

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 1123/94  
Transfer Application No.

Date of Decision : 19.6.95

Y. Mathai

Petitioner

Shri. K.S.Kalappura

Advocate for the  
Petitioners

Versus

Union of India

Respondents

Shri.V.S.Masurkar

Advocate for the  
respondents

C O R A M :

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

The Hon'ble Shri

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

  
(B.S. HEGDE)  
MEMBER (J)

J\*

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(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. 1123/94

Y. Mathai

.. Applicant

Vs.

Union of India

.. Respondents

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

Appearance

1. Shri. K.S. Kalappura,  
Advocate  
for the applicant.
2. Shri. V.S. Masurkar,  
Advocate  
for the respondent

JUDGMENT

DATED : 19.6.95

(Per Shri. B.S. Hegde, Member (J) )

The applicant has filed this application on 14.10.1994 praying for stepping-up of pay with retrospective effect from 3rd March 1986.

2. The brief facts of the case are that the applicant was a civilian employee working as Office Superintendent, Grade I in the office of Naval Pay Office, Western Naval Command, Bombay. He retired from service with effect from 31.5.1984. His main grievance is while he was working as U.D.C, he was promoted as Office Superintendent Grade II on 22-7-1986 and his juniors were promoted on 3.3.1989. Though they were promoted later than the applicant, they were drawing more salary than the applicant. Accordingly, he made a representation to the Competent Authority on 17 September 1990 which was rejected by the respondents vide their letter dated 6 November 1990. Again, on 2-3-1992, the applicant was promoted as Office Superintendent Grade I. On 3rd August 1992, his junior, one Shri. S.S. Sawant was also promoted to the

same grade. Though he was junior to the applicant, he was drawing more salary than the applicant. Here also, he made representation, which was rejected by the respondents vide letter dated 24 February 1994. Admittedly, it is stated in the application that his juniors were granted special pay while they were U.D.Cs whereas the applicant was not.

3. The respondents in their reply has taken preliminary objection for admitting the application. They have stated that the claim made by the applicant is barred by by section 21 of the Administrative Tribunals Act, 1985 which provides for three years limitation with regard to monetary claim and therefore the application should be dismissed on the ground of delay and latches. Though the claim relates to 1986, the applicant has filed this application in 1994, after a lapse of 8 years. It is therefore incorrect to say that the respondents have not considered the matter. In fact the representation was rejected as early as November 90. It is noted that the applicant did not file any application for condonation of delay in filing the O.A nor any explanation was given.

4. In order to remove the anomaly in pay of a senior drawing less than juniors, three conditions are required to be fulfilled :

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be ~~is~~ identical and in the same cadre.
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.
- (c) The anomaly should be directly as a result of the application of F.R.22C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

In the instant case, on perusal of the record, I find that the applicant has not fulfilled the required conditions as per F.R.22-C and he did not get special pay which was granted to his juniors. In this connection, the learned counsel for the applicant has drawn ~~my~~ attention to various decisions such as

- (i) Smt.N.Lalitha & Ors.V. Union of India (1992) ATC 19-569.
- (ii) Anil Chandra Das V. Union of India (1992 u ATC 224
- (iii) P.Gangadhara Kurup & Ors.V.Union of India & Ors. (1993(1) ATJ 165

5. The applicant states that the above decisions lay down that a senior drawing a pay lesser than his junior is entitled to have his pay stepped up to the level of that of his junior, irrespective of the reasons that lead to the anomaly in pay difference. In my view, all these decisions are depend upon the facts of that particular case. As stated earlier, in the instant case, the applicant has not got the benefit of special pay, but that was received by his juniors. Further, the applicant is seeking relief since 1986, which cannot be granted as per Section 21 of Administrative Tribunals Act, in view of Supreme Court decision in S.S.Rathod Vs. State of Madhya Pradesh (AIR 1990 SC-10), wherein the Supreme Court held that repeated representations will not extend the period of limitation. When a query was made to the learned counsel for the applicant, <sup>by</sup> ~~for~~ the delay in filing the O.A, he replied that the applicant was going on representing with the higher authorities. Therefore, the aforesaid Supreme Court decision clearly applies in this case. Besides, the Court decisions relied on by the applicant ~~do not~~ give cause of action. The cause of action should be reckoned from the actual date which according to the applicant, is 3/3/1986. Therefore,

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the original application is definitely barred by limitation, since the applicant has not filed any application for condonation of delay in filing the O.A belatedly. It is unjust and improper to entertain such petition, that too after his retirement. In view of the above, I find no merit in the application. The Original application is dismissed, with no orders as to costs.

  
(B.S. HEGDE)  
MEMBER (J)

J\*