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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. : 1037 of 1992.

~~Transfer Application No.~~

Date of Decision 29.9.95

Shri Krishnai P. Mahajan,

Petitioner/s

Shri S. P. Saxena,

Advocate for
the Petitioner/s

Versus

Union Of India & Others,

Respondent/s

Shri R. K. Shetty,

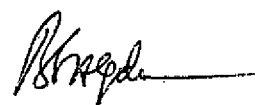
Advocate for
the Respondents

CORAM :

Hon'ble Shri. B. S. Hegde, Member (J).

Hon'ble Shri. M. R. Kolhatkar, Member (A).

- (1) To be referred to the Reporter or not ? x
- (2) Whether it needs to be circulated to
other Benches of the Tribunal ?


(B. S. HEGDE)
MEMBER (J).

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2. The brief facts are - the applicant has joined as a Lower Division Clerk in Military Engineering Services on 21.09.1942. At the relevant time, only two grades were available i.e. Lower Division Clerk and Upper Division Clerk. In 1944, on account of restructuring of the department, three grades were substituted, "A", "B", "C". This classification of "A", "B", "C", grades was done pursuant to the introduction of the unified scales introduced by the then Government Of India vide dated 19.08.1944. Thereafter, "Varadacharyu Pay Commission Report" was duly published and notified by the Respondents. Pursuant to this report, new pay scales were introduced sometime in the year 1947, as a result of which all the three grades were abolished and in the place and stead thereof, 2 grades namely, Upper Division Clerk and Lower Division Clerk were introduced. The recommendations of the Varadacharyu Pay Commission were accepted by the respondents with effect from 01.01.1947. It is an undisputed fact that "A" and "B" grades Clerk were equated with the Clerk of U.D.C., whereas 'C' Grade Clerk was equated to Lower Division Clerk and their pay scales were Rs. 80-220 for the U.D.C. and Rs. 55-130 for the L.D.C. respectively. At the relevant time, the applicant was serving as Grade 'B' in 1947 and his contention is that he should be treated as U.D.C. as on 1947. Though he was entitled to be equated to the post of U.D.C., the respondents wrongly and illegally equated and specified the applicant as L.D.C.; thereby they down graded the applicant and this is contrary to the Pay Commission recommendations. Though he had made various representations and lodged complaint with the Competent Authority to equate the post of U.D.C., only in the

year 1973, i.e. on 01.01.1973, the respondents promoted the petitioner to the post of U.D.C. on regular basis. Earlier, he was appointed on adhoc basis for a period of 6 months.

3. The applicant retired from service with effect from 31.03.1980 on superannuation. After the applicant ceased to be in the respondents' service, the respondents equated the applicant to the post of Clerk, U.D.C., on a deemed basis with effect from 01.01.1947. The grievance of the applicant is that, after having accepted the applicant's contention that he was entitled to be appointed to the post of Upper Division Clerk with effect from 01.01.1947, the respondents had no right whatsoever to withhold emoluments payable to the applicant on the basis of the scale applicable to the said post i.e. Upper Division Clerk. At the time of his retirement, the applicant was drawing a sum of Rs. 476/-. However, if the applicant would have been given the scale of the Upper Division Clerk with effect from 01.01.1947, the applicant would have been drawing a sum of Rs. 560/- per month at the time of his retirement. The respondents vide their letter dated 27.05.1981 at annexure -C stated as follows :

B.R.

"Consequent on the judgement of the Bombay High Court in the case of certain employees of the Office of Textile Commission, Bombay, the question of classification of erstwhile 'B' Grade Clerks of the Military Engineering Services and of CME and Engineer Group and Centres as Upper Division Clerks has been under consideration for sometime past. The President is now pleased to decide that such of the erstwhile 'B' Grade Clerks as could not be classified as Upper Division Clerks with effect from 1st January, 1947 shall be placed in Upper Division Clerks Grade from the same date and their pay refixed in that grade after giving benefits of increments for the past period. This will, however, be done on notional basis only and the financial benefit will be admissible from the date of issue of these orders."

