

(104)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH  
AT HYDERABAD

O.A. NO. 1110 of 1991.

and MANO. 149/95

Between

Dated: 10.4.1995.

K.Suryanarayana Murthy.

Defence Electronics Research Laboratory, Hyd and 71  
Othrs.

...

Applicants

And

1. Union of India Rep. by its Secretary for Ministry of  
Defence, New Delhi.
2. The Scientific Advisor Ministry of Defence, Director of  
General of Research and Development, Organisation,  
New Delhi.
3. The Director of Defence Electronics and Research Labora-  
tory, Kanchanbagh, Hyd.

...

Respondents

Counsel for the Respondents : Sri. N.R.Devaraj, Sr. CGSC.

CORAM:

~~Mr. J. S. Narasimhan, Judicial Member~~

Hon'ble Mr. A.B.Gerthi, Administrative Member

~~M.A.No.149/95~~  
and  
O.A.No.1110/91

Dt. of decision: 10.4.1995

JUDGEMENT

X As per the Hon'ble Sri A.B. Gorthi, Member (A) X

The applicants are Scientists in the Defence Electronics and Research Laboratory, Hyderabad (D.L.R.L. for short). As on 1.1.1973 they were Senior Scientific Assistants. In the recommendations of the Third Pay Commission, an Expert Classification Committee (E.C.C. for short) was constituted and it recommended the pay scale of D.S.As. from Rs.550-900 to Rs.700-900 or introduction of a new grade of Rs.650-1040 for individuals with specific qualifications and experience. This recommendation was not accepted by the Government. The matter was discussed in the meeting of the Joint Consultative Machinery (J.C.M. for short) but no agreement could be reached. In terms of the JCM Scheme, the issue was referred to a Board of Arbitration. The Board, in its award, recommended the revised pay scale of Rs.840-1040 (in the preremoved scale) for all Senior Scientists and Chief Draughtsmen of D.R.D.O. retrospectively from 22.9.82. The government agreed to accept the recommendation, but decided to implement the award w.e.f. 1.1.1988 for the reason that it could not afford such huge expenditure. In terms of Para 21 of the JCM Scheme, the government placed before each House of Parliament the report of the Board of Arbitration.

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decision to implement it w.e.f. 1-1-1988. Both the Houses of Parliament passed resolutions accepting the proposal of the government. The relief claimed by the applicants is that the revised pay scale be given effect from 1973 with all consequential benefits.

2. Similarly situated S.S.As. approached various Benches of the Tribunal without success. However, the Principal Bench in O.A.952/86 allowed the plea of the applicants and directed implementation of the revised pay scale w.e.f. 22-9-82. But that was prior to the ~~decisions~~ <sup>resolutions</sup> referred to above. The decision of the Principal Bench granting relief from 22-9-82 was stayed by the Supreme Court and thereafter the UOI & ORS. V/s Scientific Workers Association (Regd.), Kanpur & Ors. (Civil Appeal No.3954 of 1990). Relevant portion of the judgement reads thus:-

" Clause 21 of the JCM Scheme clearly lays down that the Central Government in the interests of award before each House of Parliament for the modifications of the recommendations of Board. There is no material on the record to show that under Clause 21 of the JCM Scheme is vitiated in any manner. The two Houses of Parliament having passed the Resolutions the award stood modified in terms of the Resolution and as such can be implemented with effect from January 1, 1988 and ~~1988~~ <sup>1988</sup>.

3. Ordinarily, under the aforestated developments, the present O.A. would have been dismissed without detailed discussion. However, we heard at length the elaborate

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arguments advanced by Mr. K. Prabhakar Reddy, learned counsel for the applicants. His first contention is that the applicants were not parties to the Civil Appeals (including C.A.No.3954/90) decided by the Supreme Court and as such are entitled to agitate their claim before the Tribunal. In support, reliance was placed on A.D.M., Jabalpur V/s S. Shukla, AIR 1976 SC 1206 and Central Inland Water Transport Corpn. Ltd. and anr. V/s Broj Nath Ganguly & another 1986 SCC (L&S) 429. In A.D.M., Jabalpur, it was observed by Bhagwati, J. (as his Lordship then was) as under:

"While considering the observations of a high judicial authority like the Supreme Court, the greatest possible care must be taken to relate the observations of a Judge to the precise issue ~~and to confine such observations even~~ though expressed in broad terms, in the general compass of the question before him, unless he makes it clear that he intended his remarks to have a wider ambit. It is not possible for Judges always to express their judgements so as to exclude entirely the risk that in some subsequent case their language may be misapplied and any attempt at such perfection of expression can only lead to the opposite result of uncertainty and ~~regards the case in hand.~~

In the case of Inland Water Transport Corporation, it was held, inter alia, as under:

"It is fallacious to assume that merely because a point has not fallen for decision by the Court, it should not be decided at any time. The whole process of judicial interpretation lies in extending or applying by analogy the ratio decidendi of an earlier case to a subsequent case which differs from it in certain essentials ~~and to lay down in the earlier case~~

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fit in with the new set of circumstances. The sequitur of the above assumption would be that the court should tell the suitor that there is no precedent governing his case and, therefore, it cannot give him any relief. This would be to do gross injustice."

