

2nd set

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO.358/99,
2. ORIGINAL APPLICATION NO.482/99,
3. ORIGINAL APPLICATION NO.553/99,
4. ORIGINAL APPLICATION NO.645/99,
5. ORIGINAL APPLICATION NO.706/99,
6. ORIGINAL APPLICATION NO.865/99,
7. ORIGINAL APPLICATION NO.969/99.

, this the 30th day of March, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

1. C.A.R.Subramaniam,
Dewan's Paradise Co-op. Hsg. Soc.,,
Dewanman, Naryngnagar,
Vasai Road (West),
Dist. Thane,
Pin - 401 202.Applicant
(in OA 358/99)
2. Dattatraya Ramchandra Misal,
At G-78, Ganadhiraj Society,
Mithagar Road, Mulund (E),
Mumbai - 400 081.Applicant
(in OA 482/99)
3. Dnyaneshwar Sadashiv Kulkarni,
At 21, Girija Co-Op. Housing
Society, Kothrud,
Pune - 411 029.Applicant
(in OA 553/99)
4. Baburao Kashinath Wagh,
7390, Iwale Galli,
Maliwada,
Ahmednagar - 414 001.
and
D.K.Kawane,
C/o. Girnar Enterprises,
Rahuri Sahakari Sakhar Karkhane,
Post : Shrishivajinagar,
Tal : Rahuri,
Dist : Ahmednagar,
Pin : 41413 706.Applicants
(in OA 645/99)
5. V.N.Dorle,
Pandram 3/1,
Savarkar Nagar,
Gangapur Road,
Pune - 411 005.Applicant
(in OA 706/99)
6. Prabhakar Gopal Edalbadkar,
At : A-12, New Vinay Co-op.
Hsg. Society, Manipada,
CST Road, Kalina,
Santacruz (E),
Bombay - 400 098.Applicant
(in OA 865/99)

7. Edwin Benjamin,
At : 53, Bhagwandas Bldg.,
Bhawani Peth,
Pune - 411 042.

....Applicant
(in OA 969/99)

(By Advocate Mr.S.P.Saxena)

Vs.

1. Union of India through
the Secretary,
Ministry of Defence,
DHQ, PO,
New Delhi - 110 011.

2. The Engineer-in-Chief,
Army Headquarters,
DHQ, P.O.
New Delhi - 110 011.

3. The Chief Engineer,
Southern Command,
Pune - 411 001.

...Respondents in
all the seven OAs.

4. The Chief Engineer,
West Zone,
Assaye Building,
Colaba,
Bombay - 400 005.

...Respondent in
OAs 358 & 482/99

5. The Garrison Engineer,
Ahmednagar.

...Respondent in
(OA NO.645/99)

6. The Chief Engineer,
Garrison Engineer (V),
Deolali.

...Respondent in
(OA NO.706/99)

7. The Commander
C.W.E. (Project),
Colaba,
Bombay - 400 005.

...Respondent in
(OA NO.865/99)

(By Advocate Mr.R.K.Shetty)

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

All these cases are filed by the respective applicants for certain reliefs. Respondents have filed reply opposing all the applications. We have heard Mr.S.P.Saxena, the

learned counsel for the applicants and Mr.R.K.Shetty, the learned counsel for the respondents.

2. The applicants' case is as follows :

1. In O.A. No.358/99, the applicant retired from service on 1.8.1975 as UDC from the MES. His case is that he should have been re-classified and treated as UDC w.e.f. 1.1.1947 on the basis of the First Pay Commission Report. If he is treated as UDC from 1.1.1947, he is entitled to fixation of higher pay and subsequent pay raised from time to time and also entitled to promotions. But, he was illegally ^{not} re-classified as UDC from 1.1.1947 and onwards. Then, there is reference to some earlier litigation, the matter went up to the Supreme Court and relief was granted to other employees who are similarly placed like the applicants. Therefore, the applicant wants a direction to respondents to re-classify him as UDC w.e.f. 1.1.1947 and re-fix his pay and grant increments from time to time, he should be granted further promotion to which he is entitled to on the basis of being treated as UDC on 1.1.1947 and all other consequential benefits including arrears of pay, fixation of higher pensionary benefits etc.

2. In O.A. No.482/99, the applicant retired from

MES service as Office Superintendent on 31.1.1981. His case also is similar like the applicant in the above case and he wants the same reliefs.

3. In O.A. No.553/99, the applicant retired from MES service as Administrative Officer on 30.9.1979. All allegations and prayers are the same as in the first case.

4. In O.A. No.645/99, there are two applicants viz.

1) Baburao Kashinath Wagh and 2) D.K.Kawane. Both the applicants

were working in the MES. The first applicant Baburao Kashinath Wagh retired from service on 4.1.1971 as UDC (vide applicant's representation at page 22 of the paper book) and the second applicant D.K.Kawane, retired from service on 31.1.1978 as Office Superintendent in MES. All other allegations and prayers in the OA are same as in the first case.