4. In this connection it is relevant to recall the order of the High Court in Writ Petition No. 890 of 1979 filed by Smt. Nalini D. Pingle & Others V/s. Union Of India & Another, which was disposed of on 23.07.1979 with the following observations :

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 "We, therefore, further give clearer directions that the respondents will place the petitioners in Upper Division Clerk's scale with effect from the 1st January, 1947 and make immediate (judgem) adjustment and accounts on the footing within a period of next four months from today. Not only the pay of these petitioners who are today serving within the Govt. Of India but the question of revised pay and pension of those who had retired on the basis of the new scales of pay be fixed within the same period. We further direct the respondents to report compliance with those directions at the end of four months from today. If no such report is received within the time specified of four months notice to whom case for contempt of disobedience should be issued forthwith to the respondents. For the last thirty years without any rhyme or reasons a sizeable section of the employees serving at a very low range of the ladder has been deprived of its legitimate pay by the unsympathetic behaviour of the officers of the Finance Ministry. We were half inclined to grant the petitioners 12% interest on the entire dues. S-ince, however, no such claim has been made in the petition and no provisions were shown to me by the counsel for the petitioners on the basis of which we could voluntarily add such a relief, we refrain from granting the same. However, look to the costs that are incurred in serving making preparations and for arrangements, etc., we think that the respondents should pay the costs of the petitioners which we quantify at 2,000/-."

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Though the applicant was not a party to the aforesaid decision, he urged that the decision of the High Court was a declaratory judgement which is binding on the respondents therefore, those who were similarly situated should be given

the benefit rendered in view of the High Court decision. Accordingly, he made a representation vide dated 15.03.1980 to Army Headquarters contending that all 'B' Grade clerks have to be equated to Clerk U/D in the new pay code and allowed the pay scale of Rs. 80-220 on the basis of the Varadacharya Pay Commission Report. Since no reply is received from the respondents, he sent a legal notice dated 21.11.1981 at annexure-D, narrating the entire events and urged that he be paid a sum of Rs. 33,243.00 as the amount due to him on the basis of equation of the grade with that of U.D.C. with effect from 01.01.1947. The respondents vide their reply dated 10.12.1981 informed him, that the case whether any service benefits will accrue to the erst-while 'B' grade clerks; who have now been placed in the U.D.C. Grade w.e.f. 01-01.1947, has been referred to appropriate authorities. The decision of the competent authority will be communicated to you in due course of time. Since he did not receive any reply within a considerable time, he filed a writ petition no. 362 of 1982 in the Bombay High Court which was later on withdrawn on 23.06.1983 on the basis of the letter issued by the respondents dated 30.10.1982 wherein it is stated as follows :-

"I am directed to say that as the late Finance Department OM No. F.44(12)-W/44 dated 19.08.1944 relied on in the judgement of the Bombay High Court delivered for certain erstwhile 'B' Grade Clerks working in the office of the Textile Commissioner, Bombay does not apply to the then 'B' Grade Clerks of the Military Engineering Services and CME & Engineer Group and Centres and who continue to be governed by the Army Instructions (India) No. 676 dated the 28th July, 1945 the President is pleased to cancel this Ministry's letter No. A/20066/EIC/3221/D(Civ.I) dated the 27th May, 1981 and the consequential benefits conferred are also hereby withdrawn."

The Learned Counsel for the applicant, (S)ubmitted that on the basis of this letter, the writ petition was with-drawn.

In 1984, one Shri R. Sambandam filed a writ petition no. 5853 of 1982 before the Madras High Court, the judgement of which was delivered on 09.03.1984 wherein it was held that the Army Instructions 676 dated 18.07.1945 has nothing to do with the subsequent equation of posts suggested by the Pay Commission and accepted by the Government. It was also held that Army instructions/^{No. 676} was cancelled as back as 1952 by another Army Instruction No. 572/52 and granted the monetary benefit. The Madras High Court while disposing of the case observed as follows :-

"The Ministry of Defence has itself accepted the judgement of the Bombay High Court and has chosen to give the benefit of the judgement to persons who were previous working as 'B' Grade Clerks but who were erroneously equated as Lower Division Clerks. The judgement of the Bombay High Court has also declared that their judgement is applicable not only to the petitioners before them but also to all ex-B Grade Clerks who have been wrongly equated as Lower Division Clerks and the Court has also given a direction that the 'B' Grade Clerks in whichever department of the Government Of India they should be equated as Upper Division Clerks and given all the consequential benefits."

