IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORDER RESERVED ON 04.03.2014

DATE OF ORDER : 10.3.2014

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER

1. ORIGINAL APPLICATION NO. 545/2010

Suwa Lal son of Shri Gyarsi Lal, aged about 46 years, resident of 66 Patel Nagar, Jaipur at present working as Statistical Assistant in the office of Regional Office for Health and Family Welfare, Sector-10, B-Block, Vidhyadhar Nagar, Jaipur.

... Applicant

(By Advocate: Mr. N.K. Garg proxy to Mr. Rajendra Soni)

Versus

1. Union of through its Secretary, Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi.
2. Director General of Health Services, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
3. Director, Central Bureau of Health Intelligence, Room No. 401, Wing-A, Nirman Bhawan, New Delhi.
4. Sr. Regional Director, Health & Family Welfare, Regional Office for Health & Family Welfare, Kendriya Sadan, B-Blopck, Sector-10, Vidhyadhar Nagar, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

2. ORIGINAL APPLICATION NO. 546/2010

Mahesh Chandra Vyas son of Late Shri H.R. Vyas, aged about 49 years, resident of 151/11, Shipra Path, Near Patel Marg, Agrawal Farm, Jaipur, Jaipur at present working as Statistical Assistant in the office of Regional Office for Health and Family Welfare, Sector-10, B-Block, Vidhyadhar Nagar, Jaipur.

... Applicant

(By Advocate: Mr. N.K. Garg proxy to Mr. Rajendra Soni)

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Versus

1. Union of through its Secretary, Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi.
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4. Sr. Regional Director, Health & Family Welfare, Regional Office for Health & Family Welfare, Kendriya Sadan, B-Blopck, Sector-10, Vidhyadhar Nagar, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Since the controversy involved in OA No. 545/2010 (Suwa Lal vs. Union of India & Others) and OA No. 546/2010 (Mahesh Chandra Vyas vs. Union of India & Others) is the same, therefore, with the consent of parties, these OAs are being disposed of by a common order. The facts of OA No. 545/2010 (Suwa Lal vs. Union of India & Others) have been taken as a lead case.

2. The applicant was working as Statistical Assistant in the Regional Office of Health and Family Welfare, Vidhyadhar Nagar, Jaipur in the pay scale of Rs.5000-8000/-. He was granted financial upgradation under ACP Scheme to the scale of Rs.5500-9000/- treating the post of Statistical Assistant to be an isolated post whereas the applicant's prayer is to grant him financial upgradation under the ACP Scheme in the pay scale of Rs.6500-10500/-.

3. Earlier the applicant had filed an OA No. 61/2000 before this Tribunal. This Tribunal vide its order dated 18.04.2002 disposed of

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that OA with the directions that the applicants shall be entitled to make representation claiming the benefits of ACP in the scale of Rs.6500-10500 and the respondents shall decide the representation of the applicants within two months thereafter. The applicants filed the representation before the respondents which was rejected by the respondents vide order dated 29.08.2002 (Annexure A/5) on the ground that the post of Statistical Assistant held by the applicant is an isolated post and, therefore, the applicant is entitled to the next higher pay scale of Rs.5500-9000/- and not of Rs.6500-10500/-.

4. The learned counsel for the applicant submitted that the similar controversy has been decided by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur in OA No. 674/2002 (**Raj Kumar Shrivastava & Another vs. Union of India & Others**). Vide its order dated 05.11.2003 (Annexure A/6) in which the Hon'ble Tribunal held that the post of Statistical Assistant is not an isolated post as it has both the promotional as well as feeder cadre post. Therefore, the applicants in that OA were held to be eligible for financial upgradation to the post in the pay scale of Rs.6500-10500/-. This order of the Hon'ble Central Administrative Tribunal, Jabalpur Bench was challenged by the respondents before the High Court of Madhya Pradesh at Jabalpur vide Writ Petition No. 5673/2005. The Hon'ble High Court it its judgment dated 06.01.2007 (Annexure A/7) observed that the Tribunal vide its order dated 05.11.2003 has allowed the OA by recording the finding that the post of Statistical Assistant is not an isolated post.

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From the perusal of the record, the Hon'ble High Court came to the conclusion that the findings and conclusions recorded by the Tribunal are unimpeachable and Hon'ble High Court dismissed the Writ Petition filed by the respondents vide its order dated 06.01.2007.

5. The respondents in compliance of the order of the Hon'ble Central Administrative Tribunal, Jabalpur Bench and Hon'ble High Court of Madhya Pradesh at Jabalpur allowed the grant of ACP to the applicants of that OA in the scale of Rs.6500-10500/- vide their letter dated 16.05.2008.

