

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 317/93.

Date of Decision : 19/6/93

IN Dockyard Employees' Union
and 18 Others.

Petitioners.

Shri R. P. Saxena

Advocate for the
Petitioners.

VERSUS

Union Of India & Another

Respondents.

Shri V. S. Masurkar

Advocate for the
Respondents.

CORAM :

HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

(1) To be referred to the Reporter or not ? W

(2) Whether it needs to be circulated to W
other Benches of the Tribunal ?

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 317/93.

Dated the 19th day of June, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

1. IN Dockyard Employees' Union
through its Secretary,
Shri Nizamuddin Maqsood Ali.
2. Shri R. Velu Thevar
Working as 'Cook' in
Dockyard Industrial Canteen,
Naval Dockyard, Lion Gate,
Bombay - 400 023

and

... Applicants

17 Other Cooks/Salesmen of
Dockyard Industrial Canteen,
Naval Dockyard, Bombay 400 023.

(By Advocate Shri R. P. Saxena)

VERSUS

1. Union Of India through
Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 011.

... Respondents.

2. The Admiral Superintendent,
Naval Dockyard,
Lion Gate,
Bombay - 400 023.

(By Advocate Shri V. S. Masurkar)

: ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application filed under Section 19
of the Administrative Tribunals Act. Respondents have
filed reply. We have heard the Learned Counsels appearing
on both sides.

2. The first applicant is the Dockyard Employees' Union and applicants from 2 to 18 are employees working in the Canteen in the Dockyard. The grievance of the applicants is about wrong fixation of pay. The applicants were working in Statutory Canteen and they came to be absorbed as Government employees as per order of the Ministry of Defence dated 21.09.1982. As per this order, the applicants became Government employees retrospectively w.e.f. 22.10.1980 and their pay scale was fixed at Rs. 200-240. After the Fourth Pay Commission Report they ~~were~~ were placed in the revised pay scale of Rs. 775-1025 w.e.f. 01.01.1986. It is stated that the applicants' Counterpart in the non-statutory canteens were placed earlier in the pay scale of Rs. 220-235 which was later modified as Rs. 225-300. Then, after the Fourth Pay Commission Report they were given the pay scale of Rs. 825-1200. It is, therefore, alleged that there is discrimination between the Cooks and Salesmen of the Canteen in the Industrial Dockyard and similar employees working in Non-Statutory Canteens. It is also alleged that the applicants doing the same and similar works like employees in the Non-Statutory Canteens are entitled to same pay on the principle of "equal pay for equal work". On these allegations, the applicants have approached this Tribunal praying that their salaries may be fixed in the pay scale of Rs. 220-235 w.e.f. 01.10.1979, Rs. 225-308 w.e.f. 03.11.1983 and then to be given the pay scale of Rs. 825-1200 w.e.f. 01.01.1986.

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3. The respondents in their reply have stated that the applicants being Government employees, cannot compare themselves with employees of non-statutory canteens. That the applicants must exhaust their remedy of approaching Joint Consultative Machinery, then arbitration, etc. It is also stated that the application is barred by limitation and delay. That the applicants and the employees of the non-statutory canteens stand on different footing and cannot be compared favourable for all purposes. It is, therefore, prayed that the application be dismissed with cost.

4. At the time of argument, Mr. R. P. Saxena, the Learned Counsel appearing for the applicants, contended about the discrimination between employees of Statutory Canteen and non-statutory canteens. He further argued that the applicants are entitled to same scale of pay as employees of non-statutory canteens on the principle of 'equal pay for equal work'. While addressing arguments on merits, Shri V. S. Masurkar, the Learned Counsel for the respondents, ^{also} contended that the application is barred by limitation, delay and laches.

5. After hearing both the sides we are inclined to agree with the respondents' contention that the application is barred by limitation, delay and laches.

