

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 3867/2015

Reserved on : 19.01.2017

Pronounced on : 25.01.2017

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. P.K. BASU, MEMBER (A)**

1. Shri A.K. Jha, Aged 56 years,
S/o Late Shri U.C. Jha,
Section Officer/Court Officer,
Central Administrative Tribunal,
(Principal Bench), New Delhi,
Through Legal Representative
Smt. Renu Jha,
Wife of Late Shri A.K. Jha,
R/o 582, Sector-4, R.K. Puram,
New Delhi.
 2. Shri M.M. Pandey, Aged 56 years,
S/o Shri G.D. Pandey,
Joint Registrar,
Central Administrative Tribunal,
Cuttack Bench, Cuttack
R/o Q.No.V/I, CAT Residential Complex,
Plot No.3GH/296, Sector-9, CDA,
Cuttack-753014.
 3. Ms. Neeru Dougall, Aged 46 years,
W/o Shri Ranjeev Dougall,
Private Secretary,
Central Administrative Tribunal,
Chandigarh Bench, Chandigarh
R/o Flat No.54, GHS-7,
Mansa Devi Complex,
Sector-5, Panchkula (Haryana).
- .. Applicants

(By Advocate : Shri Yogesh Sharma)

Versus

1. Union of India through
The Secretary

Department of Personnel & Training,
North Block, New Delhi.

2. The Principal Registrar,
Central Administrative Tribunal,
Principal Bench,
61/35, Copernicus Marg,
New Delhi.

.. Respondents

(By Advocate : Shri Rajnish Prasad)

ORDER

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

The applicants were appointed as Section Officer/Court Officer/Private Secretary on deputation basis in the Central Administrative Tribunal and later on absorbed as such.

2. The Govt. of India vide Department of Personnel and Training (DoPT) order dated 01.04.2009 introduced non-functional scales of Rs.8000-13500 to Section Officers/Private Secretaries of Central Govt. Offices/Departments including in Central Administrative Tribunal on completion of four years of approved service in the grade initially w.e.f. 01.01.1996, however, on actual basis w.e.f. 03.10.2003.

3. A controversy has arisen because the respondents have taken the stand that for grant of non-functional scales, the period of four years approved service should be counted from the date of absorption and not from the date of deputation. This was communicated by the respondents vide letter dated 28.09.2010.

This was challenged before the Bombay Bench of this Tribunal in O.A. No.52/2013 (Sunny Joseph Vs. Secretary, DoPT & others). The Tribunal quashed the order dated 28.09.2010 and the Tribunal held that the service of the applicant in that O.A. shall be counted towards regular approved service from the date he joined on deputation.

4. Some other similarly situated person, viz. Shri A.K. Chinya, filed O.A. No.1015/2012 before the Calcutta Bench of the Tribunal and the Calcutta Bench of the Tribunal also allowed the O.A. with a direction to the respondents treating the approved service from the date he joined on deputation in the Central Administrative Tribunal.

5. It is the contention of the learned counsel for the applicant that both the orders of the Bombay and Calcutta Benches of the Tribunal are declaratory in nature and is not in personam. The applicants had approached the respondents seeking the benefit of above two orders of the Tribunal, which was rejected by the respondents vide order dated 12.06.2015 on the following grounds:

- “(i) It was decided by DoPT that the implementation of order in respect of Shri A.K. Chinya is specific and not to be treated as precedent.
- (ii) The said judgment was against the stated policy of the Government and cannot be allowed in each and every case, though similar in nature;
- (iii) None of the conditions, as stated in the judgment made by the apex court in BSNL Vs. Ghanshyam Das & Others,

(2011) 4 SCC 374 for extending the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief, get fulfilled in respect of the judgment made by CAT in OA No.1015/2012.”

6. It is stated by the learned counsel that the respondents relied on the judgment of the Hon’ble Apex Court in **BSNL Vs. Ghanshyam Das & Others**, (2011) 4 SCC 374 erroneously. In fact, it is argued that this judgment is in favour of the present applicants, as in this judgment the Hon’ble Apex Court held as under:

“25. The principle laid down in K.I. Shephard that it is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief would apply only in the following circumstances:

a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;

b) where the relief granted by the court is a **declaratory relief** which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;

c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and

d) where the court expressly directs that the relief granted should be extended to those who have not approached the court.

26. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others.”

Learned counsel for the applicant, therefore, contends that since both the orders in case of A.K. Chinya (supra) and Sunny Joseph (supra) are declaratory in nature, the respondents should

grant non-functional scale of Rs.8000-13500 to the applicants as well counting the four years of service period from the date they joined on deputation by extending the benefits of A.K. Chinya and Sunny Joseph's cases.

7. The learned counsel for the respondents rely on letter dated 28.09.2010 and also argued that the principle laid down in **Ghanshyam Dass's** case, according to the judgment would apply only in the circumstances contained in para 25 of the judgment, as quoted above, and according to the respondents, none of the above conditions are applicable in the present case.

8. Heard the learned counsel for both sides and perused the pleadings and judgments cited by them.

9. When the same issue came up before the Calcutta Bench in A.K. Chinya's case and Bombay Bench in Sunny Joseph's case, the Tribunal held that the four years' period has to be counted from the date they joined on deputation and not from the date they were absorbed. In fact, the letter dated 28.09.2010 relied upon by the respondents has already been quashed in Sunny Joseph's case. In A.K. Chinya's case, the Tribunal had been guided by orders of the Principal Bench in O.A. No. 3718/2010 and of the Hon'ble High Court in **Dr. Rajendra Kumar & Ors. vs. Govt. of NCT of Delhi** in

WP(C) No.14097-100/2005, in both of which it was held that date shall be counted from the date of coming on deputation.

10. It is clear that these orders are declaratory in nature and the applicants cannot be denied the benefit of these orders on the ground that they had not approached the court. The principle laid down by the Hon'ble Supreme Court in **Ghanshyam Dass** (supra) is that litigants should not be forced to approach courts unnecessarily and it is the duty of the authority to extend the benefit of a concluding decision in all similar cases.

11. In view of the clear finding of the Tribunal/High Court and the law settled by the Hon'ble Supreme Court that if an order is declaratory in nature, then it is the Government's duty to give the benefit to all the similarly situated persons, we allow this O.A. Order dated 12.06.2015 with order dated 18.06.2015 and 10.03.2015 are hereby quashed and set aside and the respondents are directed to count the deputation period service of the applicants as approved/regular service for the purpose of grant of non-functional scale of Rs.8000-13500 on completion of four years of service. No order as to costs.

(P.K. BASU)
Member (A)

(V. AJAY KUMAR)
Member (J)

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