6. The learned counsel for the applicant further submitted that all Statistical Assistants except who are posted at Jaipur have been given the pay scale of Rs.6500-10500/- w.e.f. 09.08.1999. Thereafter the applicant sent a notice for demand of justice dated 20.04.2010 for giving the pay scale of Rs.6500-10500 w.e.f. 09.08.1999 (Annexure A/9).

7. That the Government of India sent the aforesaid notice for consideration and necessary action and to give suitable reply to the Regional Office, Jaipur vide impugned letter dated 04.05.2010.

8. That the respondents' Regional Office, Jaipur has not passed any order of giving the pay scale of Rs.6500-10500 to the applicant as per the principle laid down by the High Court of Madhya Pradesh at Jabalpur vide order dated 06.01.2007 (Annexure A/7).

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Therefore, the learned counsel for the applicant submitted that the respondents be directed to give the pay scale of Rs.6500-10500/- from the date of the ACP to the applicants.

9. On the other hand, the learned counsel for the respondents has filed the reply. The learned counsel for the respondents basically opposed the OA on two grounds. Firstly, that this OA is barred by the principle of res-judicata as the applicants have filed the OA earlier for the same cause of action and on same set of facts, which was disposed of by the Central Administrative Tribunal, Jaipur Bench on 18.04.2002. Hence OA merits rejection on that count alone in limine.

10. Secondly, the OA is barred by limitation. Earlier OA No. 61/2002 was preferred. The same was disposed of by this Hon'ble Tribunal with the direction to make a representation to the competent authority. The representation of the applicants was rejected by the respondents vide their order dated 29.08.2002 (Annexure A/5) and the applicants have not challenged this order. Therefore, at this belated stage, the applicants cannot raise the issue of grant of ACP in the pay scale of Rs.6500-10500.

11. The learned counsel for the respondents argued that the applicant is trying to seek retrospective revival of cause of action on the basis of the verdict delivered by the co-ordinate bench of the Tribunal and also the judgment of the Hon'ble High Court of Madhya Pradesh at Jabalpur. He argued that it does not furnish a

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fresh cause of action so as to maintain claim before the Court of law and to support his averments, he referred the judgment of the Hon'ble Supreme Court in the case of **Sulochana Chandrakant Galande vs. Pune Municipal Transport, 2010(8) SCC 467** at Page No. 476 wherein the Hon'ble Supreme Court dealing with the issue held, as under:-

> "30. If some person has taken a relief from the court by filing a writ petition immediately after the cause of action had arisen, the petitioners cannot take the benefit thereof resorting to legal proceedings belatedly. They cannot take any benefit thereof at such a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person. In **State of Karnataka v. S.M. Kotrayya, 1996 (6) SCC 267,** this Court rejected the contention that a petition should be considered ignoring the delay and latches, on the ground that the petitioner therein filed the petition just after coming to know of the relief granted by the Court in a similar case, as the same cannot furnish a proper explanation for delay and latches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and latches."

Thus he submitted that the OA merits rejection in limine.

12. With regard to the merit of the case as to whether the post of Statistical Assistant is an isolated post or not, the respondents in their written reply in Para No. 4(ii) have stated that the post of Statistical Assistant is not an isolated post. Para 4(ii) of the reply is quoted below:-

> "4(ii) That the contents of sub-paragraph (ii) of paragraph 4 of the original application are emphatically denied being absolutely misconceived, misleading and contrary to the material available on record. It is risibly submitted that as per record available there is no promotion channel for Statistical Assistant to the post of Investigator Statistical after five years of regular service. Be that as it may, 50% post of Statistical Assistants, are to be filled up by way of promotion from Computer-cum Key Punch Operator (CCKPO, for short). Therefore, in the light of DOPT office Memorandum, bearing Number

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35034/1/97-Estt. (D) (Vol –(IV) dated 10.02.2000, the post of Statistical Assistant is not an isolated post."

13. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the parties. From the perusal of letter dated 29.08.2002 (Annexure A/5), issued by the respondents, it is clear that the representation of the applicant for grant of financial upgradation in the pay scale of Rs.6500-10500 under the ACP Scheme was rejected on the ground that the post of Statistical Assistant is an isolated post and, therefore, the applicants were entitled under the ACP Scheme to the pay scale of Rs.5500-9000/- and not Rs.6500-9000/-, as requested by the applicants. There is no other ground of the rejection of the claim of the applicants for the grant of Rs.6500-10500/-.

