OA 180/98

OA 360/98

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No. 180/98, 258/98 and 360/98

Monday the 1st day of June 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S. Baweja, Member (A)

Vishavambhar Murlidhar Khole
Ex-UDC ,MES
Residing at : 410, Somwar Peth
Sadguru Park, Flat No.18,
Pune.

Bhishma Datta
Ex-UDC, MES
Residing at : 12-B Cycle Merchants
Society, Rasta Peth,
Pune. ... Applicants in (OA 180/98)

R.B. Durgam (Retd. UDC)
Presently residing at
B1/8, Sopan Baug. Opp.NCL
Pashan, Pune. ... Applicant in (OA 258/98)

P.D. Janpandit
(Ex-O.S Gr.I CESC)
Residing at :
1225/7, Kanade Building
Deccan Gymkhane,
Pune. ... Applicant in (OA 360/98)

By Advocate Shri S.P. Saxena.

V/s.

Union of India, through
The Secretary,
Ministry of Defence
DHQ PO, New Delhi

The Engineer-in-Chief
Army Headquarters,
Kashmir House,
DHQ PO New Delhi

The Chief Engineer
Southern Command
Pune.

GE(MES), NDA, Khadakwasla,
Pune. ... Respondents.

By Advocate Shri R.R.Shetty for Shri R.K. Shetty.

O R D E R (ORAL)

( Per Shri Justice R.G.Vaidyanatha, Vice Chairman )

These are three applications filed by the applicants praying for arrears of pay and other benefits with effect from 1.1.47. The respondents have not filed reply but the learned counsel for respondents opposes the applications and adopts the reply they have already filed in some of the connected cases previously. We have heard the counsel appearing for the applicants in O.A 180/98 and 367/98 and applicant in person in OA 258/98 and the counsel for the respondents.

All the applicants in these applications were working in Military engineering Service. They are entitled to be treated as UDC with effect from 1.1.47 and ~~subsequent~~ monetory benefits on the ~~face~~ of the first Pay Commission headed by Justice Varadhacharya It is not necessary to mention the facts of the case, since the question is covered by the decision of the Supreme Court in Civil Appeal No. 4201/85 dated 4.11.1987. The Supreme Court has confirmed the order passed by the Tribunal in OA 793/96 and connected cases. The applicants in these cases are claiming for classification as UDC with effect from 1.1.47 and they are entitled to the difference of arrears of pay etc as per the directions of the Supreme Court. In the facts and circumstances of the case we feel that arrears should be restricted to 50%. In our view as per the directions of the Supreme Court and the Judgement of the Division Bench of this Tribunal, the applicants in these cases are entitled to similar reliefs.

3. In the result all the three applications are hereby allowed. The respondents are hereby directed to re-classify the applicants in these cases as U.D.C. with effect from 1.1.47 and to pay them the difference of arrears of pay as per the directions of the Supreme Court in Civil Appeal No. 4201/85 dated 4.11.87. However we direct that in view of the facts and circumstances ofthe case arrears of pay of the applicants is restricted to 50%. The respondents are also directed to review the case of promotion, re-fixation of pay, seniority and re-calculation of Pension and Gratuity in accordance with the order dated 8.6.1994 and make payments to the applicants. In the circumstances of the case we grant six months time to the respondents to comply with this order. There will be no order as to costs.

M.P. 131/98 in OA 180/98 is hereby allowed and permitted the applicants to file joint application.

(D.S. Baweja)
Member (A)

(R.G. Vaidyanatha)
Vice Chairman

NS

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

1. R.P. No. 12/2000 in OA No. 814/98
2. R.P. No. 17/2000 in OA No. 63/99
3. R.P. No. 18/2000 in OA No. 46/99
4. R.P. No. 22/2000 in OA No. 780/98
5. R.P. No. 25/2000 in OA No. 180/98
6. R.P. No. 52/2000 in OA No. 550/98
7. R.P. No. 55/2000 in OA No. 360/98
8. R.P. No. 56/2000 in OA No. 258/2000
9. R.P. No. 61/2000 in OA No. 502/97

the 28th day of May 2002.

