

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:844/96

Dated, this Tuesday the 26th day of October 1999.

Shri K.N.Goswami Applicant.

Shri.I.J.Naik Advocate for the
Applicant.

VERSUS

Union of India & 20rs. Respondents.

Shri V.S.Masurkar Advocate for the
Respondents.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

HON'BLE SHRI S.L.JAIN, MEMBER(J)

- (i) To be referred to the Reporter or not? *Yes*
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal? *No*
- (iii) Library? *Yes*

B. Bahadur
(B.N.BAHADUR)
MEMBER(A)

abp

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MUMBAI BENCH
ORIGINAL APPLICATION NO:844/96
DATED THE 26TH DAY OF OCTOBER,99.

CORAM:HON'BLE SHRI B.N.BAHADUR, MEMBER(A)
HON'BLE SHRI S.L.JAIN, MEMBER(A).

K.N.Goswami,
HC No.098,
Police Station,
P.O.:DAMAN
Pin Code:396 210
By Advocate Shri I.J.Naik.

... Applicant

v/s.

1. The Administrator of
U.T. of Daman & Diu,
Administrator's Secretariat,
P.O.:MOTI DAMAN.
PIN CODE:396 220.
2. The Development Commissioner &
Inspector General of Police,
Administration of Daman & Diu,
Secretariat, MOTI DAMAN,
PIN CODE: 396 220.
3. Union of India, through :
The Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block, New Delhi.
By Advocate Shri V.S.Masurkar

... Respondents

(ORDER) (ORAL)

Per Shri B.N.Bahadur, Member(A).

This is an application made by Shri K.N.Goswami, Head Constable at Daman Police seeking relief from this Tribunal, in substance, that he being a Matriculate Constable should be paid in the higher scale of Rs.950-1400 w.e.f. 1/1/1986. Prayers listed at para-8(a) ask for similar reliefs. It is also seen that a MP is filed by about 20 persons, alongwith OA, at (page-48) praying that applicants therein be allowed to join together in the above OA, since cause of action and nature of relief is same, and there is a common interest.

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2. The facts of the case, as brought out by the applicant, are that when there was a single, combined, Union Territory of Goa, Daman and Diu, an OA had been filed (297/87) and that this OA was decided on 21/12/90. It is contended that the decision in this OA was in favour of persons similarly placed, and the benefit of this OA would follow to the applicants in this case. The details of the judgement which has been annexed are reproduced in the application. Also annexed is a letter from the Government of Daman recommending the case for higher pay scale to Matriculate Constables and seeking Government of India's approval (Annexure A-5).

3. The respondents have filed a reply wherein they have first taken the point regarding limitation and also taken strong objection to the maintainability of the application in view of the fact that the MP filed by 20 persons is hit by the rules of the Act. Without prejudice to this, the respondents statement goes on to say that the latest Pay Commission has not suggested any higher grade for Constables of Daman & Diu and that such a provision in the service conditions itself for Delhi Police. It is averred^m that there was no such provision for Police Cosntables of Daman & Diu for higher pay to Matriculate Constable and there is no case for comparison with Delhi Police. The statement goes on to say that the judgement relied upon has no application and that the payscales/revision, are issues to be decided by Central Government. Prayer is accordingly made for dismissal of the application.

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4. We have seen all the papers, Annexures, etc filed and have heard the counsels on both sides. Learned counsel for the applicant took us over the various papers filed, starting with a letter written on 3/6/92 by the Daman & Diu Finance Secretary to the Government of India where it was recommended that the ^{pay} of Matriculate Police Constables be raised from Rs.825-1200 to Rs.950-1400. Counsel for applicant states that this provides a strong case in his favour. The judgement delivered by this Tribunal dated 21/12/90 was gone through in detail before us and a case made out for its applicability to the present application. It was pointed out that a notice was issued (Page-33) to the Union Territory Administration through an Advocate on 20/7/1994.

5. The learned counsel for the applicant contended that the technical objections being taken by the respondents are not fair, and pleaded that the Rule 4.5 of the CAT Procedure Rules be applied to him, and in any case his case should be considered on merits and not on trivial formalities and technical points. He cited before us the following two judgements.

1. ATR 1988(2) CAT 518 - Shri A.K.Khanna & Ors v/s. Union of India & Ors.

2. [1999 (2) Mah LR 287 (SC)] - Alvaro Naronha Ferriera and Anr. v/s. Union of India & Ors.

6. Learned counsel for respondents strenuously argued the case. The points made by him are reproduced below in gist:-

(a) It was contended that the application is severely hit by limitation.

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- b. It was argued that Rule 4.5 of the rules and procedure were clearly against the applicant as no grounds were made in the MP to show how the 20 applicants were commonly placed.
- c. No representation was made to the 5th Pay Commission or any Pay Commission. The applicant has had several opportunities to go before Pay Commission. This was a normal course that should have been followed. It was argued that the notice sent by the Advocate (Annexure A-4) give no help to the applicant since it is not sent on his behalf; it is sent only on behalf of Police Constables of Administration of Daman & Diu and is vague. Further, there was only provision for a representation and not for a notice like that envisaged under Section-80 CPC.

It was argued by counsel for respondents that no Rules have been brought forward by the applicant to show that common rules existed which entitled him for the benefit, even assuming that the benefit was given to him as an employee of Union Territory of Goa. In the absence of rules, the applicant has not been able to establish his case.

