CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.871/2000 & 693/2002

THIS, THE 20TH DAY OF JUNE, 2003

CORAM: HON'BLE MR. JASBIR S. DHALIWAL MEMBER (J)
HON'BLE MR. S.K. MALHOTRA. MEMBER (A)

OA 871/2000

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OA 693/2002

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3. J. Rajasekaran,
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Mumbai-400 037. .. Applicants

By Advocate Shri R.C. Kotiyankar.

Vrsus

1. Union of India,
(Through Seecretary to Govt.
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2. Secretary to Govt. of India,
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Govrnment of India,
Nirman Bhavan,
New Delhi-110 001.

3. Director General of Supplies & Disposals,
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4. Director,
Directorate of Quality Assurance,
Department of Supply, Govt. of India,
Aayakar Bhavan (Annexe)
New Maarine Lines,
Mumbai-400 020. .. Respondents

By Advocate Shri R.R. Shetty

O R D E R
Hon'ble Shri Jasbir S. Dhaliwal Member (J)

We are disposing of these two cases by a common judgment as identical question of facts and law have been raised.

2. We are making reference to the facts of Shri A. Satheesan & Others in OA 871/2000 and have heard the learned counsel for parties.

3. The applicant joined service in Directorate General of Supplies & Disposal (DGS&D for short), Department of Supply as Examiner of Stores (Textile Engineering) in the scale of Rs.425-700 during the period 1970-82. Afterwards they were further promoted in the scale of Rs. 650-1200. Be that, under recommendations of Third Central Pay Commission for Central Government employees, the post of Senior Draftsman and Examiner of Stores in the Inspection Wing of DGS&D was identical i.e. Rs.425-700. However, a case was filed before the Calcutta Bench of CAT bearing OA No.458/86 (Sunil Kr. Bhowmik & Ors Vs. UOI) which was decided by judgment dated 03.7.1987. In compliance with the directions given in this judgment, the post of Senior Draftsman was granted the scale of Rs.550-750 with effect from 13.5.1982 vide order at Exhibit A-4 dated 01.02.1988. The scale of pay of Examiner of Stores was however, not revised. They plead that, in the post of Examiner of Stores was a higher post being promotional and post of Senior Draftsman was in the feeder category for promotion to it. All the applicants submitted their representation to allow them pay scale on par with Senior Draftsman, but the same was rejected by Respondent No.3 vide letter dated 19.7.1989, Exhibit A-6. Another OA No.757/90 was filed by similarly placed persons before the Calcutta Bench of CAT for parity in pay scale to these two posts. The Calcutta Bench vide

its judgment dated 09.12.1996 have allowed the case with a direction to the respondents to grant the pay scale of Rs.550-750 with effect from 13.5.1982 to 31.12.1985 and pay scale of Rs.1600-2660 with effect from 01.01.1986 notionally from 13.5.1982 and actual benefit from 01.11.1983 to the Examiner of Stores.

4. Union of India filed Review Application against that judgment, which was dismissed by an order at Exhibit A-II dated 25.01.2000. They plead that despite the law laid down, the judgment of Calcutta Bench of CAT, in OA 757/90 is applicable to all similarly placed Examiners of Stores in the Inspection Wing of DGS&D, the respondents did not extend the benefit to them. Government has already implemented the Calcutta Bench order dated 19.12.1996 in respect of 32 Examiner of Stores. Applicants again submitted their representation for extension of benefits of this judgment on the ground that they are similarly placed like the applicants in OA 757/90 before Calcutta Bench. They plead, non-grant of scale of pay to them is violative of Article 14 and 16 of the Constitution. Duties performed by them are same and similar as being performed by their counter parts in Calcuta office. They thus prayed for declaration / order to the effect that judgment dated 09.12.1996 of CAT Calcutta Bench is judgment in rem and the applicants are entitled to pay of Rs.550-750 for the period from

13.5.1982 to 31.12.1985 and thereafter as revised, as mentioned in para of 8 of the OA. They thus prayed for grant of actual benefit on the basis of such grant of scale of pay and interest at the rate of 18% per annum from the date of due till the date of actual payment.