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

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

1. Union of India through
The Secretary,
Ministry of Defence
D.H.Q.P.O. New Delhi.

2. The Engineer-in-Chief
Army Headquarters
Kashmir House, DHQ PO
New Delhi.

3. The Chief Engineer,
Southern Command,
Pune.

Review Applicants in all the OAs.

V/s

1. Smt. Uma Sadashiv Kulkarni
W/o Late Sadashiv Hari Kuklarni
R/at Kaluram Sutar Chawl,
S.No. 87/2-B, Azadwadi
Opp. Ganesh Mandir, Kothrud,
Pune.

Review Respondent in OA 814/98

2. D.Y. Tanksale,
R/at C/o M.D. Tansale,
23, New Swarajya Hsg. Society,
Ideal Colony, Paud Road,
Pune.

Review Respondent in OA 63/99

3. M.S.Landge,
127, Shukrawar Peth,
Pune.

Review Respondent in OA 46/99

4. Smt. Sulochana Chittibabu
W/o Late G.V. Chittibabu
448, Rastapeth,Pune. — Review Respondent in OA 780/98

5. (i) Vishavambhar Mulidhar
Khole, Ex-UDC, MES
R/at 410, Somwar Peth
Sadguru Park, Flat No.
18, Pune.

(ii) Bhishma Datta
Ex-UDC, MES
R/at 12-B Cycle Merchants
Society,Rasta Peth
Pune. — Review Respondent in OA 180/98

6. T.M. Madangopal
Ex-Adm.Officer II
R/at C/o A.V. Naidu,
449, Somwar Peth,
Pune. — Review Respondent in OA 550/98

7. Mrs. Mangala P. Janpandit L.H of
P.D. Janpandit
Ex.O.S. Gr. I CESC
R/at 1225/7, Kanade
Building, Deccan
Gymkhane, Pune. — Review Respondent in OA 360/98

Deleted as per order dt 21-3-03 in CRA 55/02

8. R.B. Durgam (Retd.UDC)
R/at B1/8, Sopan Baug,
Opp. NCL, Pashan, Pune. — Review Respondent in OA 258/2000

9. L. Mahalingam,
Ex-Office Supdt. Gr.II
R/at C/o Shri M.Shriniwasan
Flat No. B/3/1, Ayakar Co.op.
Housing Society,Phud Road,
Pune. — Review Respondent in OA 502/97

**O R D E R**

**{Per S.L. Jain, Member (J)}**

As all the above Review Petitions involve one and the same question of law, we proceed to decide all the Review Petitions together.

2. The Review Petitions are not filed within 30 days from the date of the order, therefore, respondents have filed the delay condonation application. The Chart mentioned below is indicative of the fact, the date of the decision of the OA, the Review Petition filed in respect of the said order and the cause for delay as stated by the respondents:-

| S.No. | R.P.No. | Date of Order | Review filed | Cause for delay |
|---|---|---|---|---|
| 1. | R.P.12/2000 OA 814/98 | 25.1.1999 | 29.3.2000 | Change in factual Position, Public interest, Judici-al & Discipline. |
| 2. | R.P.17/2000 OA 63/99 | 15.3.1999 | 29.3.2000 | --do-- |
| 3. | R.P.18/2000 OA 46/99 | 15.3.1999 | 29.3.2000 | --do-- |
| 4. | R.P.22/2000 OA 780/98 | 14.12.1998 | 29.3.2000 | --do-- |
| 5. | R.P.25/2000 OA 180/98 258/98 360/98 | 1.6.1998 | 29.2.2000 | --do-- |
| 6. | R.P.52/2000 OA 530/98 570/98 | 7.9.1998 | 31.8.2000 | --do-- |
| 7. | R.P.55/2000 OA 360/98 (Other OAs decided together 180/98,258/98) | 1.6.1998 | 31.8.2000 | --do-- |
| 8. | R.P.56/2000 OA 258/98 | 1.6.1998 | 6.9.2000 | --do-- |
| 9. | R.P.61/2000 OA 502/98 (Other OAs decided together 501/97, 520/97) | 27.10.1997 | 31.8.2000 | --do-- |

