

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1165/94, 1167/94, 1168/94, 1169/94.

Transfer Application No.

Date of Decision

12/7/96

N.V. Madkaikar & Ors.

Petitioner/s

Shri M.S. Sonak

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri S.N. Joshi

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 ?

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

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

O.A.Nos. 1165/94, 1167/94, 1168/94, 1169/94.

Presented, this the 12th day of July 1996

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri M.R.Kolhatkar, Member (A)

1. Narendra V. Madkaikar
2. Basilio Fernandes
3. Vasant V. Naik
4. Simao Antonio Rodrigues

(By Advocate Shri M.S.Sonak)

... Applicant

V/S.

Union of India & Ors.

(By Advocate Shri S.N.Joshi)

... Respondents

O R D E R

(Per: Shri M.R.Kolhatkar, Member (A))

As the facts in the four OAs. are similar and the issues are identical, they are being disposed of by a common judgement. For the purposes of convenience, reliance is placed on facts in OA.NO. 1169/94. The applicants were servants of Government of Goa since pre-liberation days (19th December, 1961). The applicant in OA. e.g. joined the service in October, 1960 as Aspirante in the organisation called 'Emissora de Goa' in the pay of Rs.256.66 per month. Later on, the pay was revised and fixed at Rs.291.66 per month. However The applicant was paid at the rate of Rs.256.66 per month. It is not necessary to go into further details except to say that at the time of absorption of the applicants in service of Government of India, they were stated to be wrongly equated as Clerk Grade-II in the pay scale of Rs.110-180 instead of Clerk Grade-I in the

pay scale of Rs.130-300 corresponding to the present designation of Upper Division Clerk. The applicants had represented against this wrong equation which had reduced their pay as well as rank and had ultimately carried the matter to the Court of Judicial Commissioner then equivalent to High Court who by his judgement dated 25.4.1975 (at Ex.'A-1') granted the relief to the applicants. The relief was in following terms :-

" In the circumstances I allow the Special Civil Applications. The equation made under the Annexure to the letter of Ministry of Information and Broadcasting dated 20.9.1966 is set aside. The respondents are directed to equate the post of "Aspirante" in the former "Emissora de Goa" to the post of Clerk Grade I corresponding to U.D.C. and to consider the petitioners existing pay of Rs.291.66 and not Rs.256.66 from 1.4.1963."

The applicants represented for implementation of the judgement but they were informed by letter dated 21.7.1975 and subsequent letters which are to be seen at 'Ex. A-6' annexed to the Rejoinder that action will be taken after the decision of ^{by} Union of India the Supreme Court in the SLP which had been filed. Admittedly, there was no stay on the implementation of the judgement but the applicants appear to have not taken any further legal steps till the judgement of the Supreme Court was available. The SLP of the Union of India was dismissed ^{vide} Civil Appeal Nos. 736 to 742 of 1976 decided by the Supreme Court on 24.4.1990 vide 'Ex.A-2'. The applicants ~~thereafter~~ received arrears of pay in terms of Judicial Commissioner's orders, e.g. the applicant in OA.No. 1169/94 received Rs.16,979/- on 27.12.1993 (at Ex.'A-7')

to the rejoinder). The applicants carried the matter of implementation of the judgement before the High Court of Judicature of Bombay at Goa by C.P.No. 25/93 in W.P.No.95/73. The High Court on 21.2.94 disposed of the C.Ps by observing that the arrears of salary ~~have~~^{been} paid and it is not possible for the court to entertain several grievances of the petitioners in contempt proceedings and accordingly the petitions were discharged but it was also observed that if the petitioners have any grievance, they can agitate them in accordance with the law. The applicants have represented to the Station Director on 19.9.1994 requesting the Government to refix the seniority and grant the promotional benefits and in the present OA., the Government's communication rejecting his representation has been impugned. The main prayers of the applicants are issue direction to the respondents to grant to the applicants all consequential benefits such as fixing seniority and granting promotional benefit etc. on deemed equation to the post of Clerk Grade-I w.e.f. 1.4.1963 as also consequent refixation in revised scale of pay from 1.1.1973 and 1.1.1986 and to pay to the applicants all the differences in pay and allowances on the basis of aforesaid refixation admissible to ~~them~~ according to rules from time to time with interest at the rate of 15% p.a. for the delayed payment.

