

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A. NO. 490/1996

Mumbai, this ...^{31st} day of ~~July~~ 2001

Hon'ble Shri S L Jain, Member (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. S.W. Kulkarni, Assistant Accounts Officer,
CAD (O) Pune.
2. R.P.S. Shisodia,
Asstt. Accounts Officer, D.A. (A.F.) Lohagaon,
Pune.
3. R.M. Deshpande,
Asstt. Accounts Officer,
CDA(O) Pune
4. G.D. Joshi
Asstt. Accounts Officer,
CDA (O), Pune.
5. M.V. Deo,
Asstt. Accounts Officer,
CDA(O) Pune.
6. A.M. Avachat,
Asstt. Accounts Officer,
CDA (O) Pune.
7. S.L. Shirke,
Asstt. Accounts Officer,
CDA(O) Pune,
8. V.D. Sahane,
Asstt. Accounts Officer,
CDA (S.C.) Pune
9. D.V. Ghanekar,
Jt. CDA,
R & D (Engrs)
Pune..
10. Smt. Ratnamala,
Asstt . Accounts Officer,
CDA (SC), Pune
11. Shri S L Avachare,
Asstt. Accounts Officer,
CDA (O) Pune.

12. A R Shelar,
Asstt. Accounts Officer,
CDA(O), Pune.

.....Applicants
(By: Shri S.P. Saxena, Advocate)

Versus

1. Union of India
through the Secretary
Ministry of Defence(Finance)
GOI, New Delhi.
2. The Controller General of Defence Accounts,
West Block IV, R K Puram,
New Delhi.
3. The Controller of Defence Accounts (O)
Golibar Maidan, Pune
4. The Controller of Defence Accounts (S.C.)
Pune.

.....Respondents.

(By: S/Shri R.K. Shetty and R.R. Shetty, Advocates)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (A)

Shri S.W. Kulkarni and eleven others have filed this OA, seeking issue of directions to the respondents to grant them arrears of pay and allowances for the period 23.4.1987 to 3.9.1990, arising out of stepping of their pay.

2. Heard Shri S.P. Saxena, learned Counsel for the applicants and Shri Ravi R. Shetty, learned proxy counsel for the respondents.

3. Stated in brief, the facts of the case are that 11 applicants, directly recruited as Auditors in respondents organisation between December 1996 and November 1972 as well as applicant No. 9, promoted as Auditor in November 1973,

passed S.A.S. Examination in July 1985 and were promoted as Section officers in the pay scale of Rs. 500 - 900/- (Revised to Rs.1640 - 2900/-) between July 1986 and March 1987. They were placed in the seniority list between Sl No. 1129 to 1219. One Sh. R R Kaimal who joined as Auditor in March, 1973 and passed SAS Examination in July 1985, was promoted as Section Officer on 23.4.1987 and placed at 1260 in the list. His pay was fixed at Rs. 1760/- in the scale of Rs. 1640 - 2900/- which had not been given to the applicants all of whom were senior to Kaimal. In response to the applicants' representations, and on the basis of the Ministry of Defence (Finance) letter No. AN/XIV/14162/III/4th PC/Anomalies Committee dated 4.9.1990 their pay was also stepped up to Rs. 1760/- w.e.f. 23.4.1987, but without benefit of arrears between 23.4.1987 and 4.9.1990. Applicants' representations for payment of arrears for the above period were rejected. Subsequently, one Shri T P Syamalan who was also similarly placed like the applicants vis-a-vis Kaimal, filed OA No. 435/94, before this Bench and obtained an order for getting his pay also stepped up to Rs. 1760/- w.e.f. 23.4.1987 along with arrears from that date. Applicants' move to get the benefit granted to Syamalan, extended to them also did not succeed. Hence this O.A. Applicants plead that as their position was the same as Syamalan vis-a-vis Kaimal, there was no justification to deny them the benefit granted to Syamalan. Denial of the same was arbitrary, discriminately and violative of the Articles 14 and 16 of the Constitution. They also state that merely because they had not approached

the Tribunal as Syamalan has done, they should not be denied their due.

4. In their reply the respondents point out that all the applicants have been given the benefit stepping up of pay from April - May 1987, along with notional fixation and the actual arrears from 1.9.1990, in terms of their letter dated 4.9.1990 cause of action, if any arose on 4.9.1990 and therefore the OA filed in 1996 was totally hit by limitation, more so as it was a money claim. They were entitled correctly to stepping up of pay w.e.f. 27.4.1987, which was granted to them in term of Defence Ministry's letter dated 4.9.1990. Syamalan, was paid the arrears in terms of CAT's order in OA No. 435/94 and the same was a judgement in personam. Benefit thereof was not automatically applicable to others. Ministry of Defence (Finance) letter No. AN/XIV/14162/III/4th PC Anomalies Committee of 4.9.1990 had directed the stepping up of pay of the applicants, among similarly placed others, but with directions to grant arrears only from 1.9.1990. There was nothing incorrect about the decision . The applicants have been granted the benefits they were entitled to get and nothing further was due to them. Application filed by them in the circumstances, has no merits and deserved to be dismissed, urge the respondents.

5. According to the applicants, the application was not at all time barred as the cause of action arose only after the order 31.5.1995, passed by the Tribunal in terms of which Syamalan has been granted the benefit of stepping of

pay along with arrears. Besides Courts have held time and again that benefits of judgements be extended to all similarly placed employees and those who could not come before the Court must not be treated differently. Respondents on the other hand reiterate their pleas and also aver that Syamalan's case where a second stepping up was denied by them but granted by the Tribunal was not similar to the case of the applicant and therefore no benefit could have flowed to the applicants from the said decision.

