

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA 4971996

Hon'ble Vice Chairman / Member (J) / Member (A)

may kindly see the above Judgment for
approval / signature.

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V.C. / Member (J) / Member (A) ~~(K/S)~~

Hon'ble Vice Chairman

Hon'ble Member (J)

I agree

Hon'ble Member (A) (K/S)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:497/1996
DATED THE 12 DAY OF April 2002

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

The Bombay Income-tax Department Canteen
Employees Association, Aayakar Bhavan, Room
No.257, 2nd Floor, Maharshi Karve Road,
Mumbai - 400 020.

Through its Secretary

Shri Siddharth Hanuman Jadhav, Clerk in Income
tax Departmental Canteen, Income-tax Department
(Central), Old CGO Building Annexe,
Maharshi Karve Road, Mumbai - 400 020.
Resident of B-10/26, Room No.2, Sector No.4,
Navi Mumbai, CBD in the
Capacity of the Secretary
and individually also

... Applicant

By Advocate Shri P.A.Prabhakaran

V/s.

1. Union of India,
(1) Through the Secretary,
Ministry of Finance Dept. of Revenue,
Central Board of Direct Taxes,
New Delhi.
(2) The Secretary,
Ministry of Personnel and Public
Grievances and Pension,
Department of Pension,
Department of Personnel
and Training, North Block,
New Delhi-110 001.

2. Director of Canteen,
Department of Personnel Training,
Lok Nayak Bhavan, 3rd Floor,
Khan Market, New Delhi-110 003.

... Respondents

By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna

...2.

CENTRAL ADMINISTRATIVE TRIBUNAL
 MUMBAI BENCH
 ORIGINAL APPLICATION NO: 497/1990
 DATED THE DAY OF 2002

CORAM: HON'BLE SHRI S. L. DIXIT, MEMBER (1)
 HON'BLE SMT. SHANTI CHASTRY, MEMBER (A)

The Bombay Income-tax Department, Central
 Employees' Association, 1st Floor, Narayan Narve Road,
 Mumbai - 400 002.

Through the Secretary,

Shri. D. K. Chitambar, Member, Income Tax Department,
 Central, 1st Floor, Narayan Narve Road, Mumbai - 400 002.
 Resident of B-10/12, Room No. 2, Sector 10, Vasant
 Vihar, New Delhi - 110 067.

By Advocate, Shri. V. V. Advani

1. The Income Tax Department, Central, 1st Floor,
 Narayan Narve Road, Mumbai - 400 002.
 2. The Income Tax Department, Central, 1st Floor,
 Narayan Narve Road, Mumbai - 400 002.

(3) The Income Tax Department, Central, 1st Floor,
 Narayan Narve Road, Mumbai - 400 002.
 (4) The Income Tax Department, Central, 1st Floor,
 Narayan Narve Road, Mumbai - 400 002.

5. The Income Tax Department, Central, 1st Floor,
 Narayan Narve Road, Mumbai - 400 002.
 6. The Income Tax Department, Central, 1st Floor,
 Narayan Narve Road, Mumbai - 400 002.

By Advocate, Shri. V. V. Advani
 Shri. V. V. Advani

(ORDER)

Per Smt. Shanta Shastry, Member(A)

The reliefs sought in this OA are to put the clerks of the canteen in the payscale of Rs.950-1500. The conditions put down of the payscale in the impugned order dated 11/2/93 be struck down and the clerks of the canteen may be allowed to appear in the UDCs examination.

2. This application has been filed by the Bombay Income Tax Departmental Canteen Employees Association and Applicant No.2 who is the Member of the Association as well as the Secretary of the Association. Applicant No.2 is directly affected candidate.