7. The learned counsel for respondents strenuously argued the case vis-a-vis the principle of equal pay for equal work and stated that different Union Territories had different terms and the terms were differed in magnitude and nature. Comparison was being made between the Union Territory of Delhi and Union Territory of Daman & Diu other Union Territories. It was argued

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that Judicial review cannot be taken in such matters and that the Principles of Equal pay for Equal work cannot automatically be applied to the case of the present applicant. In this regard, the learned counsel cited the following judgements:-

1. 1995(2) ATJ - 567 - M.R.Gupta v/s. Union of India.
2. 1996(2) ATJ - 501 - Union Territory v/s. Krishan Bhandari
3. 1997 SCC (L&S) -1080 - State of Tamil Nadu & Anr. v/s. M.R.Alagappan.
4. 1993 SCC (L&S) - 221 - State of Madhya Pradesh & Anr. v/s. Pramod Bharatiya & Ors.
5. AIR 1988 SC -1291 - Federation of All India Customs & Central Excise Stenographers (Recognised) & Ors. v/s. Union of India & Ors.

8. Arguing the case regarding the applicant's strong dependence on the Ruling of this Tribunal dated 21/12/90, Counsel for Respondents said that this does not create a right in rem and it was a judgement in personem. Even if it was in rem, for arguments sake, much water had flown under the bridge since 1990, specially in the light of the later Supreme Court judgements already cited.

9. It was strenuously contented that the applicant had himself consciously decided to stay in the Union Territory of Daman & Diu, and this fact cannot be overlooked.

10. We have carefully considered all the points. There is no denying the fact that the application suffers from delay and

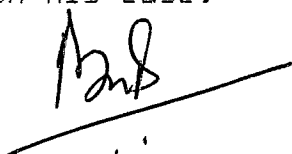
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laches. The main point raised by learned counsel for applicant was that upto 1995 he was waiting since he had been given hope and that this hope is clearly evidenced from the letter written to Government of India recommending his case. We are not impressed that this arguments can help in a legal sense. He cannot take this stand for the delay in filing his application six years after the judgement in 1990. Even assuming that the case of M.R.Gupta is applicable, the claim of the arrears is hit by case of Jaidev Gupta, since there is six year long gap between the date of judgement and his filing application.

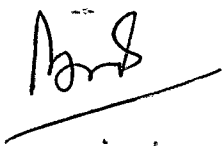
11. The second technical point relates to the argument of respondents that the MP through which 20 people have tried to join the applicant is invalid. There is some weight in the arguments made vis-a-vis rule 4.5 of the CAT Procedure Rules. However, even assuming that this MP is rejected and the sole applicant namely Shri Goswami remains before us, we would still need to go into the merits, without prejudice to the validity of the technical points raised.

12. It is clear in the first place that no rules have been cited before us which can clearly establish a right in favour of the applicant. If such clear rules had existed, we could have interpreted them in favour of the applicant. We are also in agreement on the argument of the counsel for respondents that Hon'ble Supreme Court has laid down that it is for the applicant to clearly establish his case by citing rules, etc. On this account we must conclude that the applicant is not able to establish his case.



13. The applicant has strongly relied on the letter written by the Union Territory Administration dated 3/6/92 and states that the mind of the Union Territory Administration of Daman and Diu, is clear and that it can be argued that they have promised this scale to the applicant and others similarly placed. There can be no doubt from this letter that the Union Territory Administration made a recommendation and sought approval of Government of India. However, since the power sanction is with the Government of India, mere issue of such a letter cannot be considered as a right in favour of the applicant. It is not as if this will operate as a promissory estoppel, either. Since the powers are not with the Union Territory Administration, the right can be established only when Competent Authority, viz/ the Government of India, takes a decision and approves the proposal. It is true that the matter has not been agitated before the 5th Pay Commission. However, we would not put the blame on the applicants. It cannot be said that only when representations are made to the Pay Commission will the government take a decision. It is open to the Government to take decisions relating to the working conditions (including payscale of its employees) on its own judgement, and we would have thought that a very clear reply should have come from the Ministry of Home Affairs to the letter dated 3/6/92. However, this has not happened.

14. Learned counsel for applicant relied on judgement in ATR 1988(2) CAT - 518, where it was held that benefit of judgement should be extended to those who were not parties to judgements, but were similarly placed. A reading of the judgement shows that in that



case, it was clearly admitted that the other persons were similarly placed. This is not the case here, where there is a denial by Respondents and an assertion made that the applicants are not similarly placed. This judgement therefore cannot help the applicant.

15. It is also relevant to state that bifurcation of the Union territory was made in the year 1987. The benefit asked for the OA-297/87 was decided in 1990 where the Administration of "Goa Daman & Diu" was a party. Subsequent to this there has been a split in 1987. It is also a relevant point that the applicant has consciously decided to stay on in service in the Union Territory of Daman & Diu.

16. It would not be in the fitness of things for us to take a judicial review, and decide the applicability of the particular rules to the Territory of Daman & Diu as stated above. This is clearly within powers of the Government of India in the concerned Ministry to take a decision.

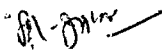
17. It must therefore be said that should, even at this stage, the Government of India in the Ministry of Home Affairs like to consider the case already forwarded to it in 1992 on merits and according to rules, it would ⁿbe open to them to do so and the mere decision in this OA would not come in their way.

18. However, in view of the detailed discussions made above, we are not convinced that the orders in that judgement of this

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Tribunal dated 21/12/90 can automatically create rights in the favour of the applicant in a manner where this Tribunal can declare as to what payscale a particular person or a set of persons would be entitled to. No right has been created. In consequence, this application is hereby dismissed. No orders as to costs.



(S.L.JAIN)
MEMBER(J)



(B.N.BAHADUR)
MEMBER(A)

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