

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO.66/2000.

Date of Decision : _____.

Smt.Shanti Devi & 5 Ors. : Petitioner.

Mr. S.K.Jain : Advocate for the Petitioner(s)

Versus

Union of India & Ors. : Respondent.

Ms.Shalini Sheoran proxy

Counsel for Mr.Bhanwar

Bagri counsel for respondents: Advocate for Respondent(s)

CORAM

The Hon'ble Mr.Justice G.L.Gupta, Vice-Chairman,
The Hon'ble Mr. A.P.Nagrath, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgment?

✓ 2. To be referred to the Reporter or not?

3. Whether their Lordship wish to see the fair copy of the Judgment?

4. Whether it needs to be circulated to other Benches of the Tribunal?

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(G.L.GUPTA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH : JAIPUR.

DATE OF DECISION : 05.05.03.

O.A. No.66/2000.

1. Smt. Shanti Devi, widow of late Shri Tulsi Ram.
2. Smt. Vijay Laaxmi, D/o. late Shri Tulsi Ram
3. Smt. Vartika Sharma, D/o. late Shri Tulsi Ram
4. Smt. Usha Sharma, D/o. late Sh. Tulsi Ram
5. Smt. Manju Sharma, D/o. late Shri Tulsi Ram
6. Anil Kumar Sharma, S/o Late Sh. Tulsi Ram all by caste Brahmin, resident of Jaipur.

.. APPLICANTS.

V E R S U S

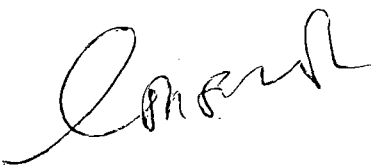
1. Union of India, through the Secretary to the Government, Ministry of Finance, Central Secretariat, Jaipur.
2. Comptroller and Auditor General of India, 10, Bahadur Shah Jafar Marg, New Delhi.
3. Accountant General (Accounts & Entitlement), Rajasthan, Jaipur.

... RESPONDENTS.

Mr. S. K. Jain counsel for the applicants.
Ms. Shalini Sheoran Proxy counsel for
Mr. Bhanwar Bagri counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.



: O R D E R :

(Per Hon'ble Mr. Justice G.L. Gupta)

The following reliefs were claimed by Late Shri
Tulsi Ram Sharma in the instant O.A. :

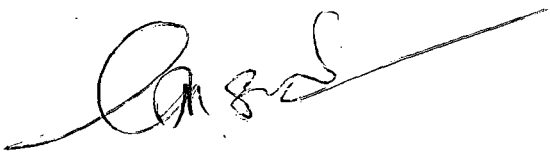
"8.1. The Govt. of India order No.498-G-II/222-97 dt. 16.4.1998 may kindly be ordered for modification to make it applicable with effect from 1.1.1996 than 1st October, 1997.

8.2. Any other relief the Hon'ble Court feel appropriate such as cost of this litigation and such other compensation which is found appropriate on account of unwarranted and unrequired financial/mental harassment etc. this poor petitioner has to undergo on account of the apathy of the department by implanting injustice pleaded for in this petition".

2. Tulsi Ram Sharma expired during the pendency of the O.A. and therefore his legal heirs have been brought on record.

3. Late Shri Tulsi Ram was appointed in the office of Accountant General as UDC on 19.9.1962. On passing the All India Competitive Examination called as Initial Recruitment Examination for the post of Divisional Accountants he was appointed as Probationary Divisional Accountant w.e.f. 15.September, 1967. He passed the Divisional Test Examination for being appointed in a substantive capacity and he was confirmed on the post w.e.f. 1.3.1976. He retired on 31.12.1996 as Divisional Accounts Officer Gr. I after putting in more than 34 years of service.

4. It is averred that the Vth Central Pay Commission Report recommended the re-structuring of the posts of Divisional Accountants and four pay scales were provided. The Government vide order Annexure A-1 dt. 16.1.1998 though accepted the recommendations of the Pay Commission, but has applied the recommendation in respect of Senior Divisional Accounts Officer w.e.f. 1.10.1997 instead of 1.1.1996. The say of the applicant is that he



as Divisional Accounts Officer Gr. I was entitled to the pay scale of Rs. 7500-12000 w.e.f. 1.1.1996.

