an interim injunction restraining the respondents from withdrawing the petitioners' rent-free accommodation without compensation during the pendency of this petition;
- iv) an order to respondents 2 and 3 to refix the pay of the petitioners on the revised scales and to pay the petitioners the revised scales of pay and arrears without recovery of house rent on an undertaking by the petitioners to refund the excess amount in case the petition fails; and
- v) other connected and consequential reliefs.

2. By an interim order dated 1-7-1980 ~~which~~ ^{while} the petition was pending in the High Court it was ordered that :-

"All the petitioners undertake through their Counsel that in the event of the petition failing in the Court, they shall refund such amount to the respondents as may be calculated in accordance with law as payable for the use and occupation of quarters which are being enjoyed rent-free by them. The petitioners undertake and agree that in the event of the petition failing, the amount payable on account of the use and occupation of the said rent-free quarters may be deducted from the amount which may be payable to the the petitioners. In view of this undertaking and agreement, the respondents are directed to fix the petitioners in the revised scales and will also pay to them such arrears as may be payable to them on account of their pay being fixed in the revised scales."

3. The respondents have opposed the petition by filing their written statement. We have heard Ms. N. S. Jog, learned advocate for the applicant and Mr. Ramesh Darda, learned advocate for the respondents.

4. The petitioners (applicants) are Ordnance Factory employees. They were promoted to the posts of Chargeman Grade II (Technical) in the pay scale of Rs. 250-380 on various dates after 1-1-1973 but before 29-11-1975. The significance of these two dates will be clear from what follows later. Prior to this promotion, they were holding the post of Supervisor Grade 'A' in the pay scale of Rs. 205-280. Since their promotion, the applicants have been enjoying the facility of free unfurnished quarters or compensation in lieu thereof according to rules in terms of the Indian Ordnance Factories (Recruitment and Conditions of Service of Class III Personnel) Rules, 1956. After the report of the IIIrd Pay Commission, a new pay scale of Rs. 425-700 was introduced for Chargemen with effect from 1-1-1973 by revising the old pay scale of Rs. 250-380. The IIIrd Pay Commission had also recommended that with the substantial improvement in the pay scales, the facility of rent free accommodation. After accepting this recommendation, the Government published the impugned O.M. dated 29-11-1975. In view of this O.M. the respondents held that the applicants were not entitled

to the facility of rent free accomodation/CILQ as the rule by which these facilities were given stood repealed w.e.f. 1-1-1973. It may be pointed out that that the chargemen Grade-II who were working as such on 31-12-1972 were given some benefits by the impugned O.M. Broadly speaking, that benefit was the addition of a sum equal to 10% of their pay plus Dearness Pay to their emoluments before fixing their pay in the new pay scale. But that benefit was not given to those like the applicants who were promoted on or after 1-1-1973. According to the applicants this is discriminatory. The main question which we are required to decide in this case is whether the Government was justified in making a distinction between those who were promoted as Chargemen Grade II earlier than 1-1-1973 and those promoted thereafter but before the issue of the impugned O.M. dated 29-11-1975.

5. Both sides are agreed that the conspectus of the facts and circumstances in this case are completely on all fours with those in Tr.A.No.174/89 and Tr.A.No.175/87 which were decided by a common judgement and order of this Tribunal on 16-3-1989. During the hearing of those transferred applications it transpired that the benefits of the impugned O.M. dated 29-11-1975 were available to about 12,000 employees but denied to about 665 employees such as the applicants. It was held that " we are unable to find any justification for any discrimination between them" (i.e. those promoted earlier than 1-1-1973 and those promoted thereafter). We are in respect-ful agreement with this view. We propose ^{to} pass an order on the same lines as was passed by this Bench in those applications(after correcting a typographical error in respect of a date in clause (6) of that order).

6.

We accordingly pass the following order:

- (i) The respondents are directed to give the benefits of Government O.M. No.36(12)/74/US-II/D(Fy.II) dtd. 29.11.1975 to the applicants.
- (ii) The applicants should be given some time for exercising their option as envisaged in para 2 of this O.M.
- (iii) In case the applicants exercise their option in favour of getting the benefits under this O.M. then they shall have to refund the amount due to the respondents on account of enjoying the facility of rent free accommodation/CLIQ, though it was waived by the Ministry of Defence by letter dated 21.1.1980. It is clarified that after 29.11.1975 they are not entitled to the facility of rent free accommodation/CILQ as provided in Indian Ordnance Factories(Recruitment and Conditions of Services of Class III Personnel) Rules, 1956.
- (iv) The respondents may recover the said amount or adjust it towards the arrears, if any, due to the applicants on account of opting in favour of the benefits under this O.M.
- (v) The interim order of the High Court dated 1-7-1980 ~~is~~ hereby vacated.
- (vi) The benefits of the above order should be given to persons like the applicants, i.e. those who were promoted to the post of Chargeman Grade II between 1.1.1973 and 29.11.1975.
- (vii) Parties to bear their own costs.

J. P. Sharma
(J. P. Sharma)
Member (J)

P. S. Chaudhuri
(P. S. Chaudhuri)
Member (A)