

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 1031/97, 1053/97 & 184/98

Dated this Friday the 30th day of March, 2001.

Shri B. A. Rajadhyaksha & Others. Applicants.

Shri G. K. Masand alongwith Advocate for the
Shri V. N. Deshpande, Applicants.

VERSUS

Union of India & Others. Respondents.

Shri M. I. Sethna alongwith Advocate for the
Shri V. D. Vadhavkar, Respondents.

CORAM : Hon'ble Shri B.N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

(i) To be referred to the Reporter or not ?

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

(iii) Library.

B. N. BAHADUR
MEMBER (A).

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Hon'ble Shri S. L. Jain, Member (J).

APPLICANTS IN O.A.No. 1031.97

1. B. A. Rajadhyaksha,
formerly working in the
New Customs House, as Deputy
Superintendent.
Residing at - 45/2229,
Gandhi Nagar, Bandra (E),
Mumbai - 400 051.
2. Kum. K.G. Rane.
3. Shri M.S. Desai.
4. Shri A. A. Mathure.
5. Smt. N. M. Desai.
6. Shri H.N. Gore.
7. Smt. N. N. Dixit.
8. Shri D.P. Kholamkar.

APPLICANTS IN O.A. NO. 1053/97.

1. Bombay Customs Ministerial
Staff Association having
their office in the New
Customs House, Ballard
Estate, Mumbai - 400 038
represented by
Shri N. Vidhyadharan,
Honorary President of the
Bombay Customs Ministerial
Staff Association.
2. Smt. Vandana V. Devel.
3. Smt. Padma Vijayan.



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4. Smt. Madhavi S. Shete.
5. Smt. Suchita V. Salvi.
6. Shri V.T. Kulkarni.
7. Smt. R.H. Hardasani.
8. Smt. Y.S. Pawar.
9. Smt. S.S. Naiksatam.
10. Smt. A. R. Vedak.

O.A. NO.: 184 of 1998.

1. All India Central Govt. Pensioners Association having their office at o/o. Mumbai Postal Institute, 260 J.S.S. Road, Girgaum, Mumbai-400 004 represented by Shri D.R. Marathe, Secretary.
2. Shri M.S. Desai.
3. Kumari K.G. Rane.
4. Shri A.A. Mathure.
5. Shri N.N. Dixit.
6. Shri V. K. Rai.
7. Shri B. M. Parikh.
8. Shri N.V. Waske.
9. Smt. S.B. Upadhye.
10. Smt. A.R. Joshi.
11. Smt. C.M. Gadkari.
12. Shri S.S. Kane.
13. Shri R.D. Rane.
14. Shri P.D. Kuveskar.
15. Shri D.M. Deshpande.



16. Shri S.G. Muzumdar.
17. Smt. N.M. Desai.
18. Shri D.P. Kholamkar.
19. Shri G.N. Khadilkar.
20. Shri R.A. Pathak.
21. Shri P.L. Harischandrakar.
22. Shri M.R. Dekhane.
23. Smt. T.P. Kamat.
24. Kumari I.A. Dalvi.

(By Advocate Shri G.K. Masand alongwith Shri V.N. Deshpande).

VERSUS

1. Union of India through The Secretary, Ministry of Finance, Department of Revenue, North Block, Parliament Street, New Delhi.
2. Commissioner of Customs, 2nd floor, New Customs House, Ballard Estate, Mumbai.
3. Assistant Commissioner of Customs Incharge Personal & Establishment Department, New Custom House, Ballard Estate, Mumbai 400 038. ... Respondents in all the 3 O.As.

(By Advocate Shri M. I. Sethna alongwith Shri V.D. Vadhavkar)

O R D E R

PER : Shri B. N. Bahadur, Member (A)..

We are considering here the above three O.As. together, since the facts and issues therein are similar. The facts of

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the case in O.A. No. 1031/97 will be taken up for the sake of convenience. This O.A. is filed jointly by eight Applicants who were working as D.O.S./E.O.S./P.O.S. at the time of their retirement. They had come up to these posts on promotion from the post of U.D.Cs. in which they were confirmed and/or worked for a continuous period of three years as Auditors. It is stated by Applicants that during this period they had been receiving a special pay of Rs. 35.00 / Rs. 70.00 per month before they were promoted.

