

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 380/90

Transfer Application No. ----

Date of decision 22-6-1993

A.D.Kshirsagar and 10 Ors. Petitioner

Mr.M.S.Ramamurthy

Advocate for the Petitioner

Versus

U.O.I. & one another

Respondent

Mr.Sureshkumar

Advocate for the Respondent(s)

Coram :

The Hon'ble Ms. Usha Savara, Member(A)

The Hon'ble Shri V.D.Deshmukh, Member(J)

1. Whether the Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No -

Usha Savara
(Usha Savara)
Member(A) 22.6.93

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.380/90

A.D.Kshirsagar and
10 Ors. .. Applicants

-versus-

1. Union of India
through
The Secretary,
Ministry of Water
Resources, Govt. of India,
New Delhi - 110 001.

2. Director,
Central Water and Power
Research Station,
Khadakwasla,
Pune - 410 024. .. Respondents

Coram: Hon'ble Ms.Usha Savara,
Member(A)

Hon'ble Shri V.D.Deshmukh,
Member(J)

Appearances:

1. Mr.M.S.Ramamurthy
Advocate for the
Applicants.
2. Mr.Sureshkumar
Counsel for the
Respondents.

JUDGMENT: Date: 22.6.93
(Per Usha Savara, Member(A))

This application has been filed by
Shri A.D.Kshirsagar and ten others employed as
Laboratory Assistants Grade-I in the pay scale
of Rs.1400-2300 in the Central Water & Power
Research Station(C.W.P.R.S. in short) praying
for the following reliefs :

"a) direct the respondents to allot
the scale of Rs.290-500/- to the
applicants for the period from
1-1-1973 to 28-2-1975 and grant
them consequential arrears and
other attendant benefits;

b) direct the respondents to allot the scale of Rs.425-700/- to the applicants for the period from 1.3.1975 till the applicants were promoted to the grade of Laboratory Assistants, Grade I, and grant them consequent benefit of arrears and all other attendant benefits, by also taking into account the revised scales of pay introduced w.e.f. 1-1-1986 based on the recommendations of the fourth pay commission.

c) that the respondents be directed to allot the scale of Rs.550-900/- to the applicants from the dates they were promoted as Laboratory Assistants Gr.I and grant them consequential arrears and other attendant benfits.

d) that the orders contained in the letters dated 24-2-1989 and 27-7-1989 restricting actual benefit of the higher scale of Rs.425-700/- w.e.f. 1-12-1988 be declared arbitrary, unconstitutional and null and void and the Respondents be directed to grant full benefits of the said scale of pay w.e.f. 1-1-1973 onwards."

2. The petitioners were recruited as Observers and were promoted to the cadre of Senior Observers which carried the pay scale of Rs.380-560. There were no promotional avenues for the officers working in the cadre of Senior Observers. On the other hand, persons joining as Computer 'B' in C.W.P.R.S. (which was another grade in Group 'C' non-gazetted staff) on the pay scale of Rs.260-400 had their promotional avenue to the post of Computer 'A' (Rs.330-560) and higher scale of Rs.425-700 as Group 'A' and thereafter

to the post of Research Assistant. In order to rationalise the cadre structure and pay scale, a High Level Review Committee under the Chairmanship of Dr. M.S. Swaminathan was appointed, which gave its report on 10-10-77. The five cadres were regrouped and redesignated as under:

(i) ~~Lab.Asstt.Gr.III~~ merging 260-430 Erstwhile Computer Observer (260-430) and Computer 'B' (260-400)

(ii) Lab.Asstt.Gr.II : 380-560 Erstwhile Senior Observers (380-560) and Computer 'A' (330-560)

(iii) Lab.Asstt.Gr.I : 425-700 Erstwhile Computer 'A' (425-700)

The merger took place w.e.f. 23-12-80 on the basis of the report. As the applicants were working as Senior Observers on the said date, they continued on the same scale Rs.380-560. (Needless to say, the pay scales were revised as per recommendations of the 4th Pay Commission). In due course, the applicants were promoted to Lab.Asstt.Gr.I Rs.425-700 (Revised 1400-2300 from 1-1-86). About this time, O.A.1942/88 was filed by one Shri A.K. Khanna & Others, who had been initially recruited as Senior Computers. The Sr.Computers in Ministry of Irrigation and Power, Central Water Commission and Ganga Basin Water Resources are all governed by the same recruitment rules, and are similarly placed in every respect. Shri A.K. Khanna & Ors. wanted the benefits of judgment in T.335/85, but they were informed that the benefit could not be

extended to persons other than the petitioners in T-335/85. By judgment dated 6-9-88 the Principal Bench of C.A.T. ordered that the order revising the pay scale attached to the post of Senior Computers to Rs.330-560 stood quashed and the applicants were declared as being entitled to the revised pay scale of Rs.425-700.