5. Respondents have filed a detailed written statement contesting the claim of the applicant. They plead that the prayer made in the present case are actually barred under the law of limitation and also in contravention of judgment rendered by Hon'ble Supreme Court and Mumbai Bench of CAT, which has been mentioned in para 2 of the written statement. It is submitted that the judgment of CAT, Calcuta Bench be ignored as it is erroneous and contrary to the well settled law by the Supreme Court. If these applications are allowed, it would spell financial disasters to the department and create chaos in the service relationships in various department of the Central Government. The Expert Body like Central Pay Commission worked out the scale of pay both vertically and horizontally built after a number of years of work. They further plead that the OA is also barred by principles of resjudicata as after 13.5.1982 the recommendations of 4th and 5th Pay Commissions have come and have been enforced. The pay scale of Examiner of Stores was revised from Rs.425-700 to Rs.1400-2300. Judgment of Calcutta Bench has been fully implemented

and even the present applicants have been given the revised pay scale with effect from 01.01.1986 in terms of the said judgment. Reference has been made to para 61.19 of the Report of 5th Central Pay Commission wherein the category of Examiner of Stores in the respondent department was specifically examined. It was recorded in that this post is predominantly filled by direct recruitment of candidates possessing a diploma in Engineering and only a limited number of posts are filled by promotion of Junior and Senior Draftsman and that there are justification for any revision of pay scale for the feeder posts. The pay scale of Rs.1600-2660 was recommended as ultimately given to the applicants with effect from 01.01.1986. They prayed for dismissal of the case. No replication has been filed.

6. We have heard Shri R.C. Kotiyankar for applicants and Shri R.R. Shetty for respondents and examined the materials on the files.

7. Even though the case has been argued at length by both the learned counsel, on close and critical examination of the legal issue raised in this case, we find that applicants are trying to re-open the question of scale of pay, which was granted to the category of applicants as long back as more than 20 years and on the recommendations of 3rd Pay Commission. Even though there is a judgment by Calcutta Bench of CAT wherein

some benefits have been given to 32 Examiner of Stores for the category to which the present applicants belong, but the court is to be guided by law, including that of limitation and then the mandate of law laid down by Hon'ble Supreme Court again and again. It has been repeatedly held in more than a score of judgments that firstly the Tribunals and courts are not to assess the nature of duties, responsibilities, liabilities etc., etc., of particular set of employees to work out the entitlement of scale of pay. Secondly, decision regarding scale of pay fall squarely within the domain and jurisdiction of the Government and Pay Commissions. Thirdly the pay scales have been settled long back with effect from, possibly, from 01.01.1973. To re-open it in the year 2003 by this Bench, it would not be either advisable or proper, it would not even be legal. It is true that one point of time anomaly had arisen before 01.01.1986. Under a judgment of court of law, in favour of the applicants in the OA for the post of Senior Draftsman was granted scale of Rs.550-750 even though the higher post of Examiner of Stores was Rs.425-700. Pay Commission itself had rectified the mistake, which was not as a result of 3rd Pay Commision's recommendations, but because of mandate of the judgment in favour of few applicants. Disparity in the scale of pay of Senior Draftsman and the Examiner of Stores was restored with effect from 01.01.1986 by grant of scale of Rs. 1400-2300 which has further been rectified to

Rs.1600-2660. In our opinion, to re-open the entire issue again would be an attempt on opening Pandora Box which would have large cascading effect in the respondent department, even in other departments also.