3. On perusal of the delay condonation application, we find that in the public interest, judicial discipline demand for review. We are not able to gather any other fact or reason for delay condonation in the said application. We do not find any reason when there exists none to condone the delay for the period stated in Col.No. 3 & 4 read together beyond 30 days. As such, delay condonation application deserves to be dismissed and is dismissed accordingly. (AIR 1999 SC 40 - M.Satyanarayana Murthy & Ors. vs. Mandal Revenue Officer-cum-Land Acquisition Officer).

4. In view of the said finding, there is no necessity to record an opinion on merits of the Review Petition No.12/2000, 17/2000, 18,22,25,52,55,56 and 61/2000. If we have taken a contrary view, our opinion regarding merits of the Review Petition is recorded below only with a view to attain finality of the litigation atleast at this level.

5. The respondents in para 3 of the Review Petition stated that at the time of filing the written statement, the particular case law as reproduced through "All India Services Law Journal for August,1999" was not received. The respondents further wish to state that the decision of CAT PB, New Delhi judgement dated 15.7.1998 in OA.No.580/94 which is fully based on the decision of Apex Court is binding on this Tribunal under Article 141 of the Constitution of India.

6. In view of the said decision, the respondents are seeking the review of an order passed in OA.NO.535/99 on 6.9.1999.

7. 2000 (2) A.I.SLJ 108 - Ajit Kumar Rath vs. State of Orissa & Ors., the Apex Court has held that :-

> "The power of review available to the Tribunal is the same as has been given to a Court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due deligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error or law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule."
>
> "Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgement."

It is stated in delay condonation application that "the undersinged and our counsel lost sight of the said judgement of the Hon'ble Supreme Court Order dated 24.10.1997 and order dated 15.7.1998 of the Hon'ble Principal Bench of CAT which is sincerely regretted".

8. 1997 (4) SCC 478 - Dokka Samuel vs. Dr.Jacob Lazarus Chelly, the Apex Court has held that "Omission on the part of counsel to cite an authority of law does not amount to error apparent on the face of the record so as to constitute ground for reviewing prior judgement".

9. The learned counsel for the respondents - Review Petitioner relied on an order passed by this Bench in Review Petition No.45/99, 50/99,53/99 on 30.3.2000, particularly on para 11 which is as under :-

> " Having regard to the undue delay in approaching this Tribunal and also claiming retrospective benefit from 1.1.1947 and particularly in view of the judgement of the Principal Bench and the Supreme Court mentioned above, we feel that our order granting 50% of arrears from 1.1.1947 requires to be reviewed and accordingly we review the same."

In view of the law stated by us pronounced by the Apex Court of the land, the order passed in Review Petition can not assist the respondents.

10. In AIR 2000 SC 1650 - Lily Thomas vs. Union of India & Ors., the Apex Court has held that :-

> "Error contemplated under the rule must be such which is apparent on the face of the record and not an error which is to be fished out and searched."
>
> "Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law."

11. In Batuk K.Vyas vs. Surat Borough Municipality - AIR 1953 Bom 133 (R), it is held that :-

> "No error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for deicision in the majority of cases. But there must be cases in which even this test might breakdown, because judicial opinion also differ, and an error that might be considered by one-judge as self evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or echaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case."

12. On perusal of OA.No.81/98 after pronouncement of order dated 25.2.1999 which was to be complied with within six months time, the respondents have filed M.P.No.490/99 seeking extension of six months time for implementing the order which was allowed vide order dated 30.7.1999. Thereafter, again the respondents moved M.P.No.76/2000 for the same relief which was allowed on 4.2.2000.

13. In OA.63/99 and 46/99 after pronouncement of order on 15.3.1999 which was to be complied with within six months, the respondents filed M.P.No.609/99 for extension of time which was allowed for one month. Thereafter filed M.P.No.608 and 609 for extension of time which were allowed and six months time for implementation of the order granted w.e.f. 1.9.1999. Thereafter, filed M.P.No.2001/2000 seeking further extension of time. Thereafter, review was filed.