3. Shri Ramamurthy, learned counsel for the applicants, drew our attention to the judgment cited above, and submitted that the applicants' in the present case were covered by the judgment in A.K.Khanna's case. They were similarly placed and though they were working as Senior Observers from 1-3-75, they should be given the pay scale of Rs.425-700 as Sr. Observers from 23-12-80 instead of the scale of Rs.380-560, as Computer 'A' were merged with Sr. Observers w.e.f. 23-12-80, and were redesignated as Laboratory Assistants Gr.II, and were performing the same duties and bearing the same responsibilities as Computers 'A'. The applicants also demanded allotment of higher pay scale of Rs.550-900 from 1-1-86 (Prayer 'C') but this was not pressed. In the course of arguments the learned counsel volunteered to restrict his claim to the post-merger period i.e. after 23-12-80. It was also submitted by him that as a result of the applicants' representation, the respondents had extended the benefit of pay Rs.425-700 on a notional basis w.e.f. 1-1-73, but on actual basis from 1-12-88 to similarly placed Senior Computers. Only those Senior Computers who were in the scale of Rs.150-380 prior to 1-1-73 and were placed in the scale of Rs.330-560 based on the recommendations of the 3rd Pay Commission were entitled to these benefits. The applicants were in the scale of Rs.260-430 on 1-1-73 and on promotion as "Sr. Observers" were given the pay scale of Rs.380-560. The order dt. 27-7-89 was only applicable to Senior Computers and not to Senior Observers, and hence the prayer to quash it along with letter dt. 24-2-89.

4. Shri Ramamurthy argued that both the Senior Computers and the Sr. Observers perform the same or similar duties and discharge the same or similar responsibilities. That is why Dr. Swaminathan recommended the merger of these two categories into unified category of Laboratory Asstt. Gr. II with a scale of Rs.380-560. The Govt. cannot give the benefit of higher scale of Rs.425-700 only to Computer 'A', who were in it the scale of Rs.330-560, and deny to Senior Observers, who were in the scale of Rs.380-560/- The benefits of the higher scale should have been extended to the applicants w.e.f. 1-3-75 onwards, when they became senior observers. This follows naturally from the judgment in A.K. Khanna's case. Reference was also made to the case of Parmanand Sharma decided by the Cuttack Bench on 23-9-88. The petitioners in that case were Lab. Asstts. in Dhandakanya Development Authority who claimed parity of pay with the Lab. Asstt. working under the Ministries of Railways and Defence. It was argued that the duties performed and the responsibilities discharged by the applicants as observers prior to 1-1-73 are the same or similar to the duties and responsibilities discharged by Lab. Asstts. in Parmanand Sharma's case, but the respondents were given the scale of Rs.260-430/- whereas the Lab. Asstts. in Parmanand Sharma's case were given the scale of Rs.290-500/-

5. Reply has been filed by the respondents, and the rejoinder filed by the applicants was followed by a sur-rejoinder. A preliminary objection has been taken that the application

is hopelessly barred by limitation. The demand ranges back to 1-1-73 or in any event to 23-12-80, while the application has been filed in 1990. The bar of limitation cannot be avoided by making the judgment in A.K.Khanna's case the starting point for limitation. The facts are undisputed. The five cadres/grades in Group 'C' non-gazetted staff were regrouped after the recommendations of the Swaminathan report on 10-10-77 and redesignated as Lab.Assts.Gr.III,II to I. The Computer 'A' cadre (Rs.330-560) was abolished, and merged with the cadre of Senior Observers, and brought on par with them by giving them the pay scale of Rs.380-560/- The distinction under the old cadre/grade between Computer 'A' (Rs.425-700) and Computer 'A' (Rs.330-560) was found to be irrational by the Hon'ble Principal Bench in its judgment dated 6-9-88 in A.K.Khanna's case, and it was held that all those who constituted the erstwhile Computer 'A' cadre (Rs.330-560) ought to be given the same pay scale i.e. Rs.425-700 which had earlier been restricted to six posts of only, though the duties performed by all the Senior Computers, irrespective of the scale, Sr.Computers were one and the same. Shri Suresh Kumar, learned counsel for the respondents submitted that the judgment in the above case does not apply to the members of the Senior Observer cadre but was only restricted to the cadre of Computer 'A'. The Senior Observers had only one scale of pay as recommended by the 3rd Pay Commission, unlike Computer 'A'. The judgment in A.K.Khanna's case resulted in removing the artificial distinction between people performing the same duties, in the same cadre, but having different pay scales. How can

