

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-608/2014

New Delhi, this the 02nd day of May, 2016.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)

M. M. Banerjee,
S/o L. Sh. B. B. Banerjee,
5, R-4, Gobind Niwas, Near Neelam Chowk,
NIT, Faridabad. ... Applicant
(By Advocate: Sh. Srigopal Aggarwal)

Versus

1. Union of India,
Secretary,
Ministry of Urban Development,
Nirman bhawan, New Delhi-110101.
2. Union of India through
Secretary, M/o finance,
North Block, N. Delhi.
3. Director of Estate,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110108. ... Respondents
(By Advocate: Sh. A. K. Singh)

ORDER (ORAL)

Hon'ble Mr. Justice Permod Kohli

The applicant in this OA has questioned the order dated 09.07.2013 rejecting his claim for grant of pay scale of Rs. 5500-9000 w.e.f. 25.10.1999 with consequential benefits. From the perusal of the impugned order, it appears that the claim of the applicant has been rejected only on the ground that the benefit of the judgment dated 05.09.2012 and 12.11.2012 of the

CAT Chennai Bench passed in OA No. 1499/2011 is available only to the applicants therein.

2. Briefly stated, as the facts emerge from the record, the applicant initially joined as a LDC on 22.01.1981 in the office of the Estate Manager, Directorate of Estates, Ministry of Urban Development, Kolkata. He was promoted as UDC in the year 1989 and thereafter as Accountant on 29.10.1999. He earned further promotion as Assistant Estate Manager on 28.12.2006 and was posted at Mumbai. Presently, he is serving at Faridabad Regional Office in the same capacity w.e.f 28.11.2013.

3. The case of the applicant is that on the recommendation of the Fifth Central Pay Commission w.e.f 01.01.1996 Accountants working in the Ministry of Urban Development and Directorate of Estates were granted pay scale of Rs. 5500-175-9000, whereas Accountants serving in the regional offices of the Directorate of Estates were granted pay scales of 5000-150-8000. He made a representation dated 20.09.2010 claiming pay scale of 5500-175-9000. The applicant also relies upon judgment dated 24.08.2009 passed in OA No. 1905/2008 (**Om Prakash & Ors. Vs. UOI & Ors.**) which was upheld in WP (C) No. 2824/2010 vide order dated 27.04.2010 passed by

the Hon'ble High Court of Delhi. The applicant has also referred to judgment dated 05.09.2012 passed by the Madras Bench in OA No. 1499/2011 (**Y. Bala Sundaram Vs. UOI & Ors.**). We have carefully perused the judgment by Madras Bench.

4. It is contended on behalf of the applicant that the two applicants in OA No. 1499/2011, namely, Y. Bala Sundaram and Ravi Kumar are junior to the applicant in the same cadre of service. The applicant has also placed on record a promotion order dated 21.10.1999 whereby promotion of some of the members of service in the rank of accountants was notified. It appears that the applicant, M.M. Banerjee is at serial number 3, while Y. Bala Sundaram and Ravi Kumar are at serial number 5 and 6 of the aforesaid promotion order. This demonstrates that the applicant is senior to them.

5. In the aforementioned judgment passed in OA No. 1499/2011, Madras Bench of the Tribunal was considering the pay scales of Accountants and relying upon the earlier judgment of the Tribunal passed by different Benches, issued the following directions:

“6. The applicants in this OA are similarly situated and claim the relief of granting pay scale of Rs. 5500-9000w.e.f 01.10.1996 with all attendant benefits like arrears of pay, allowances, fixation of pay etc. Therefore, in terms of the orders in OA No.

997/2001 passed by the Ernakulam Bench of this Tribunal and OA 1905/2008 passed by the Principal Bench, the applicants before us are eligible for the relief claimed. Accordingly, the Order No.D-11020/8/2010-Regions (Pt-1) dated 10.08.2011 of the 1st respondents is quashed. Respondents are directed to grant pay scale of Rs. 5500-9000 to the applicants w.e.f 01.01.1996 with all consequential benefits and pass orders within a period of eight weeks from the date of receipt of a copy of this order."