6. During the Oral submissions the learned counsel for both sides vehemently reiterated their respective pleas. According to Sh. Saxena, learned counsel for the applicants, limitation cannot be invoked against his clients as the matter agitated related to pay fixation which was a continuous cause of action, fully supported by the Hon'ble Supreme Court's decision in M.R. Gupta Vs Union of India [(1995) S.SCC.628]. Besides, courts have held that the Govt. shall extend benefits arising from a judgement to all those similarly placed, instead of driving everyone to litigation., Sh. Saxena also urged that as the respondents have accepted Tribunal's decision in Syamalan's case there was no ground to deny it to others who were identically placed. The applicants should succeed, in the circumstances is his plea. Forcefully arguing for the respondents Sh. Ravi R. Shetty, learned counsel pointed out that the matter related to a money claim which cannot be raised or granted after more than Ten years . Grant of stepping up of pay to remove the anomaly of junior Section Officers promoted from

the grade of Sr. Auditors drawing more pay than their seniors who were directly promoted as Section Officers from the grade of Auditors directly by Ministry of Defence (Finance) letter No. AN/XIV/14162/III/4th PC/ Anomalies committee dated 4.9.90, was a policy matter and it was not for the Tribunal to interfere with the above. Such a policy matter was not subject to judicial review as elucidated by the Apex Court in the case of K. Narayan Hegde Vs State of Karnataka 2000 SCC L&J 872. Besides, judgements by themselves do not become cause of action, as the Hon'ble Supreme Court had laid down in Bhoop Singh Case AIR 1992 SCC 1414. Merely because a colleague got a benefit, a cause of action does not arise as shown in State of Karnataka Vs S.M. Kottrayya (1996) 6. SCC 267. Applicants have no case at all and the application deserved to be dismissed in the circumstances argues, Sh. Ravi Shetty.

7. We have carefully considered the matter and perused the relevant records. It is a matter of record that an anomaly had crept in the fixation of pay of Section Officers after IV Pay Commission recommendation were adopted, with those seniors who became Section Officers directly from the post of Auditors getting lesser emoluments than the juniors who became Section Officers, through the grade of Sr. Auditors, as had happened in the case of the applicants in this OA vis-a-vis their junior Sh. R.R. Kaimal. This being brought to their notice, Govt. had considered the matter and by their order No. AN/XIV/14162/III/4th PC/ Anomalies Committee dated 4.9.1990 directed the stepping up of pay of the affected seniors to that of the juniors, w.e.f. 1987

notionally and arrears actually from 1.9.1990. All the applicants in this OA are the beneficiaries of the said policy decision. However, their request for grant of arrears between April 1987 and September 1990 was turned down. Only on a much later date when another individual - T.P. Syamalan - was granted the benefit of arrears during the intervening period through the favourable decision in OA No. 435/94, the present applicants have come up in this O.A. claiming the arrears. This they had done after nearly six years i.e. in 1996. That being the case, the plea urged by the learned counsel for the respondents that the application is hit by limitation in terms of Section 21 of the Administrative Tribunals Act, 1985, has force and merits acceptance. This strictly is not a case of pay fixation, but only one of payment of arrears for a short intervening period and the issue of pay fixation has been satisfactorily settled by the Ministry's order of 4.9.1990 and applicants have themselves reaped the benefits of the said order and got higher fixation of pay. They cannot therefore get the benefit out of M.R. Gupta's decision as there is no continuous cause of action. Evidently this is a case where the applicants who have acquired the notional fixation of pay from April 1987 and drawal ~~drawl~~ of arrears from 1.9.1990, have come up as if a fresh cause has arisen with T.P. Syamalan succeeding in the OA No. 435/94, and getting the arrears. In a situation like this the decisions in the cases of Bhoop Singh and Kottrayya clearly go against them. In the case of Bhoop Singh (Supra) Hon'ble Supreme Court has recorded as below:-

"Inordinate and unexplained delay or laches is by itself a ground no refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for

long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed.... Article 14 of the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner."

Further in the case of S.M. Kotrayya (Supra) following are the dicta of the Hon'ble Apex Court:

"Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-sections(1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

8. It is also evident that Syamalan's case is strictly not on all fours with the case of applicants, as in that case the stepping up of pay was originally rejected as the stepping up has been done once earlier and a second stepping up was not considered regular. This has been set aside by

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this Bench. In the case of applicants there was no second stepping up but only one stepping up to remove the anomaly of Seniors who were directly promoted from the grade of auditors to that of Section Officers, ~~were~~^{being} given lower fixation of pay compared to juniors who becomes Section Officers, after having been promoted as Senior auditors. Syamalan's case was therefore distinct from the case of applicants as has been correctly pointed out by the respondents. Even otherwise the fixation of pay having been granted as a policy decision of the Government who have also fixed the date from which the notional fixation has to take place and the actual monetary benefits were to accrue, there is no case for any interference from this end. Respondents are correct when they state that it is not for the Tribunals to enter into the realms of policy. Once the policy of stepping up of pay of the seniors to the level which their juniors had got by an anomalous situation, has been announced and implemented as has happened in this case, it is not for us to stray into the turf of policy and/ direct modification, as clearly laid down *Narayani* by the Apex Court in the case of Hedge (Supra). The applicants case has therefore been effectively foreclosed.

9. In the above view of the matter we have no doubt in coming to the conclusion that the applicants' case fails both on merits and on limitation. The same is accordingly dismissed. No costs.

Govindan S. Tampi
(Govindan S. Tampi)
Member (A)

S.L. Jain
(S.L. Jain)
Member (J)

Patwari/