2. Respondents have opposed the OA., firstly on the ground of limitation. It is contended that the cause of action arose, in the first instance on 25.4.1975 when the Judicial Commissioner gave ~~his~~

verdict and subsequently on 24.4.1990 when the Supreme Court dismissed the SLP. However, merely because the respondents have chosen to give a reply to the representation in September, 1994, a stale cause of action does not get revived. The respondents in this connection have relied on Supreme Court judgement in Naib Subedar Lachhman Dass vs. Union of India & Ors., AIR 1977 SC 1979, where the Supreme Court observed that in the absence of the satisfactory explanation for delay of four years in challenging the order of discharge passed against Army ~~Sergeant~~ High Court was justified in dismissing the petition. Other cases relied on by the respondents are Ratam Chandra Sammant & Ors. vs. Union of India & Ors., 1993(2) SLR 811 and D.Seshagiri Rao vs. Director General, All India Radio, New Delhi & ^a ~~Ors.~~ ^{viz.} case decided by Hyderabad Bench, 1993(6) SLR 633. In our view, the objection as to limitation cannot be upheld because the applicants having approached the High Court in its contempt jurisdiction, the High Court has given liberty to the applicants/contempt petitioners to agitate their grievance in accordance with the law and thus the applicants have challenged the Government communication rejecting their representation which is in order.

3. The next objection of the respondents is that the OAs^{are} are hit by principles ~~analogous~~ to res-judicata because no prayer for interest or promotion was made to the judicial commissioner and since the order of the Judicial Commissioner is silent on this aspect, ~~these~~ these prayers ought to ~~be~~ considered as having been rejected and the applicants cannot re-agitate the same issues.

4. In regard to promotion in particular, the respondents have invited our attention to the fact that not only prior to 1975, i.e. the order of the Judicial Commissioner but also after 1975 various applicants were offered promotions to the higher posts but the applicants had rejected the offers on the ground that they wanted to await the decision of the Supreme Court on the SLP. On this point, the counsel for the applicants submits that the offers which were made to the applicants for promotion were rejected because they were not proper offers ^{sense that} ~~in the~~ they were not offers of promotion ^{to a post} ~~equated~~ to the post held by them, i.e. UDC but they were offers equating ^{with} ~~ing~~ their posts ~~to~~ that of Clerk Grade II. Since the offers ~~were~~ not proper, they were rejected and the fact that the offers ~~were~~ rejected should not be held against them. Moreover, ^{some of} ~~the~~ offers were not individual offers but the joint offer made to all employees. Therefore, the earlier rejection of the offers should not be held against the applicants. It is also pointed out by the applicants that respondents' department itself had conceded the correctness of their demand vide letter of the department dated 26.6.1993 at page 57 of the OA. The department had ^{would} stated that the seniority of these employees ~~have~~ to be recasted so that they may get the promotional benefits ~~due~~ to them. With reference to this point, the respondents have contended that the letter dated 26.6.1993 was an internal correspondence and cannot be relied upon as an authoritative ~~order~~ of the respondents.

5. We have already held that we are inclined in particular to entertain the applications and that the same are not barred by limitation. But taking into account the judgement of the High Court in the contempt petition, we cannot take upon ourselves the task of giving the direction of grant of consequential benefits to the applicants when the orders of the judicial commissioner on this point are silent and the High Court refused to go into the matter of consequential benefits, in the contempt jurisdiction. In other words, it appears to us that the prayers in the OAs. as to grant of consequential benefits to the applicants mainly the promotional benefits, the payment of difference between the original benefits and the additional benefits and the payment of arrears and the interest thereon, are matters which are hit by principles analogous to res-judicata and applicants cannot re-agitate the same before this Tribunal. For the same reason, we are also not inclined to grant the prayer for interest from the period 1.4.1963 because there are no such orders passed by the Judicial Commissioner. However, we are of the view that there has been an inordinate delay in making the payments to the applicants. For example, in OA.1169/94 the payment towards arrears of pay was actually made on 27.12.1993 though the judgement of the Judicial Commissioner was dated 25.4.1975. Normally, the respondents are expected to implement the judgement in the absence of stay within six months. In this particular case, admittedly, there was no stay. But the applicants were not paid any interest for the period from the date of judgement of the judicial commissioner to the date of actual payment.

The respondents have stated that the certified copy of the judgement was received only on 19.4.1993 and the calculations involved were voluminous and there was also shortage of staff and in view of this, the applicants are not entitled to interest on delayed payment. We are not impressed by this argument.

In our view, the Government failed in its duty in making prompt payment of the arrears¹³ when there was no stay and therefore the applicants are entitled to payment of interest ^{for} delay in payment of arrears from the date of judgement, namely, 25.4.1975 till the date of actual payment.

The respondents are, therefore, directed to make payment of interest at 10% p.a. on the arrears due to each of the applicant as if the arrears were payable on the date of pronouncement of the judgement of the Judicial Commissioner. Except for this partial relief, we are not inclined to grant any other relief to the applicants. The OAs¹⁴ are, therefore, dismissed, subject to what is ^{above} stated about the payment of interest above, with no order as to costs. The interest payment be made within a period of three months from the date of receipt of this order.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde

(B.S. HEGDE)
MEMBER (J)

mrj.