The applicants' main grievance is that, under the Government Order dated 21.09.1992 (vide Annexure 'A' to the O.A. at page 10), the applicants'

were treated as Government employees with a definite pay scale of Rs. 200-240 but the pay scale should have been initially fixed at Rs. 220-235. If once this initial pay fixation is corrected, then the applicants get the benefit of higher pay scale in pursuance of the Fourth Pay Commission Report. The question is, whether in the O.A. filed in 1993 the Court or Tribunal can go into the question of legality or correctness of the pay scale given in the Government Order of 1982? That means, the applicants have approached this Tribunal about eleven years after the cause of action arose. When the Government Order of 1982 was issued, the applicant got a cause of action to claim higher pay scale, as given to the employees of the non-statutory canteens. They approached this Tribunal eleven years later in 1993, challenging the correctness of the pay scale given by the Government Order of 1982. It is not disputed that the period of limitation to approach this Tribunal is one year from the date of cause of action. But here, instead of one year, the applicants have taken eleven years to approach this Tribunal. On the face of it, the application is hopelessly barred by limitation, besides suffering from delay and laches.

6. No reasons are given for the delay. No application is filed for condonation of delay. At one stage, the Learned Counsel for the applicant submitted that the Court can restrict the grant of arrears and may grant new pay scale either from the

date of application or atleast one year prior to the date of application. It is not a question of mere granting some arrears. The Court has to decide the correctness and validity of the pay scale given in the 1982 Order. That portion of the order of 1982 regarding pay scale will have to be quashed before giving any further relief about enhancement of pay scale. But the right to challenge the 1982 Order has become barred by limitation because of lapse of eleven years. The question of restricting the arrears to one year or to grant the new pay scale from 1993, the date of filing petition, does not arise.

7. Time and again the Supreme Court has observed that a matter like fixing pay scales, has to be decided by an Expert Body like Pay Commission. The Fourth Pay Commission has referred to Canteen Employees in its report and has given different revised scales of pay depending upon the old scales of pay. The Fourth Pay Commission did not think of merging all the pay scales into one for canteen employees. We also thought of giving some relief prospectively, since the Supreme Court has now decided that there is no difference between the employees of Statutory Canteen and Non-Statutory Canteen. We thought of giving some relief prospectively or giving direction to the Government to consider the case of the applicants for enhancement of pay scale atleast in future. We may take judicial notice that during the pendency of this O.A., the Government of India had constituted

Fifth Pay Commission to consider the revision of pay scales of Central Government employees. We may also take judicial notice that the Fifth Pay Commission has submitted its report and the major recommendations are accepted by the Government and necessary orders have been issued. Now, on perusal of the Pay Commission Report, we find that the Fifth Pay Commission has considered the pay scales of Canteen employees. As far as Cooks are concerned, most of the applicants are Cooks, ~~and~~ a new pay scale is given and then there is a uniform revised pay scale. Therefore, the applicants have got higher pay scale in the revised pay scale in pursuance of the Fifth Pay Commission Report and the Fifth Pay Commission has specifically gone into the pay scales of Cooks in the Government Canteens and, therefore, when an Expert Body has already considered the matter and given the report, and the Government has accepted the same and revised the pay scale, the question of this Tribunal granting any relief or giving a direction to the Government to revise the pay scale of applicants will not arise at all. If, however, inspite of the Fifth Pay Commission Report the applicants did not get proper deal so far as pay scales are concerned, it is open to them to make a representation to the Government and if such a representation is made, the Government may consider them expeditiously and pass appropriate order according to law. If any adverse order is passed by the Government or if the applicants feel that inspite of Fifth Pay Commission Report they are entitled to some higher

pay scale on any legal ground, then they may approach this Tribunal for appropriate reliefs according to law.

Since we are disposing of the O.A. on the question of limitation, delay and laches, and also taking into consideration the higher pay scale given in pursuance of Fifth Pay Commission Report, we are not expressing any opinion on the merits of the case.

8. In the result, the O.A. is dismissed subject to the observations made in para 7 above. In the circumstances of the case there will be no order as to costs.

(Signature)
(D. S. BAWAL)

MEMBER (A).

R. G. Vaidyanatha
19.6.95
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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