Aggrieved with the order of the Madras High Court, the respondents filed a Civil Appeal No. 4201 of 1985 in the Supreme Court, which has been disposed of by the Supreme Court on 04.11.1987 passing the following orders :-

"Having heard learned counsel for the appellants and the Learned Counsel for the respondents and taking into consideration all aspects of the case we reduce the liability of the Union Of India under the judgement under Appeal by 40% and direct that 60% of whatever amount is due to each of the respondents under the judgement of the High Court shall be paid to the respondent. If any of the respondents is dead the amount to him shall be paid to his legal representatives. The amount payable under this order shall be paid within four months. The appeal is allowed to the above extent. No costs."

5. It is true that by virtue of the Supreme Court Order, the liability of the respondents has been reduced to 60% and waived by 40%. Despite the above, the contention of the Learned Counsel for the applicant is that, no fixation and seniority has been fixed so far. During the course of hearing, the Learned Counsel for the applicant, Shri Saxena drew our attention to the Order of the Ministry Of Defence dated 08.06.1994 wherein some of the employees, who were similarly situated to that of the applicant, have been graded as Grade 'B' Clerk of Military Engineering Services for their re-classification as U.D.C. with effect from 01.01.1947 and they were given all consequential benefits with effect from 01.01.1947 consequent on judgement of C.A.T., Calcutta Bench in O.A. No. 501/93 decided on 03.01.1994.

6. In reply, the respondents, though they have denied the contention of the applicant, however, they submitted that the decision of the Bombay High Court was effective only for the employees of Textile Commission Of Government Of India and not to others. Further, they urged, the financial benefits was to be admissible only from the date of issue of this order i.e. 27.05.1981. Since the applicant retired from service on 31.03.1980, i.e. prior to issue of Government Order, the applicant is not eligible to draw any arrears of pay and allowances on revision of pension, etc. Since the pension gratuity is worked out based on the average pay drawn by the individual for last 10 months prior to his retirement, the applicant is not entitled to the benefits as pointed out by him, unless otherwise the Government reconsider the issue as per the Madras High Court judgement for which the matter is still under consideration of the Government. It is also submitted that the application suffers from delay and laches and cannot be adjudicated upon by this Hon'ble Tribunal having arisen before 1st. November, 1982 and the same is required to be dismissed in limine, etc.

7. We have heard the arguments of both the counsel and perused the records. The admitted fact is, at the relevant time the applicant was working in 'B' Grade which is equated to U.D.C. grade. Accordingly, the respondents have given the benefits to those who have been similarly placed vide their order dated 08.06.1994. The only objection that was taken by the respondents is that the applicant has retired prior to ~~the~~ passing the order of the respondents dated 27.05.1981, which was later on cancelled; and as such, his grievance could not be considered. However, in the reply, the respondents have stated that the applicant is not entitled for the benefits as contended by him unless otherwise the Govt. reconsider the issue as per the Madras High Court Judgement for which the matter is still under consideration of the Government, etc. There cannot be any doubt, that the decision of the Bombay High Court was a declaratory one, which would apply to those who were working in the Government Of India in any department in that category of 'B' Grade, which has been treated as equivalent to U.D.C. That is made clear by virtue of Supreme Court's order and it is further amplified by saying that even if the person is dead, the legal representative of his or her, is entitled to get the claim. That being the position, it is uncharitable on the part of the respondents that the applicant cannot be given any benefits by virtue of their treating him as U.D.C. with effect from 1947 onwards. In the circumstances, we feel sorry ^{that} the stand taken by the respondents is not only heartless and inconsiderate as observed by the Bombay High Court Judgement but despite the same, the respondents allowed the various applicants to resort to litigation, which is not called for. Therefore, we are of the view, that the claim preferred by the applicant is sustainable and the relief which was granted by the respondents to

others vide their letter dated 08.06.1994 corresponding similar relief should be given to the applicant.

8. There is no doubt that the applicant's case is similar in all respects to that of officers who are given benefits by the respondents vide their letter dated 08.06.1994 and thus, he is also entitled to claim the same benefits. The contention of the respondents regarding that the petition is barred by time, delay and latches and since he retired from service, the same benefits cannot be extended to him, is found to be unjust and not tenable both on merits and on legal grounds.