6. The applicant is also similarly situated being Accountant serving in the Directorate of Estates. Admittedly, the aforesaid judgment has been implemented and the benefit has been allowed to the applicants therein. The claim of the applicant before us is no different from the applicants in the case decided by the Madras Bench. Even vide the impugned order, the claim of the applicant is not rejected on any other ground except that he was not a party to OA No. 1499/2011 decided by the Madras Bench. Said action on the part of the respondents is totally unjustified. The impugned order is, therefore, set aside.

7. It is by now a well settled legal proposition that similarly situated persons should be treated similarly, and they cannot be treated differently merely on the ground that they did not approach the court earlier or were not parties to earlier *lis*. We have noticed in number of cases that respective applicants

are being denied relief despite directions by the Tribunal for granting consideration in accordance with the directions and mandate of some earlier judgments, or judgments of the coordinate Benches having attained finality. The denial is not on merits or on some distinctive features which are apparently justifiable to deny such claim. We have observed that even where the claim of an applicant is permissible under dictum of an earlier final verdict of the Tribunal, such claims are rejected merely on the ground of the person not being party to the earlier *lis*. This has not only created discrimination but has generated avoidable and unnecessary litigation with the Government, which does not serve any purpose of the administration nor of the public servant concerned. Rejection of a claim on some distinctive features or on valid legal grounds may be justifiable, but not on the ground of the individual not being a party to the *lis*, even though the mandate of the judgment is clear and unambiguous.

8. The Hon'ble Supreme Court in **State of Uttar Pradesh & Others vs. Arvind Kumar Srivastava & Others** [(2015) 1 SCC 347], on consideration of various earlier decisions on the subject, has reiterated this position, and held that failure to treat identically situated persons alike would amount to discrimination and would be violative of Article 14 of the Constitution. Their

Lordships further held that merely because other similarly situated persons did not approach the court earlier, they cannot be treated differently. However, some exceptions have been carved out where an applicant can be denied the benefit of the judgment rendered in case of similarly situated persons, namely, delay and laches and acquiescence on the part of the concerned individual, which would be a valid ground to dismiss his/her claim. Following the aforesaid judgment of the Apex Court, this Tribunal recently in OA No.3775/2015 – **Neeta Dutta v Union of India & others**, decided on 28th April, 2016, in somewhat similar circumstances, wherein though the claim of the applicant was specifically admitted by the respondents that her case is squarely covered by an earlier judgment of the Madras Bench of the Tribunal, however, the same was declined merely on the ground that she was not party to the case decided by the Madras Bench, held the action of the respondents to be arbitrary and unfair and the respondents have been directed to grant relief to the applicants in terms of the earlier judgment. Taking a serious view of the matter, the Tribunal also directed copy of the order to be sent to the Secretary, Department of Personnel & Training; Secretary, Department of Expenditure; and Secretary, Ministry of Law and Justice to be circulated to all concerned with the

observation that wherever a person approaches the concerned authorities seeking relief based upon an earlier final/concluded judgment, the relief has to be granted, notwithstanding the fact whether or not the person was a party to such *lis*, of course, subject to the exceptions provided in the Judgment of the Apex Court in **State of Uttar Pradesh & Others vs. Arvind Kumar Srivastava & Others** (supra). It is further provided in our order that wherever it is found that the relief sought has been declined merely on the ground that the similarly placed person was not a party in the earlier *lis*, the official found responsible for denial of relief would be personally liable.

9. This OA is accordingly allowed. The respondents are directed to fix pay of the applicant in the pay scale of 5500-175-9000 with effect from the date he was promoted as Accountant. However, the actual financial benefits shall be confined to three years preceding the filing of this Application.

(**Shekhar Agarwal**)
Member (A)

(**Permod Kohli**)
Chairman

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