

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3621/2012
MA 3083/2012

Reserved on: 28.03.2016
Pronounced on: 31.03.2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

1. Smt. M. Goswami W/o Shri F.M. Goswami
Aged about 58 years
R/o 14/815, Lodhi Colony, New Delhi
Presently working as Administrative Officer, Gr.II
In the Office of CIT (TDS-1), New Delhi
2. Shri Sanjay Budgujar S/o Shri Umrao Singh
Aged about 44 years
R/o WZ-59, Dayal Sar Colony,
Uttam Nagar, New Delhi-110059
Presently working as Administrative Officer, Gr.III
In the Office of CIT (Audit)-1, New Delhi ... Applicants

(Through Shri A.K. Behera, Advocate)

Versus

1. Union of India through the Secretary,
Department of Revenue
Ministry of Finance
North Block, New Delhi-110002
2. The Secretary,
Department of Expenditure
Ministry of Finance
North Block, New Delhi-110002
3. Chairman
Central Board of Direct Taxes
North Block, New Delhi-110002
4. Chief Commissioner of Income Tax - Delhi
3rd Floor, Central Revenue Bldg., I.P. Estate,
ITO, New Delhi-110002 ... Respondents

(Through Shri R.N. Singh, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicants have filed this OA seeking the following reliefs:

- "(1) Implement the Order dated 01-08-2007 of this Hon'ble Tribunal in the OA No. 743 of 2006 [Shyam Lal & ors. Vs. UOI & ors.] both in letter and in spirit in a time bound manner.
- (2) Revise the pay-scale of AO-III and PS such as to maintain their pay parity with that of ITO/ Supdt. of Central Excise and Customs, as all these officers are Group 'B' Gazetted Officers."

2. One of the applicants in this OA namely Smt. M. Goswami was also applicant no.31 in OA 743/2006, **Shyam Lal and others Vs. Union of India and others.** That OA was disposed of vide order dated 1.08.2007 as follows:

"36. In the result, to serve the ends of justice, the OA is disposed of with a direction to the respondents to appoint HPC to look into the grievances of the applicants, on the lines on which HPC was appointed to look into the grievances of other officers, whose pay scales were revised vide order dated 21.04.2004 (supra), and take further action on the basis of the recommendations of the HPC. This HPC will, inter alia, consider the representation of the applicants. HPC shall be appointed as expeditiously as possible and preferably within a period of two months from the date of receipt of a certified copy of this order. HPC shall be directed to submit its recommendations as expeditiously as possible and preferably within a period of four months from the date of its appointment. In the peculiar facts and circumstances of this case, there shall be no order as to costs."

In Shyam Lal (supra), the applicants therein challenged OM dated 21.04.2004 whereby the respondents revised the pay

scales of Income Tax Officer, Appraiser (Central Excise), Superintendent (Central Excise) and Superintendent (Customs Preventive) from Rs.6500-10500 to Rs.7500-12000 with effect from 21.04.2004, to the exclusion of Administrative Officer Grade-III, such as the applicants herein.

3. On the directions of the Tribunal, the respondents have filed an additional affidavit in which they have stated that a High Powered Committee constituted specifically in compliance of the order of this Tribunal in Shyam Lal (supra) has refused to revise the pay scale of AO Grade-III.

4. Learned counsel for the respondents raised following preliminary objections:

(i) It is stated that one of the applicants in the present OA and in Shyam Lal (supra) is the same. In fact, applicant no.1 in OA 743/2006, Shri Shyam Lal had filed a Contempt Petition No.205/2008, which was closed by the Tribunal vide order dated 19.08.2008. It is the contention of the learned counsel for the respondents that having approached this Tribunal once in OA 743/2006 and the Contempt Petition also being closed, a fresh OA cannot be filed by the applicants on the same issue and it is barred by the principles of res judicata/ constructive res judicata. At best, the applicants could have made

an application for revival of Contempt Petition but an OA would not be maintainable;

(ii) The OA is barred by limitation, delay and laches;

(iii) It is submitted that creation/ abolition of posts, pay scales and framing/ amendment of recruitment rules falls within the domain of the respondents. Further, it is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within their domain. It is also stated that equation of posts and determination of pay scales is primary function of the executive and not the judiciary and, therefore, ordinarily Courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions. Reliance in this regard is placed on the authoritative pronouncements of the Hon'ble Supreme Court in:

1. Mallikarjuna Rao Vs. State of A.P.,

(1990) 2 SCC 707

2. P.U. Joshi & ors. Vs. The Accountant

General, Ahmedabad & ors., 2003 (2)

SCC 632

3. Secretary Finance Department and ors.

Vs. The West Bengal Registration

Service Association & ors, 1992 (2) SCC

82

4. S.C. Chandra and Ors. Vs. State of

Jharkhand & Ors., 2007 (8) SCC 279

5. Union of India Vs. Hiranmoy Sen,

2008(1) SCC 630;

- (iv) The OM dated 31.05.2011 (Annexure A-2) is an internal document of the department and the settled law is that such internal communications cannot be considered unless an order to that effect has been issued;
- (v) The prayer in para 8 (1) itself is not maintainable under Section 19 of the Administrative Tribunals Act as there is no fresh cause of action;
- (vi) Even on merits of the case, the only ground to seek higher pay scales by the applicants is pay parity with other cadres but pay scales are decided keeping in view several other factors like job description, entry qualifications etc.