3. By letter dated 11/1/93, the Central Board of Direct Taxes referred to an earlier letter of the Board dated 8/10/92 and clarify that various categories of canteen employees will be eligible to appear in the departmental examination in the income tax department as shown below in the letter. Accordingly, sweeper, wash boy, coffee/Tea maker, Assistant Halwai, Cook, Clerk, Salesman (all posts) in the payscale of Rs.750-940/825-1200 and Halwai (Rs.950-1500) will be eligible for departmental examination for promotion to the post of LDC (Group 'C'). Similarly, Assistant Manager, Store Keeper, Canteen Manager cum Salesman, Manager Accountant, Manager, Deputy General Manager, were held eligible for departmental examination for the post of UDC and the General Manager was held eligible for departmental examination of Tax Assistant, Head Clerk, Inspector. The applicants who are the canteen clerks are aggrieved that they are not allowed to sit for the departmental examination for promotion to the post of UDC though they were already Group 'C'

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employees. The applicants had sought interim relief in this Tribunal in an earlier similar OA No.539/94, ~~they were not~~ granted Interim Relief on 3/5/94 allowing the applicants therein to appear in the departmental examination for the post of UDC in the scale of Rs.1200-1800 scheduled to be held on 16/5/94 and had directed that the results should not be declared without the directions of the Court. In the present case also, since the departmental examination was scheduled to be held on 4/7/96 and the representation of the applicants had been rejected by the Competent Authority, the applicants had sought permission to appear in the departmental examination to be held on 4/7/96. Accordingly, by order dated 28/6/96, direction was given to allow the applicants to appear for the departmental examination to be held on 4/7/96 with the results not to be declared without the directions of the Court. Similar direction was given for the further examination which was to be held on 3/6/98.

4. The contention of the applicants is that in view of the directions of the Supreme Court in Writ Petition(C) No.6189-7044, respondent no.1 had issued a circular no.12/5/91-DIR(C) dated 29/1/92 in which following decisions were taken in respect of canteen employees in the Central Government Offices.

1. The employees of the canteen are paid at the same rate and on par with the Central Government Employees of equal status.
- II. The revised pay scales were applicable to the canteen employees also from 1/1/86.
- III. The canteen employees are treated as Government servants with effect from 1/10/91.
- IV. The employees of these canteens are entitled to all the benefits as are available to other Central Government employees of comparable status with effect from 1/10/91. The applicants put three facts in OA No.539/94 in Para 4.2 the respondents.

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5. The applicants therefore mentioned these facts in an earlier OA of 539/94 and the respondents had admitted this position in their reply filed on 20/11/95. As the department was neither refusing nor allowing the claim of the Ministerial staff who were in the payscale of 825-1200 to appear in the UDC's Departmental examination, the applicants had put in an application to respondent no.3 to allow them to appear in the examination and had also asked that the canteen clerks be placed in the payscale of Rs.950-1500. After passing the interim order on 3/5/94 in OA No.539/94, the Tribunal had further continued the interim relief by order dated 2/6/95 but also directed the respondents to dispose of the representation of the applicant therein dated 5/1/94, by passing a speaking order within two months. Opportunity was given to the applicants to challenge the order on the representation, should they feel aggrieved. The representation was rejected on 6/2/96 on the following grounds. "In the recruitment rules, only LDCs in the payscale of Rs.950-1500 are eligible for promotions. The posts of Assistant Manager, Store Keeper, etc in the canteen in the scale of Rs.950-1500 are higher than the post of canteen clerks who are in the payscale of Rs.825-1200. Therefore, these clerks cannot be allowed to appear in the UDC examination."

6. Being aggrieved the applicants have now approached this Tribunal.

7. The applicants submit that inspite of the Supreme Court's decision in the case of Government canteen employees, the Railways had not extended the same benefit to the Railway canteen employees therefore the Railway Canteen employees

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had taken the matter to the Supreme Court and the Supreme Court in their judgement dated 27/2/90 in the case of MMR Khan V/s. Union of India (JT 1990(3)SC-1) directed that the Railway employees are entitled to the same benefits as the other employees of canteens in other departments are entitled to. Accordingly, the canteen employees of the Railways who were matriculates were given the payscale of Rs.950-1500 i.e. of the LDCs and they were given all the benefits like the other LDCs in the Railways. In all the central Government offices including Income tax and Railways among the clerks there are only two categories namely LDCs and UDCs, who are in the payscale of Rs.950-1500 and Rs.1200-1800 respectively. Though the Ministerial staff of the canteen employees are part and parcel of the Central Government and are entitled to be put on par with the LDCs as per the circular dated 29/1/92, the canteen employees who are matriculates and who belong to Ministerial staff cadre have been discriminated against and have been put in the payscale of Rs.825-1200. They have thus been denied the opportunity of competing with other LDCs for examination for promotion to the post of UDCs.

