

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER : 17.05.02

OA No. 74/98

1. Subodh Kumar Agarwal son of Shri P.P. Agarwal
2. SANjeev Kumar Surana son of Shri D.C. Surana
3. Prakash Chand Modi son of Shri Babu Lal Modi
4. Shri Mahendra Tambi son of Shri S.N. Tambi
5. Ravindra Bhatia son of Late Shri Yashpal Bhatia

All are working as Assistant Audit Officer
under the Accountant General (Audit), Rajasthan,
Jaipur.

....Applicants.

VERSUS

1. The Union of India through the Comptroller and
Auditor General of India, Bahadur Shah Zafar Marg,
New Delhi.
2. The Accountant General (Audit-2) Rajasthan, Jaipur.

....Respondents.

Mr. Anupam Agarwal, Proxy counsel for

Mr. Manish Bhandari, Counsel for the applicants.

Mr. Gaurav Jain, Counsel for the respondents.

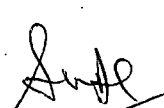
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Hon'ble Mr. S.K. Agarwal, Member (Judicial)

Hon'ble Mr. H.O. Gupta, Member (Administrative)

ORDER

PER HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL)



In this OA, applicants make a prayer to quash and set aside the order dated 30.7.97 and 10.12.97 and to direct the respondents to provide actual benefits of increments to the applicants as granted by Hyderabad Tribunal in OA No. 607/91 decided on 25.9.95.

2. The facts of the case, as stated by the applicants, are that applicants were initially appointed as Section Officer in the grade of Rs. 1640-2900 and they have successfully completed the probation period and the services of the applicants were confirmed vide order dated 2.7.93. It is stated that after confirmation, due benefits of increments were given to those working in Jaipur (Rajasthan) but the said benefit was not allowed to those working at different places other than Jaipur. Therefore, certain persons made complaints and in consequence thereof not only increments were withdrawn but order for recovery was also made. It is stated that representations were filed but with no avail. Therefore, OA No. 607/91 was preferred by employees working at Hyderabad and this OA was decided by CAT Hyderabad Bench vide its order dated 25.9.95 by which respondents were directed to make actual payment of increments after necessary pay fixation. It is stated that in consequence of the order passed by CAT Hyderabad, the benefits were given to all the concerned employees but the said benefit was not given to other similarly placed employees and they were only given notional benefits. Aggrieved by such discriminatory action, employees of Kerala have also filed an OA, who have also been given benefits as given to employees of Hyderabad. Applicants made representations but their representations have been rejected. Therefore, applicants filed this OA.

3. Reply was filed. It is stated in the reply that Hyderabad CAT judgement is applicable to the applicants of OA No. 607/91 only and therefore, the applicants of this OA are not entitled to similar benefits as provided by CAT Hyderabad. It is further stated that Principal Bench in OA No. 2031/98 has observed that competent authority can



restrict the payment of arrears in public interest having regard to the financial outlays involved. It is further stated that respondent No. 1 considered the whole matter and decided to modify condition No. 5 in Annexure A/2 vide order at Annexure R/3 and Annexure R/3 has been held as just and fair by CAT, Principal Bench, New Delhi in OA No. 2031/98. Therefore, applicants have no case.

4. Heard the learned counsel for the parties and also perused the whole record.

5. In catena of cases Hon'ble Supreme court has been of the view that similarly placed persons cannot be treated differently. In other words, equals cannot be treated as unequals and unequals cannot be treated equally. In Ashwani Kumar vs. State of Bihar 1997 (2) SCC Page 1, Hon'ble Supreme Court has been of the view that respondents are duty bound to treat all the employees under them alike.

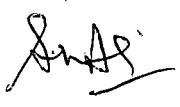
6. In Kamlakar & Others vs. Union of India & Others 1999(3)SLJ SC 307, Hon'ble Supreme court held that it is not proper to treat similarly placed group differently.

7. On the basis of aforesaid legal position, we are of the considered opinion that applicants, if they are similarly placed, cannot be denied the same benefits even though they have not filed any OA.

8. Admittedly, CAT Hyderabad Bench has given direction to respondents C & AG to release the first increment on completion of one year of service from the date of their appointment on probation and this judgement has been complied with vide order No. 235 dated 14.8.96 issued by Principal Director of Commercial Audit Hyderabad, meaning thereby that all the applicant of OA No. 607/91 before CAT Hyderabad Bench

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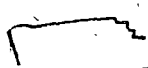
were given the benefits of increments as per the direction of the Tribunal given in OA No. 607/91 decided on 25.9.95 but the applicants of this OA were denied the same benefits on account of an order dated 20.3.97 passed by C & AG by which benefits of increments were made admissible on notional basis from 1.1.86 and on actual basis from the date of issue of these orders. It is undisputed fact that the case of these applicants is identical to those who are applicants in OA No. 607/91 before CAT Hyderabad and who have been given the benefit of increments in pursuance of the order CAT Hyderabad in OA No. 607/91 decided on 25.9.95 on actual basis. Then there is no reason to deny the same benefits to the applicants of this OA. The Circular dated 20.3.97, also makes it very clear that employees are entitled to their first increment on completion of first year service from the date of their appointment on probation and second increment on completion of second year service and so on but by this Circular, those benefits made applicable on notional basis w.e.f. 1.1.86 and actual basis from the date of issue of this Circular. Although the competent authority can modify the terms/condition of service in public interest but there must be some rationale behind such public interest. It is very strange that some employees were given the benefit because there was judgement in their favour and others who were also similarly situated persons were denied the same benefit because Department has issued some order to restrict the payment of arrears. In the reply, the basis of restriction has been mentioned as public interest having regard to the financial outlays involved but the same has not been mentioned in the said Circular specifically. President of India is only competent authority to make/supplement the rules regarding condition of service of persons serving in TA & AD. The only limitation is that President can exercise the powers after consulting C & AG but it is not open to the C & AG to make any provision in regard to condition of service. It is not the case of the respondents that this order dated 20.3.97 was issued by the President. Therefore, any order which is inconsistent with FR/Rules is not valid.

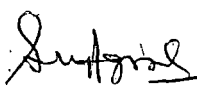


9. Therefore, in view of legal proposition, as above, and facts and circumstances of this case, we are of the considered opinion that applicants are also entitled to be given similar treatment as per Hyderabad CAT Judgement. Hence orders dated 20.3.97 and 10.12.97 are liable to be quashed. Order passed in OA No. 2031/98 is Single Member decision of Principal Bench and full facts might not have been made available before the Bench. Therefore, the order in OA No. 2031/98 does not help the respondents in any way.

10. We, therefore, allow this OA and quash letters dated 20.3.97 and 10.12.97 and direct the respondents to provide actual benefits of the increments to the applicants within two months from the date of receipt of a copy of this order as granted by CAT Hyderabad in OA No. 607/91 decided on 25.9.95.

11. No order as to costs.


(H.O. GUPTA)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)

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