5. In O.A. No.706/99, the applicant retired from service on 1.7.1974 as UDC in MES. All allegations and prayers in the OA are same as in the first OA.

6. In O.A. No.865/99, the applicant retired from service as Officer Gr.II on 31.1.1982 in MES. All allegations and prayers in the OA are same as in the first case.

7. In O.A. No.969/99, the applicant retired as UDC on 31.8.1980 from MES. All other allegations and prayers are same as in the first case.

3. Respondents have filed their separate written statements in all these cases and they are not disputing the dates of appointments of applicants, their dates of supernnuation and about them not being treating as UDC w.e.f. 1.1.1947. They have also taken the plea of want of jurisdiction and also pleaded bar of limitation.

4. We are not mentioning the details of pleadings, since the point is covered by a direct decision of the Supreme Court. Some employees, like the applicants, had filed a writ petition in the Madras High Court which came to be allowed by the Madras High Court. Then, the government of India took the matter in appeal before the Supreme Court in Civil Appeal No.4201/85, where the Supreme Court allowed the appeal partly by restricting the arrears to only 60% and not the full amount granted by the

Madras High Court. It is also an admitted fact that the Bombay High Court had also granted similar reliefs to other employees similarly situated like the applicants. Therefore, there cannot be any legal objection to the applicants' claim that they should be treated as UDC w.e.f. 1.1.1947 and are entitled to consequential benefits like higher fixation of pay, higher promotions from time to time, fixation of higher pension etc.

5. But, now, the strong point urged by the learned counsel for the respondents is that the claim for arrears is barred by limitation. The learned counsel for the applicants contended that arrears are granted in many cases and he even referred to the Judgment of the Supreme Court in Civil Appeal No.4201/85, where by order dt. 4.11.1987, the Supreme Court restricted the arrears to only 60%. He, therefore, argued that the application may be allowed by restricting the arrears by 60% as held by the Supreme Court or to at least 50% as held by this Tribunal in some cases.

6. To day, we have passed a considered order in Review Petition No. 45/99 and connected cases holding that, in cases of this type arrears cannot be granted beyond three years prior to the date of filing the application. We have referred to Section 21 of the Administrative Tribunals Act where there is a specific bar of limitation in filing applications in the Tribunals. Though fixation of pay or fixation of pension may be a continuing cause of action, certainly limitation comes in the way while granting arrears. From a perusal of the pleadings, we have seen how these applicants retired long back about 15 to 20 years prior to the date of filing of the application. How can they now claim arrears right from 1947 which will take us ^{to} about 53 years back

from the date of filing of the application. There will be a drain on the State exchequer if such reliefs are granted. Therefore, by giving detailed reasons in the order passed to day in the Review Petition No.45/99 we have allowed arrears of monetary benefits only for a period of three years prior to the date of filing of the applications. The Review Petitions were argued by the same counsels and on the same date and therefore we are not repeating the reasons given by us in those Review Petitions and by adopting the same reasoning, we hold that applicants are entitled to only arrears of monetary benefits for a period of three years prior to the date of filing the respective applications, but however, they are entitled to refixation of pay, promotion etc. from 1.1.1947.

7. The dates of filing of these seven cases in this Tribunal, dates of retirement and dates of actual arrears to be granted as follows:

<u>O.A. No.</u>	<u>Date of filing</u>	<u>Date of Retirement</u>	<u>Actual arrears granted from</u>
1. 358/99	05.04.99	01.08.75	05.04.1996
2. 482/99	26.04.99	31.01.81	26.04.1996
3. 553/99	08.06.99	30.09.79	08.06.1996
4. 645/99	29.06.99 (A-1)	04.01.71	29.06.1996
	(A-2)	31.01.78	29.06.1996
5. 706/99	09.08.99	01.07.74	09.08.1996
6. 865/99	15.09.99	31.01.82	15.09.1996
7. 969/99	11.10.99	31.08.80	11.10.1996

(At Sl.No.4 OA 645/99 A-1 and A-2 should be read as Applicant No.1 and Applicant No.2)

8. In the result, all the seven Original Applications are allowed as follows :

(1) The respondents are directed to treat the applicants as UDCs w.e.f. 1.1.1947 and re-fix their pay as UDCs as on 1.1.1947 and again

notionally grant increments from time to time.

- (2) The Respondents shall also consider the case of applicants for higher promotions on the basis of they being UDCs from 1.1.1947 and give notional promotions from the dates they became due for promotions.
- (3) The respondents shall also on the basis of the above exercise fix the pension of the applicants on the date of their respective retirements which we have mentioned above in para seven.
- (4) After doing the above exercise, the applicants ^{be} granted actual monetary benefits in the form ^{of} arrears only for a period of three years prior to the date of filing of the respective OAs as mentioned in para 7 above.
- (5) The applicants are also entitled to arrears of monetary benefits from the date of filing of applications till to day and are entitled to future pension till their life-time.
- (6) In the circumstances of the case, there will be no order as to costs.

(D.S.BAWEJA)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.