8. According to the applicants, in the Income-tax department, even other Group 'C' employees such as Notice Server, Drafterbands and Drivers who are non ministerial staff are allowed to appear in the departmental exams for LDCs. It is further submitted that as per rules 3,4 and 5a, Schedule-A of Departmental canteens the non ministerial and ministerial staff have been placed in the same payscale which has resulted in the present injustice to the applicants. The clerks of the

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canteen are matriculates as per Rule 5(2) Schedule-B of the Departmental canteen rules. Thus educationally they are on par with the LDCs. They are performing duties identical to those of the LDCs. According to the applicants the ministerial staff of the canteen satisfy all the conditions as laid down in para-5.2 of manual of office procedure. According to the Recruitment Rules, there is no para regarding pay of LDC for appearing in UDC examination, it only provides that LDCs can become UDCs. The applicant's have also contented that paying lesser emoluments to Assistant Manager cannot be used as a ground to deny the applicants their dues.

9. The learned counsel for the applicants submits that the Fifth Pay Commission has finally put the canteen clerks on par with the LDCs by granting them the same scale as that of LDCs. Therefore the matter now is confined to only grant of the payscale of Rs.950-1500 w.e.f. 1/1/86 till 31/12/95.

10. The learned counsel for the applicants is relying on the judgement of the Supreme Court in MMR Khan V/s. Union of India as well as on the earlier judgement of the Supreme Court whereby Canteen employees were given the status of Government servants.

11. The respondents have filed their reply. The respondents have taken a preliminary objection that the application is time barred. The Bombay Income-Tax Department Canteen Employees Association is not a recognised Association. The respondents submit that as per the directions of the Tribunal dated 2/6/95 in OA 539/94, the Central Board of Direct Taxes had decided the petition dated 5/1/94 of the Bombay Income-Tax Department Canteen Employees Association by passing a speaking order on 6/2/96. A

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copy of the order was forwarded to the Secretary of the Bombay Income-Tax Department Canteen Employees Association on 23/2/96. The respondents rely upon the judgement of the Hon. Supreme Court referred to for its true interpretation and legal effect thereof as well as the circular dated 29/1/92. According to the respondents, the Apex Court had directed vide their interim order dated 26/9/83 to pay all the employees of non statutory canteens on the same rate and on the same basis on which employees of statutory canteens were paid. Accordingly clerks in the non statutory canteens were given the payscale of Rs.220-335, prevalent then for the clerks of statutory canteens (later on revised to Rs.825-1200 by the IVth Pay Commission). The respondents submit that if the applicants otherwise fulfill specified qualifications and condition they can very well appear in the examination or interview for recruitment to the post advertised by any of the Government departments/offices, but as departmental candidates they cannot seek a promotion on the basis of the departmental examination for the post of UDCs as they are not in the payscale of LDCs. The payscale of the canteen clerks in the statutory canteens is Rs.825-1200. It is not equal to the payscale of ^Apay of LDCs of the Income-tax department. Therefore, the post of the canteen employees cannot be compared with the post of LDC. Further, the respondents also contend that the Recruitment Rules and cadres available in the Railways are entirely different than those available in the Income-tax department and just because in the Railways, the canteen clerks were given the same payscale as that of the LDCs, it cannot be made applicable in the Income-tax department. Further, the duties of ...8.

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LDC in a department are entirely different than the duties of canteen clerks. They are not identical. The respondents have produced extract of para 14.3.1 of Chapter-3 of Office Procedure showing the duties of LDCs in the Department. The respondents have also submitted a copy of the latest orders of the CBDT dated 24/7/2000 regarding eligibility of Canteen employees to appear in the departmental examination. It has been decided that canteen employees cannot be permitted to appear in the departmental examination for promotion to various grades and the earlier circular letter dated 11/193 has been withdrawn. The reason given is that since departmental examination for promotion in the income-tax department which are limited to the feeder grades do not fall in the category of examination for Direct Recruits envisaged by DOP&T.

