

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1067/1995,
81/96, 625/97 and 987/97
DATED THE 9th DAY OF February 2001

CORAM: HON'BLE SHRI S.K.I.NAQVI, MEMBER (J)
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

Applicants in OA-1067/95

1. Shri A.Madaswamy
2. Shri R.M.Joshi
3. Shri V.G.Datar
4. Smt Meena Shrikant Karmarkar(L>R>)
W/o. late Shri S.B.Karmarkar
5. Shri P.V.Chadhari
6. Shri M.P.Tarde

Applicants in OA-81/96

1. Shri K.Parameshwaran
2. Shri P.R.Ramchandran

Applicant in OA-625/97

1. Shri T.S.Nayar

Applicant in OA-987/97

1. Shri B.G.Krishnamurthy

By Advocate Shri R.C.Raviani

V/s.

1. Union of India,
Through : The Secretary,
Ministry of Defence,
South Block,
New Delhi : 110 011.

2. The Controller General of Defence Accounts,
West Block - V,
R.K.Puram,
New Delhi - 110 066
(Respondent Nos.1 and 2 in OA.Nos
1067/95, 81/96, 625/97 & 987/97)
3. The Controller of Defence Accounts(Officers),
Golibar Maidan,
Pune - 411 001.
(Respondent No.3 in OA-1067/95)
4. The Controller of Defence Accounts,
Southern Command,
Pune - 411 001
(Respondent No.4 in OA-81/96 &
Respondent No.3 in OA-625/97)
5. The Assistant Controller of Defence Accounts,
P.A.O. (ORs),
AC (Regiment):AHMEDNAGAR. (Respondent No.3 in OA-81/96)

By Advocate Shri R.K.Shetty

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(ORDER)

Per Smt. Shanta Shastry, Member(A)

In all these four OAs identical issue is involved and facts are similar except for the dates. The advocate for the applicants in all the four cases again is the same so also the advocate for the respondents. We have therefore proceeded to decide all the four OAs through a common order.

2. The applicants in all these cases were promoted as Assistant Controller of Defence Accounts (ACDA for short) in the junior scale of pay of Rs.700-1300 on officiating basis from the post of Accounts officer. The Senior scale of the post of ACDA is Rs.1100 - 1600. Immediately on their promotion to the Junior Time Scale, the applicants were asked to perform the duties of group charge though generally the post is held by an officer in the Senior Time Scale of the pay. They worked in these posts till they were promoted after 4 years on a regular basis to the Senior Time Scale of Rs.1100-1600. // It is the case of the applicants that since they were performing the duties of senior scale post from the date of their promotion to the Junior Time Scale they should have been granted Senior Time Scale ^{pay} from the date of their promotion. Shri R.C.Ravlani, the learned counsel for the applicants submits that the applicants had represented their case before the concerned authorities, however their request was not considered and they were told that the same would be decided after the final decision in the Letters Patent Appeal no.50 of 1981 filed in the High Court. The learned counsel for the applicants contended that similar issue had already been decided by the Hon.High Court of Delhi in WP No.1942/79 in the

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case of M.G.Menon & Ors V/s. Union of India & Ors. The pay of the applicants in that case had been fixed in the Senior Scale from the date of promotion on the principle of 'equal pay for equal work'. They had also been paid arrears. But the department did not extend the benefit of the judgement to other similarly promoted officers. The learned counsel explained that India Defence Accounts Service consists of direct entrants through UPSC and promoted officers from the grade of Accounts Officer from the defence cadre. As per the Recruitment rules, the ratio of direct recruits to promotees is 80:20. The Accounts Officer's are selected for promotion to IDAS through DPC. The promotion from junior to senior scale is done after four years of service in the junior scale. The direct recruits undergo two years training and have to pass a departmental examination. For the next two years they perform duties normally performed by Accounts Officers. The Direct Recruits are raw compared to Promotee officers who have rich experience and are older. They can therefore hold a group charge straight away against Senior Scale appointment but in the matter of pay, they are being discriminated and are being paid only the salary of the post of Section Charge. The learned counsel submits that being aggrieved by the discriminatory treatment, some officers filed writ petition before the Hon.High Court of Delhi. Also in due course, OAs were filed before the Principal Bench of CAT in New Delhi. Both the Hon.High Court as well as the CAT, Principal Bench allowed the Writ Petition and the OAs and had directed the respondents to grant Senior Time Scale of pay of Rs.1100-1600 to the applicants with consequential benefits like fixation of pay and arrears of pay. These judgements were implemented. All the same the respondents filed Letters Patent Appeal no.50/81 in the High Court. This has not

been decided so far. The cases decided in favour of the applicants by various benches of the Tribunal are as follows:-

1. K.S.Rangaswamy V/s. Union of India & Ors OA-2356/93 decision dt.28/11/1994.of Principal Bench, New Delhi.

2. P.D.Makkar & Ors. V/s.Union of India & Ors.OA-1100/89 decided on 4/7/91. Principal Bench, New Delhi.

3. S.Bhagirathan V/s. Union of India & Ors 428/88 decided on 25/3/92 (Bombay Bench)

3. In the case of Rangaswamy, the Principal Bench directed to refix the pay in the Senior Time Scale and to give arrears and to refix the pension. There were no stipulations.

4. In the case of P.D.Makkar, the respondents were directed to refix the pay of applicant w.e.f. their respective date of promotion with consequential benefits as were extended to applicants in the case of Menon & Ors (supra) subject however to the condition that the applicants will have to refund the benefits if the final decision in LPA 50/81 goes against them.

In the case of Bhagirathan, decided by the Mumbai Bench, the directions were given as per the judgement of the Principal Bench.