5. The learned counsel for the applicants states that the order of the Tribunal in Shyam Lal (supra) cannot be treated as an order specific to the applicants in that case including Smt. M. Goswami and that it is an order *in rem* and in view of that, OA could be filed by anyone for enforcement of an order *in rem*. It is stated that though the respondents have stated that the HPC has considered the case of the applicants and rejected it but

no reasons have been assigned for such a view taken. Regarding minutes of the meeting which have been circulated vide OM dated 31.05.2011 (Annexure A-2), it is stated that the learned counsel for the respondents has failed to notice that it is not a noting but an OM and copies of the same have been supplied to all participants including employee associations. Our attention was specifically drawn to item no.18 of the minutes which is regarding Grade Pay of Rs.4800/- to AO-III/PS in view of their Gazetted status. It was decided that the proposal may be taken up by DIT (HRD) with DoP&T/ Department of Expenditure. No action has been taken by the respondents on such proposal as yet.

6. In the end, the learned counsel for the applicants reiterated that all the applicants want is a detailed order based on the decision of the HPC so that they could seek legal remedy based on that order.

7. We have heard the learned counsel for the parties and gone through the pleadings available on record.

8. While it is true that copies of OM dated 31.05.2011 have been circulated to Associations as well but the decision referred to in the said OM is a decision at the level of CBDT in its discussion with the Associations and it is not a government decision. Neither has any order been issued as a result of such agreement. Therefore, in view of the judgment of the Hon'ble Supreme Court in **Union of India Vs. Ashok Kumar Aggarwal**, 2013 (14) SCALE 323, it is of no value.

9. As regards delay, there is substantive ground to hold that there has been delay. The order in Shyam Lal (supra) was delivered on 1.08.2007. Contempt Petition was closed by order dated 19.08.2008. The applicants have approached this Tribunal in July, 2012. Learned counsel for the applicants argued that the minutes of the meeting held under the Chairmanship of Chairman, CBDT are dated 31.05.2011 and the OA has been filed on 2.07.2012 and, therefore, there is no delay in filing of the OA. This is not a convincing argument at all. If the applicants were interested to pursue the matter further after the closure of the Contempt Petition, they should have taken recourse to law within the period of limitation. In fact, the Contempt Petition was closed on the assurance that the entire process would be completed within four months from the date of the order i.e. 19.08.2008. The applicants should have approached this Tribunal in December, 2008 itself after the period of four months from the date of the Tribunal's order was over. Therefore, we have no hesitation to hold that this OA is hit by delay.

10. We have also noticed that in Shyam Lal (supra), one of the applicants in the instant OA namely Smt. M. Goswami was also the applicant in the aforesaid OA and thus, there is no doubt that this OA is hit by the principles of res judicata/constructive res judicata. There is no scope for the applicants to file a fresh OA once a matter has been decided in Shyam Lal (supra) in 2007 and Contempt Petition closed in 2008, for the same prayer of

giving higher pay scale. The argument that the order in Shyam Lal (*supra*) is an order *in rem* and any one can approach this Tribunal for implementation of the order also does not hold good in view of the fact that Smt. M. Goswami is applicant in both the OAs and she cannot have recourse to law in a fresh OA for the same relief.

11. Therefore, we are of the considered opinion that this OA is not maintainable at all on the grounds of *res judicata/constructive res judicata* and delay. However, even if we were to look at the merits of the case, we cannot entertain the claim as the sole ground for seeking upgradation is past pay parity and as rightly pointed out by the learned counsel for the respondents, the Hon'ble Supreme Court has settled the law in this regard that the Courts/Tribunals should not ordinarily enter into the arena of deciding pay scales and it should best be left to be decided by expert bodies like Pay Commissions.

12. In any case, just on the ground of pay parity, discrimination cannot be claimed. This could be understood in a very simple way. In case, only past pay parity were to be a principle of deciding pay scales then we would not have required successive Pay Commissions. It could have sufficed to constitute a Fitment Committee which would decide the replacement scales in place of existing pay scales and a pay fixation formula. The number of pay scales would have remained the same and this would hardly require any application of mind. As is well known, Pay Commissions are set up to study the whole administrative

structure, various cadres, changing requirements in society which has to be addressed by the Government and its functionaries, change in priorities over time in different activities of the Government, change in cadre structures that are required including Recruitment Rules and basic qualifications etc. Pay parity is just one of the factors and that is why several successive Pay Commissions have been set up and there is enormous change in the number of pay scales which has steadily gone down over the past few decades and the gap between the highest and the lowest pay scales sought to be reduced. In fact, Sixth Pay Commission had recommended basically seven pay grades whereas at one point of time there used to be 25 to 30 pay scales. Therefore, in any case, this sole argument of pay parity has to be rejected.

13. In view of the above discussion, neither is the OA maintainable nor is there any merit in it. The OA is, therefore, dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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