it be made applicable to the facts of the present case, where there are no such artificial distinctions, but all the Senior Computers are on the same pay scale. It was also vehemently denied by the learned counsel that the duties and responsibilities of the senior computers and Sr. Observers are not the same or similar. Were it so, then there was no need to create two distinct cadres *ab initio*, as a single category was sufficient to meet the requirements. In 'Parmanand Sharma's case, the applicant, who was a Lab. Asstt. was brought ~~at par with Asstt. Teachers and given~~ ^{to} the scale of Rs.290-500. The applicants are Observers and not Lab. Asstts. and are working under Auxiliary Technical Services and not under teaching staff. Also, the applicants were working in the pay scale of Rs.225-350 which was being drawn by Shri Parmanand. Therefore, the applicants cannot be given any relief on the basis of this judgment. Further, under the Recruitment Rules, the Senior Observers, now known as Lab. Asstt. Gr. II have a new promotional channel, and can now be promoted to the post of Lab. Asstts. Gr. I, and Research Asstts. thereafter. The applicants on their promotion to Gr. I get the pay scale of Rs.425-700 at par with Computer 'A'. The post of Lab. Asstt. Gr. II is the feeder post for the post of Lab. Asstt. Gr. I so, how can the applicants be given the higher scale of pay which they would be entitled to ~~not~~ get on promotion to Gr. I ?

6. The claim of the applicants for the higher pay scale is primarily based on the fact that the grade of Sr. Observer was merged with the grade of Computer 'A' as recommended by the High Level Committee headed by Dr. Swaminathan. This merger took effect from 23-12-1980 and both the cadres were redesignated as Laboratory Assistants Gr.II. It was strenuously argued that since both the cadres were placed in the same grade, there could not be any justification for giving the Computer 'A' a higher scale, and all persons in the grade of Laboratory Assistants Gr.II were entitled to one uniform scale of pay. It was also contended that giving different pay scale to persons coming from different sources but holding the same post was violative of Articles 14 and 16 of the Constitution of India. In our opinion, initially it has to be seen whether the claims of the applicants are within limitation. The learned counsel for the applicants has made a statement that he restricts the claim to the post merger period, i.e. the period beginning from 23-12-1980. However, it will be necessary to examine whether even such a claim would be within limitation.

7. The respondents have raised preliminary objection on the ground of limitation. The application was also admitted expressly with the reservation that it shall be open for the respondents to challenge and oppose the claim on the ground of limitation. After examining all the circumstances, we find that the cause of action for higher pay scale arose in favour of the applicants from the date of merger, i.e. 23-12-1980. The starting point for the ~~exist~~ limitation would therefore also be

the same. It is impossible to hold that the starting point for limitation would be the date of decision in the case of A.K.Khanna & Ors. vs. Union of India & Ors. (supra) which was decided on 6-9-1988. By this decision simply the relief granted to the petitioners in T.A.No.335/85 B.A.Saini & Anr. vs. Union of India and Ors. was extended to the applicants, namely, A.K.Khanna & Ors. Both these cases dealt with the question of parity of pay scales between the senior Computers, Selection Grade and Senior Computers. The Senior Observers were not concerned in any one of these decisions. In the case of B.S. Saini & Anr. the Principal Bench held that creating two pay scales of Rs.425-700 for certain posts of Senior Computers and the other pay scale of Rs.330-560 for the remaining posts of the Senior Computers were violative of Articles 14 & 16 of the Constitution. It is the contention of the applicants that their duties and functions were similar to Computers 'A' who were, before redesignation, known as Senior Computers and were receiving the pay scale of Rs.425-700. This pay scale was very much in existence on the date of merger, i.e. 23-12-1980 and the applicants ought to have filed appropriate proceedings claiming this pay scale within the prescribed period of limitation. The applicants do not get the cause of action, therefore, by virtue of the decision either in TA No.335/85 decided on 11-4-1986 or OA 1942/88 decided on 6-9-1988. As the cause of action was very much available to them right from the date of merger, i.e.

23-12-1980, it is obvious that the present application which was filed in April, 1990 is barred by limitation.

8. It must be pointed out that in the first place it cannot be said that simply the relief which has been granted to Computers 'A' / Senior Computers in the above said two cases is to be extended to the applicants, and in the second place that even if the relief was to be extended to the applicants, it could be so done only if the application was within limitation.

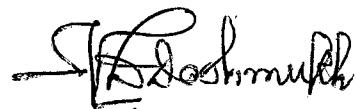
9. As the cause of action has arisen on 23-12-1980, i.e. more than three years before the Administrative Tribunals Act came into force this Tribunal has no jurisdiction to condone the delay. There is nothing to show that any proceedings taken by the applicants was pending before the above said Act came into force or any order was passed between 23-12-1980 and the date of commencement of the Act. The applicants have attached to the application the letter of the Govt. of India dated 24-2-1989 (Ex. 'F') and the Office Order dated 27-7-1989 (Ex. 'G'). However, we find that the said letter and the Officer Order dealt exclusively with the pay scales of the Senior Computers and the applicants cannot take any advantage of these letters so far as the bar of limitation is concerned.

10. In view of the above discussion, we find that the claim of the applicants is barred by limitation and we dismiss the application.

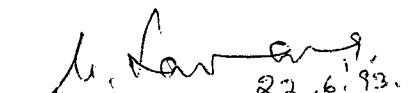
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However, in the circumstances, there
shall be no order as to costs.



(V.D. DESHMUKH)
Member (J)



(Ms. USHA SAVARA)
Member (A)

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