7. We are relying on the following judgments in support of our view mentioned above. Since there are judgment by Hon'ble Supreme Court, we need not follow the judgment given by Calcutta Bench because of effect of Article 141 of the Constitution of India. The cases of the judgment of the Supreme Court are being given as follows:' (1) State of U.P. & another Vs. J.P. Chourasia & Others AIR 1989 SC 1918, (2) State of M.P. Vs. Pramod Bhartia AIR 1993 SC 382, in which more than eight judgments were considered. In the case of UOI Vs. Parasuramji Bombhate 1991 (SCC) 9, it has been held that once there is a policy decision on the basis of involvement of financial burden, no court or Tribunal should direct the Government to change it. It is entirely for the Government to examine the issue in these aspects. (3) Secretary, Finance Department & Ors. Vs.s W.B. Registration Service Association & Ors AIR 1992 SC 1203. In the case of UOI & Ors Vs. P.V. Hariharan JT 1997 (3) SC 856. This is also a case regarding claim to pay scale on the basis of equal pay for equal work. But Government had already fixed some scale on the recommendations of Pay Commission. The Hon'ble Apex Court held that Government would prescribe

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the pay scale for each post. This is also done on the basis of recommendations of Pay Commission or similar Expert Body. It was held, Tribunals shall not fix pay scale for particular category, which is not its function, it is the function of Govrnment. Several categories similarly situated above and below have put their claim on the basis of such change as ordered by court of law. They also put their claims before the Pay Commission. It held that "Tribunals should realise interference with the prescribed pay scale is a serious matter, the Pay Commission to go into the problem. Full picture will be placed before it by the appropriate authority to decide the pay fixation. Very often the doctrine of equal pay for equal work is also being misunderstood and misapplied by freely revised and enhancing the pay scale across the bar." Tribunals were thus advised to rectify any such mistake, unless it is of hostile discrimination. Unless hostile discrimination is clearly made out, there would be no justification for interfering in the fixation of pay scale.

8. We cannot lose sight of another legal aspect and that is as to whether a particular judgment lays down a binding precedent decision for all time to come or can be treated as judgment in rem. Rule of law is that the court decides only the case before it on the facts and circumstances brought to its knowledge. To be

a judgment in rem, the legal issue has to be fully considered on facts and then principles of law lay down. If a court takes a decision on the facts put before it, while there is a mandate of Hon'ble Supreme Court prohibiting such consideration and claim for revision of scale of pay, such judgment cannot be treated as binding preceding much less a judgment in rem.

9. We cannot ignore the fact that applicants had claimed such revision of pay and their representation was rejected almost 14 years back some where in the year 1989. They accepted it. Sometimes there are judgments benefit of which can be taken by similarly placed persons, it cannot be applied as a universal rule. We have also taken into consideration that the grievance of applicants for parity of pay with Senior Draftsman, has been accepted and parity has been granted from the year 1986. The claim for limited period of actual benefit for the period from 13.5.1982 to 31.12.1985 would be clearly barred by law of limitation, as counted from the date of cause of action arisen and as counted from the date of rejection of their representation in 1989. It is settled law that momentary claims once made by such persons must fall within the period of limitation. Hon'ble Supreme Court has so held in a number of judgments including one in the case of M.R. Gupta Vs. UOI 1995 (5) SCC 628.

10. Even though some judgments are cited by learned counsel for applicant laying down applicability of judgment for benefit of same to be extended to similarly placed persons. But considering the facts of this case, as discussed above particularly taking note of the fact that applicants claim with effect from 13.5.1982 to 31.12.1985, we do not find it to be a fit case to allow by following the judgment in the case of some other persons. It has been held by Hon'ble Supreme Court in that, Article 14 has not been violated in the case of persons falling in two categories (1) those who had come to the court of law within a reasonable time or within the period of limitation and (2) those who remained sitting on the fence and came only after decision. The judgment in the case of Bhoopsingh Vs. UOI JT 1992 SC (3) 322, Ratanchandra Samanta Vs. UOI 1994 SCC (L&S) 182 and the judgment in the case of Jacob Abraham & Ors. Vs. UOI 1994 (28) ATC (FB) 175 on this aspect of the law. It has further been held that delay and laches is sufficient to deny the remedy even if the litigant is found entitled to. Grant of similar benefit to other persons earlier by court does not give a fresh cause of action nor does it extend period of limitation. Same view was taken in Ex. Capt. Harish Vs. UOI & Ors. JT 1994 (3) SC 126.

11. For the reasons discussed above, both the cases are dismissed.

(S.K. MALHOTRA)
MEMBER (A)

(JASBIR S. DHALIWAL)
MEMBER (J)

Gajan