9. In the result, we pass the following order :-

The O.A. is therefore allowed, Since the applicant has retired from service on 30.03.1980, the monetary benefits regarding difference in pay and allowances be restricted to three years prior to filing of this O.A.

RP 128195
15/4/96

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In sofar as pensionary and other benefits such as promotion, refixation, seniority, recalculation of pension and gratuity, etc. the respondents are directed to carry out the same in accordance with their order dated 08.06.1994 by virtue of which those who are similarly situated to that of the applicant, have been given the benefits and the same be done within a period of six months from the date of receipt of this order.

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10. The O.A. is disposed of with the above directions. No order as to costs.

M.R. Kolhatkar

(M. R. KOLHATKAR)

MEMBER (A).

B.S. Hegde

(B. S. HEGDE)

MEMBER (J).

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R.P. no. 128/95
by circulation
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22/12

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16.1.1996.

Heard Shri S.P. Saxena,
counsel for the applicant.

Shri R.K. Shetty,
counsel for the respondents
desires to file reply.

Respondents are
given six weeks time
to file reply to R.P.
No. 128/95.

Failure to file
reply before the next
date of hearing, the
matter shall be heard
on the basis of
available records.

List the case on
4/3/1996.

16/1/96
order/Judgement despatched
to Applicant/Respondent (s)
on 25/1

25/1

M.R. Kolhatkar
(M.R. Kolhatkar)
M(A)

B.S. Hegde
(B.S. Hegde)
M(J)

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Dt. 4-3-96 (30)

Heard Shri S.P. Saxena for
the applicant - and Shri R.K.
Shetty for the Respondents
who seeks time to file reply
to the R.P. in order to take
instructions from Delhi.
Accordingly, the matter is
adjourned to 15-4-96.

M.R. Kolhatkar
(M.R. Kolhatkar)
M(A)

B.S. Hegde
(B.S. Hegde)
M(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLEG.NO.6, PRESCOT RD, 4TH FLOOR.,

Bombay - 400 001.

O.A.No.1037/92

15/4/96.

Heard Shri S.P.Saxena, Counsel for Applicant and Shri R.K.Shetty, Counsel for Respondents.

Respondents to file reply to Review Petition-128/95. Today Respondents Counsel states that they are not going to file a reply.

The Counsel for Applicant draws our attention to certain infirmities occurred in the judgement, the name of the applicant should be "Krishanji.P.Mahajan" instead of "Krishnai.P.Mahajan".

Secondly in page No.4 at para-4, line-4 instead of "immediate judgem" the word "judgem" is required to be deleted.

Thirdly, the applicant has retired w.e.f. "31/3/80" and not "30/3/80". The same is to be rectified accordingly. The Counsel for applicant submits that in para-9, the sentence starting "since the applicant has retired from service on 31/3/80, the monetary benefits regarding difference in pay and allowance be restricted to three years prior to filing of this OA". needs to be modified. The circular issued by Ministry of Defence dated 8/6/94, as per directions of the Supreme Court, grants pay fixation with effect from 1/1/47., but the Supreme Court has granted payment of salary etc., from 1/1/47, but restricted the actual payment to 60% of the arrears of pay and allowances., the same benefits be extended to the applicant. Accordingly, the RP-128/95 is allowed and necessary corrections referred to above be carried out before issue.

We are satisfied that the applicant stands on the same footing as that of others referred to in their letter dt. 8/6/94 and hence the benefits cannot be denied to him.

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In the ~~facts and circumstances~~ of the case, hence we direct the respondents to make payment to applicant as mentioned in letter dt. 8/6/94 within a period of 3 months from the date of communication of this order., and also pay to him revised pensionary benefits to the applicant.

Copy of the order be given to parties. RP-128/95 is disposed of.

M.R. Kolhatkar

~~(M.R. KOLHATKAR)~~
MEMBER (A)

B.S. Hegde

(B. S. HEGDE)
MEMBER (J)

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alt. 15/4/96
Order/Judgment despatched
to Applicant/Respondent (s)
on 19/4/96

24/4/96