2. The Applicant then rely on a letter of Government of India, Ministry of Finance, dated 08.02.1971, in consequence of which about 104 posts of U.D.C. working in the Internal Audit Department of Bombay Customs House were filled up. Amounts per month payable, as special pay, were raised from time to time. A further fifty-one posts of U.D.Cs. were upgraded by letter dated 05.05.1979 to the post of Technical Assistants and granted a special pay of Rs. 35.00 per month. The concept of upgradation, as envisaged, has thereafter been described in considerable detail in the O.A. and it is averred that "the seniority based on length of service of the U.D.Cs. should have been reckoned as the criteria for upgradation."

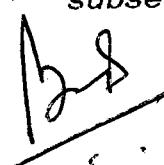
3. The Applicants further state that they had agitated before the Commissioner of Customs and the Central Board to post them as Technical Assistants, by virtue of their length of service, but their requests were not granted. The Applicants state that they are seeking only to agitate to enforce their



claim about the inclusion of special pay drawn by them for fixation of their salary in the promotional posts, and for arrears arising out of such fixation. The Applicants rely on a Supreme Court judgement dated 04.10.1986 upholding the decision of the Calcutta Bench of this Tribunal dated 30.09.1992 in O.A. No. 491/91. It is further stated that Applicants had approached the Respondents at higher levels after such judgements, but were informed that the judgements have been treated to be in personem and that the Supreme Court had never decided that others should also be provided such benefits.

4. With such grievances as discussed above, the Applicants have come up to the Tribunal seeking the relief for a direction to Respondents to fix the Applicants' basic pay in D.Os. cadre after taking into consideration the Special Pay drawn by them. Directions are also sought for payment of arrears consequent to such fixation, from the relevant date/s. An amendment has also been made as alternative claim (Page 13).

5. The Respondents in the case have filed a Written Statement in reply, resisting the claims of the Applicants. It is stated that Applicants were working as D.Os./E.Os./P.Os. at the time of their retirement, but the dates as indicated in exhibit 'C' are incomplete. A detailed account is provided subsequently in the Written Statement in regard to the number of



posts sanctioned, the percentages fixed for upgradation and the contention taken that the Ministry had decided that U.D.Cs. attending to work of more complex/important nature may be granted special pay and that nowhere it has been said that the senior-most U.D.Cs. should be posted for attending to this complex nature of duties.

6. It is further stated by Respondents that as per an award of arbitration, the Special Pay was to be taken into consideration for fixing pay on promotion in case of those U.D.Cs., subject to certain conditions as brought out in para 4 of the Written Statement. In the same paragraph it is stated that a clarification was sought from Government regarding grant of benefit to such personnel who were receiving special pay for reasons other than handling of work of complex nature but this was not found acceptable to Government. Other details in respect of the Government stand, etc. has been set out in paras 5/6 of the Written Statement.

7. The stand taken with regard to the order of the Calcutta Bench is also elucidated in their Written Statement, by the Respondents.

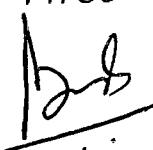
8. We have seen all the papers in the case and have heard the Learned Counsel on both sides. Learned Counsel Shri G. K.



Masand alongwith Shri V. N. Deshpande, argued this case for the Applicants. It was first argued that the ratio of the judgement of the Calcutta Bench of this Tribunal clearly worked in favour of the Applicants and the letter dated 18.06.1980 cannot take precedence over the Award. The Hon'ble Court had seen the Award. It was further stated that the judgement was not in rem. In this connection, it was argued that it was not necessary for the Supreme Court to specifically say that the judgement was to be applicable in rem and hence the stand taken by the Respondents (Page 18) was not correct. The Applicants are similarly placed and this should be ground enough to decide that they were equally eligible to the benefits. No discrimination could be made, argued the Learned Counsel for the Applicants. It was also pointed out that the Applicants satisfied the conditions and that they were also confirmed. Reliance was placed on the following two judgements :

- (i) A.K. Khanna V/s. Union of India reported in A.T.R. 1988 (2) CAT 518 dated 06.09.1988.
- (ii) G. K. Sharma V/s. State of Rajasthan reported in 1993 SCC (L&S) 554.

9. The three O.As. were argued on behalf of the Respondents by their Learned Counsel, Shri M. I. Sethna alongwith Shri V. D. Vadhavkar. The point regarding limitation, delay and laches was first taken up by the Learned Counsel for Respondents and it was



even emphasised that in terms of the law settled in the case reported at 2000 (2) ATJ 298 (P. S. Aslekar & Others V/s. Union of India & Others), the contention of limitation could be raised at any stage. It was stated that any benefit could, in any case, come only after 1997.