14. In OA.No.780/98 which was decided vide order dated 14.12.1998 respondents filed M.P.No.337/99 for extension of time by four months which was allowed on 4.6.1999, further M.P.No.644/99 for extension of time by four months was allowed by order dated 4.10.1999. Thereafter, filed M.P.No.128/2000 for extension of time which was allowed on 3.4.2000. Thereafter, review was filed.

15. OA.NO.180/98 which was decided along with other OAs.No. 258/98 and 360/98 which was decided on 1.6.1998, time to implement the order was six months. Thereafter, Review Petition No.63/98 was filed by the respondents which was decided vide order dated 11.12.1998. Thereafter, the respondents sought time for implementing the order vide M.P.No.15/99 which was allowed on 15.1.1999, further filed M.P.No.454/99 which was allowed by order dated 23.7.1999, further filed M.P.No.771/99 which was allowed vide order dated 26.11.1999. Thereafter, the respondents filed the review.

16. The respondents have not only allowed the applicant but also gave him the legitimate expectation that the order is to be complied with and they are not going to agitate the matter any more either in Superior Court or anywhere else. Thus, the legitimate expectation of the applicants in OA. was that the matter has attained its finality. There must be some sought of finality to the decision and only with a view that a decision attain finality, provisions regarding limitation in filing review

application is being provided for. Ignoring such provisions and to wake up after months and years, without there being any cause for delay for being condone, the respondents cannot seek the indulgence of this Tribunal in such matters.

17. The respondents have stated that whatever amount has been paid, they are not going to recover the same and towards the claim of the applicant in OA.No.780/98 amount Rs.7,921/- + Revised Pension from 1.1.1996, OA.NO.814/98, 63/99, 46/99, 502/97, 360/98, 530/98 arrears of revised pension/gratuity from 1.1.1996, OA.NO.180/98 amount Rs.34,883/in the grade of UDC and Rs.5,311/as AO II, OA.NO.250/98 amount Rs.37,242/- + payment of UDC, Asstt.I/C Supdt. Clerical have been paid. This is the circumstances which leads the Tribunal to arrive to a finding that though there is no estoppel against law but certainly there is an estoppel which arises from the conduct of the respondents which lead to the applicant to believe that they are going to get the fruits of the litigation.

It will not be unnecessary to state that the cases of the applicants were decided on the basis of the earlier judgement of the Apex Court of land.

18. In the result, we do not find even any merit in reviewing the order passed by this Tribunal in the OAs.mentioned in para 2 of this order. As such, delay condonation application as well as review petition (both) deserves to be dismissed and are dismissed accordingly. No order as to costs.



Copy to :-
1.
2. Shri R.K.Shetty, Counsel for Respondents.

Section Officer.

(39) O.A.360/1998 Dt. 21.3.2003
M.P.No.195, 196, 197/2003

Shri S.P. Saxena, learned counsel for the applicant and Shri R.R.Shetty, for the respondents.

2. Applicant filed M.P. No.195/2003 for condonation of delay in bringing on record the leal heirs. The same is condoned and the M.P. is allowed.

3. M.P.No.196/03 has been filed by the applicant to bring the name of wife of late Shri P.D. Janpandit on record. The same is allowed.

4. M.P.No.197/03 has been filed by the applicant for speaking to the minutes as a Review Petition No.25/2000 was filed on 29.2.2000. The Review Petion was dismissed. In the Review Petition Order, the name of the deceased employee is still shown in respect of the name of the legal heir. The applicant wants that to be corrected and replaced by the name of the legal heir. The same is allowed. Corrections may be carried out accordingly in the R.P.25/2000.

List on 23.4.2003.

(K.V.Sachidanandan)
Member (J)

(Smt. Shanta Shastry)
Member (A)

sj*

Rect. 27/3 (Copy) 21/3/03 + corrections to Master