4. Neither of the above two cases will be of any assistance to the applicants. The Supreme Court categorically upheld (in CA No.3954 of 1990) the validity of the government's decision to implement the award of the Board of Arbitration w.e.f. 1-1-1988 only. Even if the applicants were not parties before the Supreme Court, they cannot agitate an issue that stood decided by the apex Court. Even if they do so, they cannot expect a different result. In view of Article 14 of the Constitution which lays down that "the law declared by the Supreme Court shall be binding on all Courts within the territory of India".

as precedent, it is not everything in the decision that binds the Courts of inferior jurisdiction, but only its ratio decidendi. The ratio in the Scientific Workers Association case (supra) squarely applies to the case before us as the applicants are also the Scientific workers of the DRDO except that <sup>their</sup> claim is for the revision of pay scale w.e.f. 1973 and not from 22-9-82. The grounds on which the claim is made are the same which were found unacceptable by not only some of the Benches of the Tribunal but also by the Supreme Court.

6. The O.A. was filed in 1991 whereas the judgement of the Supreme Court (in CA No.3954 of 1990) came in 1994. Faced with the situation, learned counsel for the appli-

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cants came up with a Miscellaneous Application (M.A. No.149 of 1995) wanting to challenge the Constitutional validity of Clause 21 of the Scheme for the JCM, <sup>which</sup> ~~It~~ <sup>is</sup> reads as under:-

"21. Subject to the overriding authority of Parliament, recommendations of the Board of Arbitration will be binding on both sides.

If, for reasons to be recorded in writing, the Central Govt. is of opinion that all or any of the recommendations of Board of Arbitration should on grounds affecting national economy or social justice be modified, the Central Govt. shall, as soon as may be lay before each House of Parliament the report of the Board containing such recommendations together with the modification proposed and the reasons, therefor, and thereupon Parliament may make such modifications in the recommendations as it may deem fit. Modification may extend

7. Mr. Prabhakar Reddy urged that Clause 21 is unfair and heavily loaded in favour of the government and cannot therefore stand scrutiny under Article 14 of the Constitution. In this context, he referred to the judgment of the Constitutional Bench of the Supreme Court

in P. Sambamurthy & Ors. V/s State of Andhra Pradesh and Ors. AIR 1987 (1) SC 183. In that case, the validity of Clause 5 of Art. 371-D, under which an Administrative Tribunal for the State of Andhra Pradesh was established came up for consideration. Clause 5 read as under:-

"(5) The order of the Administrative Tribunal finally disposing of any case shall become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order is made whichever is earlier;

1. Secretary for Ministry of Defence, Union of India, New Delhi.
2. The Scientific Adviser Ministry of Defence, Director of General of Research and Development, Organisation, New Delhi.
3. The Director of Defence Electronics and Research Laboratory, Kanchanbagh, Hyd.
4. One copy to Sri. K. Prabhakar Reddy, advocate, CAT, Hyd.
5. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

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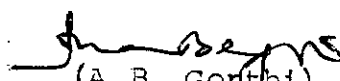
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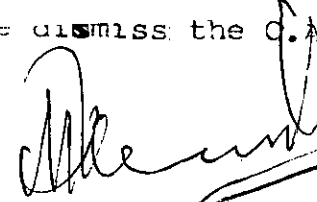
"Provided that the State Government may, be special order, made in writing for reasons to be specified therein, modify or annul any orders of the Administrative Tribunal before it becomes effective and in such a case, the order of the Administrative Tribunal shall have effect only in such modified form or be no effect, as the case may be." (underlined for emphasis.)

8. There can be no comparison between the proviso to clause 5 of Article 371-D, under which judicial review - a basic and essential feature of the Constitution - could be set ~~as~~ <sup>ought</sup> by the State government and Clause 21 of the JCM Scheme under which the government could ~~modify~~ <sup>accept or rejecting</sup>, the award of Board of Arbitration, provided it has the support of the resolutions of both the Houses of Parliament. For reason of economic helplessness, the government agreed to implement the award w.e.f. 1-1-1988 and not from 22-9-1982. It placed its decision supported with reasons, before the Parliament, which by resolutions, approved it. The procedure prescribed in Clause 21 thus fully accords with the Constitutional concept of sovereignty of the Parliament reflecting the will of the people. We therefore, find that Clause 21 of the ~~MA~~ <sup>MA</sup> has no such infirmity as would lead us to hold that is Constitutionally invalid. We, therefore reject the plea raised in the MA.

9. The above being the position, even if the MA is allowed and the additional prayer proposed <sup>is</sup> to be brought in to, considered, ~~the result~~ <sup>an amendment of this</sup> nature enlarging the scope of the ~~MA~~ <sup>MA</sup> after such an inordinate delay, especially <sup>when</sup> ~~would~~, there is no case on merit, will only contribute to further delay. Therefore we decline <sup>leave</sup> to grant ~~MA~~ <sup>leave</sup> to amend the OA as prayed for in the MA.

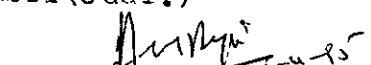
in ~~the~~ <sup>the</sup> ~~also~~ <sup>also</sup> the MA. No costs.

  
(A.B. Gorthi)  
Member (Admn.)

  
(A.V. Haridasan)  
Member (Judl.)

Dt. 10 April 1995

kmv/spr

Dy.   
Registrar (3)

(M) 2 - 41



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TYPED BY  
CHECKED BY

COMPARED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH

THE HON'BLE SHRI A.V. HARIDASAN: MEMBER

THE HON'BLE SHRI A.B. MORTHY: MEMBER

DATED 10.4.1995

ORDER/JUDGMENT

M.A.NO/R.P.NO./C.P.NO.

in

O.A.NO. 110/91

Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default

Rejected/Ordered.

No order as to costs.

FILED