10. Learned Counsel for the Respondents took us over the O.M. dated 05.05.1979. It was necessary to identify ten percent of the concerned staff, and such persons were given the benefit. The Applicants did not fall in this stipulated ten percent staff, and hence were not provided with the benefit. Learned Counsel for Respondents further continued to argue that the Board of Arbitration had accepted this position and that the staff doing harder complex work had got the benefit only for the relevant period. It was argued that it is not the case of the Applicants that they fall in the ten percent category of staff. A policy decision made 20 years back cannot be questioned now in 1977. On this argument, reliance was placed on the case of reported at 1997 SCA 1003. Ans

11. The Learned Counsel for the Respondents drew our attention to the O.M. at page 27 dated 22.05.1989, also referred to by the Applicants for support. In fact, the point made was that this does not support the cause of the Applicants. It was

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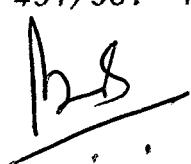
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also argued that the Applicants have not drawn special pay specifically as per O.M. dated 05.05.1979 and no judicial review of a policy could lie in this regard.

12. Rearguing the case briefly, the Learned Counsel for Applicants stated in regard to limitation that each employee should not be asked to go to seek redressal once similarly placed persons are awarded. Representations had been made in time by Applicants. It was also urged that this was a continuing cause of action and hence would not be subject to limitation. Judicial review of policy was clearly in order and para 12 of the judgement of G. K. Sharma V/s. State of Rajasthan, quoted above, was sought support from. It was reiterated that Applicants were getting special pay only for arduous nature of work.

13. Now, the first point to be seen is, that this matter and issues raised in the three cases have already been taken up for judicial review by the Calcutta Bench of this Tribunal admittedly. The matter has further been taken up right up to the Hon'ble Supreme Court, which has also gone into the subject in view of a Special Leave Petition being filed by the Union of India i.e. the original Respondents in the case before the Calcutta Bench of the Tribunal. The Calcutta Bench had decided the matter in its judgement/order dated 30.09.1992 in O.A. No. 491/90. Here also the U.D.Cs. were working in the Internal Audit



of the Collectorate of Customs, Calcutta, as Upper Division Clerks and the same grievance was raised that the special pay that they ~~had been~~ drawing, as U.D.Cs., was not taken into account while fixing their pay in the promotional post. The matter has been dealt with in some detail in the aforesaid judgement of the Calcutta Bench. The Calcutta Bench of the Tribunal had decided the matter by directing the official Respondents therein to revise the pay (of the Deputy Office Superintendents) from the grade of U.D.C. and to pay monetary benefits. This judgement was made in September, 1992. The Supreme Court has thereafter also decided the matter by dismissing the S.L.P. Therefore, we would be bound by these decisions, since the issue involved are similar here. However, we will examine the arguments raised by the Respondents.

14. A point has been taken up by the Respondents that the Special Pay being drawn by the Applicants was not the same kind of special pay, as was being drawn by the ~~some others in~~ ^{Board} ~~the office~~. This argument cannot be allowed and in any case, all these issues were before the Calcutta Bench when ~~the~~ matter was decided. Similarly, the issue regarding the award of Board was also discussed at some length. This also cannot offer any support to the Respondents, since this fact was also available to the Calcutta Bench. We will, therefore, not go into this issue, which have once been settled.



15. One of the main contention taken in rejecting the case of the Applicants was that the benefit of the judgement of the Calcutta Bench could only be given to the Applicants therein. Infact, this is the reply given to the Applicants by the Respondents. It is also seen that the matter had been taken upto the highest level of the Government and was rejected on this count. Now, it would not be correct to take such a stand in all cases and in the facts and circumstances of this case where all the basic facts and issues are common, it would be certainly not correct or open to the Respondents to take this stand. It would have an implication to the effect that each person should go to Court. In this regard, the case of Gopal Krishna Sharma cited above, has some relevance, where it is decided that the benefit of judgements of the Supreme Court are to be extended to all and even to those who did not join as parties before the Court. We have also seen the judgement in the matter of A.K. Khanna V/s. Union of India reported in ATR 1988 (2) CAT 518. The Headnote of the judgement reads as follows :

"Benefit of Judgement

Constitution of India, Articles 14 & 16 - Benefit of Judgement - Whether can be extended to those who were not party to the judgement but were similarly placed as the petitioner therein. Held, Not extending similar benefit would amount itself to a discrimination violative of Articles 14 and 16 of the Constitution."