14. It is not disputed that similarly situated persons filed OA No. 674/2002 before the Central Administrative Tribunal, Jabalpur Bench. The Central Administrative Tribunal, Jabalpur Bench gave a finding that the post of Statistical Assistant is not an isolated post and, therefore, the applicants in that OA were entitled to the pay scale of Rs.6500-10500 under the ACP Scheme. The respondents being aggrieved by this order of the Central Administrative Tribunal, Jabalpur Bench filed a Writ Petition before the High Court of Madhya Pradesh at Jabalpur. The Hon'ble High Court confirmed the findings of the Central Administrative Tribunal, Jabalpur Bench vide its order dated 06.01.2007 (Annexure A/7). The Hon'ble High Court dismissed the Writ Petition filed by the respondents.

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15. Subsequently, the respondents have complied with the order of the Central Administrative Tribunal, Jabalpur Bench and the order of the Hon'ble High Court of Madhya Pradesh at Jabalpur. It is clear that both the Tribunal and the Hon'ble High Court have laid down a ratio that the post of Statistical Assistant is not an isolated post. Therefore, the order of the Central Administrative Tribunal, Jabalpur Bench and the judgment of the Hon'ble High Court of Madhya Pradesh at Jabalpur cannot be said to be an order and judgment in persona. On the other hand the same is a judgment in rem. Thus the principle laid down by the Hon'ble High Court of Madhya Pradesh shall be made applicable to all similarly situated persons of their own otherwise it will create anomaly in the Department. Some of the Statistical Assistants will be drawing ACP in the scale of Rs.6500-10500 while others in the scale of Rs.5500-9000/-. Besides, extension of such benefits will no way affect the rights of another employee.

16. Moreover in Para No. 4(ii) of the written reply, as quoted in Para No. 12 of this order, it has been clearly stated by the respondents that the post of Statistical Assistant is not an isolated post. When the respondents themselves admit that the post of Statistical Assistant is not an isolated post, therefore, the rejection of the request of the applicants for the grant the scale of Rs.6500-10500/- under the ACP Scheme on the ground that is an isolated post (Annexure A/5) is not correct. As stated earlier, the sole ground of rejection, as communicated by the respondents vide their order dated 29.08.2002 (Annexure A/5), is that the post of

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Statistical Assistant is an isolated post. Now after nine years, the respondents have themselves admitted that it is not an isolated post. They cannot take technical objections like res-judicata or limitation for not granting the benefits of scale of Rs.6500-10500/-.

17. In any case, the present OA is not barred by res-judicata. In the earlier OA No. 61/2002 filed by the applicants, this Tribunal had only directed the respondents to decide the representation of the applicants. No substantial issue was decided by this Tribunal in the earlier OA filed by the applicant. The Tribunal did not pass any final order on the grant of the pay scale of Rs.6500-10500/-.

18. With regard to the objection of the respondents that the OA is barred by limitation, we are of the view that it is not barred by limitation. When the applicants filed a representation after the judgment of the Hon'ble High Court of Madhya Pradesh, their case was sent to the DGHS by the Ministry of Health & Family Welfare vide their letter dated 04.05.2010 and no final decision has been taken by the respondents so far on the prayer of the applicants.

19. We have carefully perused the case law, as referred to by the learned counsel for the respondents and we are of the view that in the facts & circumstances of the present case, the ratio decided by the Hon'ble Supreme Court in the case of **Sulochana Chandrakant Galande vs. Pune Municipal Transport, 2010(8) SCC 467** (supra) is not applicable. In the present OA, the ground on which the application of the applicants was rejected by the

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respondents is that the post of Statistical Assistant is an isolated post whereas now in their reply, the respondents are admitting that it is not an isolated post. Therefore, in our opinion for the mistake of the respondents, the applicants cannot be made to suffer. Moreover the ratio decided by the Central Administrative Tribunal, Jabalpur Bench and the Hon'ble High Court of Madhya Pradesh at Jabalpur is squarely applicable in the present case. In fact it was the duty of the respondents to follow the same ratio for all Statistical Assistants to avoid any further litigation. However, taking a lenient view, we are not imposing a cost upon the respondents in the present OA.

20. Consequently, the OA is allowed. The respondents are directed to grant the pay scale of Rs.6500-10500/- with effect from the date on which the applicants became eligible for the grant of ACP within a period of three months from the date of receipt of a copy of this order.

21. In view of the order passed in the OA, there is no need to pass any order in MA No. 11/2011 and it is disposed of accordingly.

21. A copy of this order be placed in the file of OA No. 546/2010 (Mahesh Chandra Vyas vs. Union of India & Others). The MA No. 12/2011 (OA No. 546/2010) is also disposed of accordingly.

(M. NAGARAJAN)
MEMBER (J)

(ANIL KUMAR)
MEMBER (A)

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