

OA No. 550/98

OA 570/98

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,
MUMBAI - 400 001.

ORIGINAL APPLICATION NOS.550/98 & 570/98.

DATED THE 7TH DAY OF SEPTEMBER, 1998.

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

Hon'ble Shri D.S.Bawēja, Member(A).

T.M.Madangopal
Ex-Adm. Officer II,
Rlat-C/O. A.V.Naidu,
449, Somwar Peth,
Pune - 411 011.

| Applicant in OA No.550/98.
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and

Smt. A.V.Padmavati Kunhiraman
(W/O of Late Shri A.V.Kunhiraman,
MES No.30785),
A-304, Jesal Apartment,
Behind Municipal Hospital,
Shastrinagar,
Dombivli(West)-421 202.

| Applicant in OA No.570/98.
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By Advocate Ms.Neelima for Shri S.P.Saxena

v/s.

1. Union of India
Through The Secretary,
Ministry of Defence,
DHQ PO, New Delhi-110 011.

2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
DHQ PO, New Delhi-110 011.

3. The Chief Engineer,
Southern Command,
Pune - 411 001.

By Advocate Shri R.K.Shetty.

| Respondents in OA Nos.
| 550/98 and 570/98.
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I O R D E R I

I Per Shri R. G.Vaidyanatha, Vice Chairman I

These are two applications filed by two applicants
(applicant in the first case and applicant's wife in the
second case) seeking revision of pay from 1/1/47 and for
consequential benefits. Learned Counsel for respondents opposes
the two applications. It is brought to our notice that the
question is covered by judgements of supreme Court and
number of judgements of this Division Bench. Hence, we are

disposing of both the OAs at admission stage.

We have heard both the counsel.

2. The two applicants who were formerly working as civilians in Defence Establishments from the period prior to 1947. They have claimed for higher pay scale with effect from 1/1/47. In an identical matter, the Supreme Court in Civil Appeal No.4201/85 by order dated 4/11/87 granted relief to the retired clerks in the Ministry of Defence like the present applicants. In our view the said decision directly applies to applicants in these two cases. Further, similar point has been considered by Division Bench of this Tribunal in OA.Nos.501/97 and connected cases where by order dated 27/10/97, this Tribunal granted reliefs to officials like the applicants by granting the benefit of revised payscale from 1947 subject to certain conditions. In our view the decisions of the Supreme Court and Division Bench squarely applies to these two cases. These two applicants are entitled to ^{relief} claim as granted by this Tribunal in OA-501/97 and connected cases.

3. In the result, both the applications are allowed. Respondents are directed to reclassify the applicants in OA-550/98 and 570/98 as UDCs with effect from 1947 and pay them the difference of arrears of pay as per the directions of Supreme Court in Civil Appeal No.4201/85. In view of the delay in filing the applications, we are restricting the amount to 50% of the total amount due to the applicants. Respondents are directed to give promotion, re-fixation of pay, seniority, recalculation of pension and gratuity in accordance with the order dated 8/6/94 and make payments to the respective applicants, but however restricting the past arrears to 50%. In the circumstances of the case, six months time is granted to implement the order. No costs.

M(A) *[Signature]*

H.C.

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

RP.No. 46/99 in
PRE DELIVERY JUDGEMENT IN OA.NO. 570/98.

Hon'ble ~~Vice Chairman~~ / ~~Member (J)~~ /
Member (A) may kindly see the above judgement for
approval / signature.

W.G.
~~V.G.~~ / Member(J) / ~~Member (A)~~

~~Hon'ble Vice Chairman~~

~~Hon'ble Member (J)~~

Hon'ble Member (A) *W.G.*

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.R.P.No.46/99 in OA.No.570/98

Dated this the 28th day of May 2002.

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

Hon'ble Smt.Shanta Shastry, Member (A)

Smt.A.V.Padmavati Kunhiraman ...Applicant

None for the Applicant

vs.

Union of India & Ors.

...Respondents

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

Tribunal's Order

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

The Respondents in OA.NO.570/98 which was decided vide order dated 7.9.1998 have filed the Review Petition after receipt of the copy of the same on 29.9.1998, on 25.10.1999 after the prescribed period mentioned in Rule 17 (i) Central Administrative Tribunals (Procedure) Rules, 1987 along with application for condonation of delay.

2. Order passed in OA.NO.570/98 was to be complied with within six months. Thereafter, on 26.4.1999 the respondents filed M.P.No.324/99 for extension of time for implementing the order passed in the OA., which was decided on 4.6.1999 and further extension of time by four months from 4.6.1999 was

P.C.M.

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granted. Thereafter, the respondents filed another M.P.No.628/99 on 22.9.1999 for extention of time for implementing the order which was allowed and further six months time from the date of order, i.e. 1.10.1999 was provided to the respondents.

3. On perusal of the delay condonation application we find that in the public interest, judicial discipline demand for review is the ground. We are not able to gather any other fact or reason for delay condonation in the said Review Petition. We do not find any reason when there exists none to condone the delay of about a year. 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.46/99. 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 at the time of filing the written statement dated 20.8.1999, 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.

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6. In view of the said decision, the respondents are seeking the review of an order passed in OA.NO.570/98 on 25.10.1999.

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 diligence, 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 of 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 undersigned 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".

[Handwritten signature]

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 the present case, in addition to the above facts and question of law decided above, it is worth mentioning that the respondents have taken the decision to implement the order passed in OA.No.570/98. In furtherance of the said decision, the respondents moved M.P.No.329/99 and 628/99 were considered by the Tribunal and allowed as stated above. The litigation must attain

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its finality. The respondents who were entitled to file a Review Petition within 30 days from the date of the order passed, not only slept over the matter but also gave an unambiguous impression that they are implementing the order passed in OA.No.570/98. The applicant in OA. thereafter had legitimate expectation that the matter has attained finality and thereafter after about a year the respondents changed their mind after coming to know of the judgement referred above. The Respondents are estopped by their conduct and on principle of legitimate expectation of the applicant.

11. In the result, we do not find even any merit in reviewing the order passed by this Tribunal dated 7.9.1998. As such, delay condonation application and Review Petition (both) deserves to be dismissed and are dismissed accordingly. No order as to costs.

Shanta S

(SMT. SHANTA SHASTRY)

MEMBER (A)

S.L. Jain
(S.L. JAIN)

MEMBER (J)

mrj.

dt: 28.5.2002
Order/Judgement despatched
to Applicant/Respondent (s)
on 17.2002

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