5. In the counter, the respondents case is that the recommendation of the 5th Pay Commission contained at para 102.28 of the Report providing four tier cadre restructure and scales of pay were accepted by the Government from 1.10.1997. It is averred that no post of Senior Divisional Accounts Officer was available as on 1.1.1996 and therefore, the applicant could not be given the benefit of the scale of Rs. 7,500-12,000 w.e.f. 1.1.1996.

6. We have heard learned counsel for the parties and perused the documents on record. The contention of Mr. Jain was that the recommendation of the Vth Pay Commission having been accepted by the Government w.e.f. 1.1.1996, there cannot be any justification for not accepting the recommendations in respect of Senior D.A.O. w.e.f. 1.1.1996. According to him, it is a case of discrimination and the Court should step in to redress the grievance of the applicant.

7. On the other hand, the contention of learned counsel for the respondents was that no post of Senior DAO existed as on 1.1.1996 and some time was taken in creating the posts and the new grade could be given after creation of the posts only. It was submitted that the Government can accept different recommendations from different dates. Reliance was placed on the case of Union of India Vs. Madras Civil Audit & Accounts Association [(1992) 20 ATC 176].

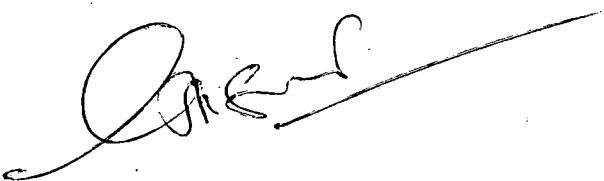
8. We have given the matter our thoughtful consideration. It is not in dispute that the recommendations of the Vth Pay Commission in general were



accepted w.e.f. 1.1.1996. However, it is admitted position, that no post of Senior Divisional Accounts Officer existed as on 1.1.1996. This post was created pursuant to the recommendations of the Vth Pay Commission at para 102.28. It may be pointed out that before the Vth Pay Commission Report, the pay structure of the cadre of Divisional Accountants comprised of three pay scales only and there was no post of Senior DAO. The Vth Pay Commission considered the various contentions made before it by the Divisional Accountants and agreed to create four tier cadre structure. Pursuant to the recommendation of the Vth Pay Commission, the Government has taken steps to create the posts of Senior DAO. When there was no post of Senior DAO on 1.1.1996, the Respondents cannot be directed to grant pay scale of the Senior DAO to the applicant from 1.1.1996.

9. It is now settled legal position that the Government has a power to fix different dates for different recommendations of the Pay Commission. In the case of Union of India Vs. Secretary Madras Audit (supra), it was held that two different dates of implementation of the recommendations in respect of various categories of the personnel did not offend Article 14 and 16 of the Consitution.

10. It was noticed in that case that pursuant to the recommendations of the Pay Commission the government was required to take specific decisions to give effect the recommendation from a suitable date keeping in view all the relevant aspects. It was observed by their Lordships that where the post was not in existence earlier, Rules had to be framed prescribing the

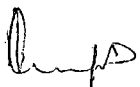


eligibility etc. for the newly created post and the Government is bound to take some time in completing that exercise.

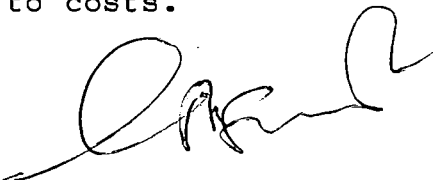
11. Following the dictum of the aforesaid case it has to be held that the Government cannot be said to have faulted when it sanctioned the pay scale of Rs.7500-12000 of Senior DAO from 1.10.1997.

12. It is unfortunate that the deceased applicant had already retired on 31.12.1996. He cannot succeed in claiming the pay scale of Rs.7500-12000.

13. For the reasons stated above, we find no merit in this OA and dismiss it. No order as to costs.


(A.P.NAGRATH)
MEMBER(A)

B.


(G.L.GUPTA)
VICE_CHAIRMAN