5. The learned counsel contends that when the issues involved are same and persons are similarly placed, the judgement delivered in one case should be extended to others similarly placed persons. The Learned counsel relies on the following cases.

i) Smt.Dipti Roy & Ors. V/s. UOI 2000(1)(CAT) AISLJ 33

The head note reads as follows:

Similarly placed persons - limitation -demand extension and benefits of Supreme Court decision in similar case of Hari Sham Rao- That case allowed benefit to only 48 persons involved therein - However, SC gave same benefit in other case too. Held the benefit cannot be denied It should be given from the date of filing of application.

...5.

ii) Y.B.Vishnuprasad and Ors v/s. Union of India & Ors in OA No.602/97 decided on 1/9/99. Here the respondents were not extending the benefit of the judgement to the applicants who were similarly placed persons. It was directed to give them similar treatment, relying upon the case of Inderpal Yadav v/s. UOI 1995(2)SLR 248. It was held that government should not force people to go to court. Similarly placed persons should be treated similarly. Limitation does not apply to a continuing cause.

iii) It was ruled in the case of Pramod Kumar Bhargava and Anr. V/s. UOI in OA 444/PB/1988 decided on 2/3/99 (1999)10 ATC 807 (Chandigarh) Uniform extension of court's decision to all similarly placed employees should be allowed. The learned counsel therefore submits that the respondents should have extended the benefits of the judgement cited earlier to the applicants as they are identically placed to the applicants in those cases.

6. The learned counsel for the respondents admits that the applicants were put in group charge immediately on promotion to Junior Time Scale because of their experience and because of shortage of personnel. The learned counsel took the stand in the written statement that since the LPA 50/81 was pending in HC of Delhi, no relief can be granted to the applicants. Now the respondents' counsel has filed MP-512/2000 bringing out the latest developemnt in the matter. The learned counsel submits that the Principal Bench, New Delhi has decided in ^{a similar} OA No.2370/97

and other connected cases that the applicants should be paid the difference in the pay and allowances of the post in the Junior Time Scale and the Senior Time Scale to the applicants or justifiable honorarium only for the period they had performed the duty of group charge alongwith the interest from the date payable till actual payment. Accordingly, the respondents in pursuance of the said judgement have issued order dated 31/5/2000 sanctioning a special allowance @ Rs.300/- p.m. pertaining to the period 1/1/86 to 31/1/97. This has been done only as a one time exception. Again this special allowance is not to be reckoned for any other purpose such as DA, HRA, CCA, Pension, Pay fixation on promotion to the next higher grade, etc. Thus, the OA has become infructuous as relief has already been granted to the applicants. In case however, it is considered that this is contrary to the earlier judgements of the Tribunal then the matter may be referred to a larger bench. // The learned counsel also states that the applicants' case is not covered by FR 49 As has been rightly pointed out in the judgement dated 11/4/97 of the Principal Bench in OA-757/96 and other connected cases.

7. The learned counsel submits that while in the past the GOI had accorded approval for payment of special pay at Rs.150/p.m. for holding group charge between the period 28/11/83 to 30/9/85 to one Shri S.Bhaghirathan, IDAS (retired), he was given the benefit of reckoning the same for purposes of terminal benefits, encashments of unutilised EL, etc vide letter dated 28/4/88. At present however, since no special pay is allowed to be taken into consideration in pay fixation the respondents have not given the benefit of reckoning of the special allowance for purposes of pay etc.

8. The applicants however are not at all happy with the special allowance sanctioned by the respondents vide letter dated 31/5/2000. According to them they are entitled to the Senior Scale Pay Scale and allowances from the date they took over the group charge till they were regularly promoted after four years. It would be discriminatory that while those who had approached the Tribunal earlier had been granted the full relief, while the present applicants should be denied the same when they are identically placed to the applicants in the earlier OAs.

9. After hearing both the learned counsels for the applicants as well as respondents, we find that the respondents have tried to arrive at a compromise by sanctioning a special allowance without the benefit of it being considered for purposes of pay etc. In our view, the consistent stand taken by various benches of the Tribunal has been to grant the Senior Time Scale to the applicants in those cases. However, it has to be borne in mind that the ^{applicants}~~respondents~~ have not been formally appointed in the Senior Time Scale. They have been appointed in the Junior Time Scale on officiating basis and have been asked to perform the duties of Senior Time Scale post. It is neither an additional charge nor an officiating arrangement. It is purely for convenience sake, the applicants have been asked to do the job. There does not appear to be any formal order to that effect. It is an informal arrangement. Had the intention been that they should work as full fledged senior officers in the scale of Rs. 1100-1600, the respondents would have specified accordingly. Further as per the recruitment rules for the post of Senior Time Scale, the persons have to undergo a probation of two years and have to pass a departmental examination. Unless this is

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completed, a person cannot be promoted to Senior Time scale. This being the position, in our considered view, it will not be proper to give the Senior Time Scale ^{of} pay to the applicants. Also there cannot be a discrimination between direct recruits and promotees. The applicants have to be distinguished from those who have been actually formally promoted to the Senior Time Scale. Therefore according to us it would suffice if the applicants are paid the difference between pay ^{and} allowance between the Junior Scale and the Senior Scale pay and allowances for the period they held the group charge, without giving them the actual senior scale ~~pay~~. This is the first option suggested in the judgement of the Principal Bench dated 11/4/97. Accordingly, relying partly on the judgement of the Principal Bench, we direct the respondents to pay the difference of salary and allowances between the higher post and the lower post for the period they had actually performed the duties of group charge. This shall be done within a period of three months from the date of receipt of a copy of this judgement. Interest on the difference in pay @ 10% shall be paid from the date of payment due till the date of actual payment. No costs.

The OA^{is} is disposed off accordingly.

(SHANTA SHASTRY)
MEMBER(A)

(S.K.I.NAQVI)
MEMBER(J)

abp.