

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 393/2000

Date of Decision : 14th March 2001

Smt.K.R.Adhav _____ Applicant.

Shri S.P.Saxena _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents.

Shri R.K.Shetty _____ Advocate for the
Respondents.

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastry, Member (A)

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other ~~or~~ Benches of the Tribunal ?
- (iii) Library yes

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

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.393/2000

Dated this the 14th day of March 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

Smt.Kamabai Ratnakar Adhav,
W/o late Mr.R.D.Adhav,
R/at Ferguson Gate Maliwada,
Dr.Gaikwad's Quarter,
Ahmednagar.

...Applicant

By Advocate Shri S.P.Saxena

V/S.

1. Union of India
through the Secretary,
Ministry of Defence,
DHQ, P.O., New Delhi.

2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House DHQ, P.O.
New Delhi.

3. The Chief Engineer,
Southern Command,
Pune.

4. The Garrison Engineer,
Office of G.E.,
Ahmednagar.

...Respondents

By Advocate Shri R.K.Shetty

..2/-

S.L.Jain

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for directions to the respondents to extend the benefits of reclassification to the deceased Shri R.D.Adhav, U.D.C. in refixation of pay from 1.1.1947, to fix his pay, grant the annual increments from time to time, to calculate the difference on arrears of pay arising out of the above refixation in U.D.C. scale grade from 1.1.1947, pay the same to the applicant, to review the case of the deceased employee for further promotion from Upper Division Clerk to the Office Superintendent, to fix the pay in the said grade, to recalculate all the pensionary benefits, to pay the difference of arrears of retirement benefits, to recalculate the family pension and pay the arrears along with 18% interest thereon.

2. The applicant's husband Shri R.D.Adhav was an employee of Respondent No.4, who retired on 18.5.1968 and expired on 10.3.1980, was initially appointed on 1.11.1941 as LDC at G.E. Ahmednagar, was promoted to the post of U.D.C. on 21.5.1962.

3. There were only two grades of Clerks, (i) Lower Division Clerk and (ii) Upper Division Clerk. The Government of India vide Finance Ministry's Memorandum No.F.44 (12)-W/44 dated 19.8.1944 had reclassified the two grades of Clerks in three

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grades 'A', 'B' and 'C'. The applicant was 'B' grade Clerk since 1944. In view of the acceptance of the First Pay Commission's recommendations which came into force w.e.f. 1.1.1947, the three grades, i.e. 'A', 'B' and 'C' were abolished and two grades Lower Division Clerk and Upper Division Clerk were brought into existence. The deceased employee R.D.Adhav who was a 'B' grade Clerk working in the MES was to be classified as Upper Division Clerk, w.e.f. 1.1.1947 and entitled to be placed in the scale of Rs.80-220. The respondents failed to do so. The representation of the deceased employee was in vain. Vide letter dated 27.5.1981, the respondents accepted to equate the post of 'B' Grade Clerks to the post of Upper Division Clerk w.e.f. 1.1.1947, which was in view of the judgement of the Hon'ble High Court of Bombay in Writ Petition No. 890/79 delivered on 23.7.1979. Thus, the deceased employee was entitled for being graded as Upper Division Clerk with all consequential benefits like fixation of pay in the U.D.C. grade, revised pay scale w.e.f. 1.1.1947, Arrears and payment thereof, review of his next promotion due to antidating of his date of promotion of becoming Upper Division Clerk, recalculation of his pension and family pension. The respondents did not suo-moto revised the deceased employee's pay, promotion and retiral benefits.

4. The President of India vide letter dated 17.5.1981 equated the erstwhile 'B' grade Clerks to the scale of Upper Division Clerk w.e.f. 1.1.1947 and directed refixation of pay etc. after giving the benefits of annual increments with

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retorspective effect. But the respondents did not comply with the same. Some employees filed Writ Petition No. 5853/82 before Hon'ble Madras High Court which was allowed and an appeal to the Apex Court challenging the said order (Civil Appeal No.4201/85) was heard by the Apex Court, directed Union of India to pay 60% amount out of the petitioner's dues and the 40% liability reduced. Similarly placed clerical employees of M.E.S. filed OA.No.501/93 before CAT, Calcutta Bench for the same relief was allowed by order dated 3.1.1994. The President of India thereafter approved the payment of the various reliefs of the erstwhile 'B' Grade Clerks of the M.E.S. for their reclassification as Upper Division Clerk w.e.f. 1.1.1947 and for all the consequential benefits vide letter dated 8.6.1994. Another OA.No.1037/92 filed before CAT, Bombay Bench was allowed. Hence, this OA.

5. The respondents have not disputed the facts stated by the applicant. Hence, we are not dealing them in every detail in this respect.

6. The learned counsel for the applicant relied on the precedents referred above and the orders passed by the President of India, Civil Appeal No. 7453/97 arising from an order passed by CAT, Principal Bench, Delhi, and review arising out of OA.NO.960/90. A perusal of the same makes it clear that the Tribunal has rightly dis-allowed the arrears of pay and allowances w.e.f. 1.1.1947. The learned counsel for the

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applicant further relied on an order passed on 30.3.2000 by this Bench in OA.NOs.358/99, 482/99, 553/99, 645/99, 706/99, 865/99 and 969/99, wherein monetary benefits in the form of arrears only for a period of three years prior to the date of filing of the OAs. were allowed. On perusal of the said OAs., we find that the employees have filed these OAs. and not the legal heirs thereof. The present case is filed by the widow of the deceased employee Shri R.D.Adhav. As stated above, his death took place on 10.3.1980 hence, the right of the present applicant is limited only to family pension which is dependent on the fixation of the pension. Hence, we are unable to grant the relief as was granted in group of OAs. by CAT, Mumbai Bench on 30.3.2000, i.e. to say actual monetary benefits in the form of arrears only for a period of 3 years prior to the date of filing of the respective OAs.

7. In view of Section 21 of the Limitation Act, the applicant has to agitate his/her grievance before the Tribunal within one year after passing of the orders by the respondents or after six months when the matter is represented and there is an inaction on the part of the respondents. On perusal of the pleadings, we are unable to find that there was any representation by the applicant to the respondents. Hence, the applicant is only entitled to monetary reliefs for a period of one year ^{prior to} ~~up to~~ the date of filing of the OA. which was filed on 29.5.2000.

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8. In the result, we allow the OA. partly and direct the respondents :-

(i) to treat the deceased R.D.Adhav as Upper Division Clerk w.e.f. 1.1.1947, refix his pay as Upper Division Clerk as on 1.1.1947 and notionally grant increments from time to time.

(ii) Consider the case of the applicant's ^{husband} for higher promotion on the basis of his being Upper Division Clerk from 1.1.1947 and give notional promotion from the dates he becomes due for promotion.

(iii) On the basis of above exercise, fix the pension of the deceased R.D.Adhav on the date of his retirement, i.e. 18.5.1968, revise the same from time to time till his death, i.e. 10.3.1980.

(iv) On the basis of the said pension, the family pension of the applicant be revised from time to time as per Rules and fix it on 29.5.1999.

(v) The applicant be granted actual monetary benefits in the form of difference of family pension for a period of one year prior to the date of filing of the present OA., i.e. 29.5.2000

(vi) The applicant is entitled to future family pension during her life time as fixed in view of the directions mentioned above.

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(vii) The said exercise be concluded within a period of not later than six months.

(viii) No order as to costs.

Shanta S
(SMT.SHANTA SHAstry)
MEMBER (A)

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

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