12. In view of this position, the respondents hold that the applicants are not entitled to the payscale of Rs.950-1500 as given to the LDCs and consequently they are not entitled to appear in the departmental examination for promotion to the post of UDCs.

13. We have heard the learned counsel for both the sides and have given our careful consideration to the arguments advanced.

14. The applicant's main grievance is that they have been placed in a lower scale than that of LDCs although by the OM dated 29/1/92, the employees of the canteen are entitled to all the benefits as available to other central government employees of comparable status w.e.f. 1/10/91. All the employees of the canteen are to be paid at the same rate and on par with Central Government employees of equal status. The revised payscales were

made applicable to canteen employees from 1/1/86. We therrefore find it necessary to refer to the OM dated 29/1/92. All that the OM provides for is that these canteen employees be extended all benefits as are available to other Central Government Employees of comparable status. It is to be noted that all the canteen employees who were absorbed as Government servants were granted the payscale of Rs.825-1200 and thereforre the applicants also were treated on par with the employees of the statutory canteens. It is not that the employees of the statutory canteens had been granted the higher payscale of Rs.950-1500. The OM has not specifically provided that the canteen employees should be placed in the same payscale as that of the LDCs or should be granted the payscale of the LDCs. The Railways have implemented the Supreme Court judgement in the case of MMR Khan supra. They have taken an independent decision to give the payscale of LDC to the canteen employees but all the other Ministries, Departments of Government of India have uniformly granted the payscale of Rs.825-1200 to the canteen employees. Since the applicants belong to Income-tax department, in our considered view they cannot compare themselves with the employees in the Railways. It is not that the scale of Rs.825-1200 is given only to the canteen employees in Income-tax department. This is a scale given to all canteen employees in the various departments/Ministries of the Government of India. The applicant's have also contented that their duties are identical to those of the LDCs. They are also matriculates and therefore they should have been placed in the payscale of LDCs w.e.f. 1/1/86.

15. The respondents have pointed out that the applicants have approached this Tribunal belatedly as far as payscale is concerned. The cause of action arose in 1992 with the issue of Memorandum dated 29/1/1992. The applicants were placed in the scale of Rs.825-1200. They have not agitated the payscale given to them before this Tribunal immediately. However, in view of the judgement of the Supreme Court in the case of M.R.Gupta V/s. Union of India AI 1996 SC 669 since this is a matter regarding pay, it is a continuous cause of action and therefore limitation cannot apply except for limiting the arrears. However, it is not for this Tribunal to interfere in matters of payscales. It has been held by Supreme Court clearly in the case of Union of India & Another V/s. P.V.Hariharan, 1997 SCC L&S 838 that it is the function of the Government to fix the payscales which normally acts on the recommendations of the Pay Commission. Change of payscale for each category has a cascading effect. Unless a clear case of hostile discrimination is made out, there would be no need to interfere with the fixation of the payscales. The Full Bench of this Tribunal also has held in matter of payscales of Liftman, Tailors of MES, that it would not be proper for the Tribunal to interfere in the matter of fixation of payscale. Accordingly, we are of the considered view that it would not be appropriate for this Tribunal to make any pronouncement in regard to the applicability of a higher payscale to the applicants in this case. We therefore cannot grant any relief in this respect. The OA therefore fails.

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applicants are not entitled to appear in the departmental examination to be held for promotion to the post of UDC. They can no doubt appear for direct appointment whenever the posts are advertised if they are otherwise eligible and qualified. Since the letter dated 11/1/93 has already been superseded by the letter of 24/7/2000, there is no question of striking it down. This prayer has become infructuous.

17. In view of the discussion and the reasons recorded above, the OA is dismissed. Interim Relief granted is also vacated. No order as to costs.

Shanta
(SMT. SHANTA SHASTRY)
MEMBER(A)

S.L. Jain
(S.L. JAIN)
MEMBER(J)