Therefore, the benefit of this principle decided ~~by the~~ Hon'ble ~~by~~ Supreme Court would certainly come to the support of the Applicants, since in our view the situation is similar.



16. One important point taken by the Learned Counsel for the Respondents during argument related to limitation, delay and laches. It was argued that the matter pertained to a very distant time in the past, and that the case was hit on the principles of limitation, delay and laches. In regard to limitation, it may be stated that what has been asked for, in relief, relates to fixation of pay in a higher cadre after taking into consideration the special pay as described. The matter regarding fixation of pay and the benefit that will come about for times ahead is certainly ~~thereafter~~ ^{Arg 8} a continuing cause of action and in ^{view of} the ratio in the case of M.R. Gupta V/s. Union of India & Others reported at 1995 (31) ATC 186 decided by the Hon'ble Supreme Court the application will not therefore be hit by the law of limitation. However, in regard to delay and laches, the matter will have to be governed by the ratio decided in the matter of Jai Dev Gupta V/s. State of H.P. & Another reported at 1998 SCC (L&S) 1587. In other words, the benefits of payment of arrears, etc. if available, will be restricted in consonance with the ratio of Jai Dev Gupta's case.

17. In view of the detailed discussions made above, we are convinced that the relief sought by the Applicants will have to be granted to them in principle. We must reiterate that the matter is being decided in principle, since we are not going by the actual dates and other records. These are matters of facts



applicable in individual cases of the number of Applicants in three O.As. Hence, the Respondents will need to decide the each individual case of the Applicants in the three O.As. depending on the facts but based on the principles decided herein.

18. Accordingly, all the three Original Applications (No. 1031/97, 1053/97 and 184/98) are allowed in terms of the following orders :

- (i) The Respondents are directed to fix the Applicants' basic pay in the cadre of D.O.S./equivalent after taking into account the special pay (of Rs. 35/-, Rs. 70/- or as applicable) paid to them as Upper Division Clerks.
- (ii) The pay will be fixed notionally and dates notified in each case based on facts in individual cases.
- (iii) The arrears, if and as due to the respective Applicants, whether as pay or pension, as applicable shall be payable from the month of filing of the respective O.As. In other words, w.e.f. 01.09.1997 in O.A. No. 1031/97, 01.11.1997 in O.A. No. 1053/97 and from 01.02.1998 in O.A. No. 184/98. No interest will be payable on such arrears.
- (iv) In the circumstances, there will be no orders as to costs.

S. L. Jain
(S.L. JAIN)
MEMBER (J).

OS*

B. N. Bahadur
(B.N. BAHADUR)
MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. NO. : 29/01 IN O.A. NO. : 1031/97.

Dated this Friday, the 15th day of June, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

Shri B. A. Rajadhyaksha & Others ... Applicants

VERSUS

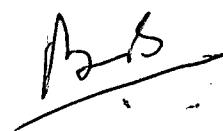
Union of India & others ... Respondents.

ORDER ON R.P. ON CIRCULATION.

Per : Shri B. N. Bahadur, Member (A).

This Review Petition is filed on the ground that petitioners have noticed that there are errors apparent on the face of the record which has resulted in substantial miscarriage of justice to them. It is the contention in the review petition that the petitioners have been treated differently. It is also their grievance that the benefit has been given from a date different to that given by the Calcutta Bench. Other grounds on the basis of Calcutta Bench judgement has been taken in the Review Petition, specially on restriction of the dates of payment of arrears.

2. On careful consideration of this Review Petition we are not convinced that there is any error apparent on the face of the



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record, as has been contended. The grounds on which the petitioners have a grievance may well form a basis of grievance for them but these grievances do not come out of errors apparent, as contended. Their grievances arising out of the appreciation made by this Tribunal certainly have a remedy but not in a revision petition. Hence, we are not convinced that the Review Petition has any force or merit and is therefore hereby rejected.

S. L. Jain
(S. L. JAIN)
MEMBER (J).

B. N. Bahadur
(B. N. BAHADUR)
MEMBER (A).

OS*