

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.4178/2011
M.A. No.3122/2011

Order reserved on 26th October 2016

Order pronounced on 4th November 2016

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Ram Kumar s/o Mr. Banwari Lal
r/o 198A, Old DC Road
Jeevan Nagar, Sonapat
2. Saibal Das s/o Mr. A K Das
r/o 815, Type II Sector 1
R K Puram, New Delhi -22
3. Mr. Veena Saini w/o Mr. A K Saini
r/o WZ-290A 108, 2nd Floor
Hari Nagar, New Delhi – 64
4. R R Bahl s/o Mr. K L Behal
r/o BG-6, Paschim Vihar, New Delhi
5. Deep Chand s/o Mr. Tilak Chand
r/o 781, Sector II
Sadiq Nagar, New Delhi
6. Rajinder Kumar s/o Mr. Roop Lal
r/o G-402, Sarojini Nagar
New Delhi – 23

..Applicants

(Mr. A K Trivedi, Advocate)

Versus

1. Union of India through its Secretary
Ministry of Environment & Forests
Paryavaran Bhawan, CGO Complex
Lodhi Road, New Delhi – 3
2. The Director
National Zoological Park
Mathura Road, New Delhi - 3

..Respondents

(Mr. Gyanendra Singh, Advocate)

O R D E R

Mr. K.N. Shrivastava:

M.A. No.3122/2011

M.A. seeking joining together in a single petition is allowed.

O.A. No.4178/2011

The applicants have filed the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985. The brief facts of the case are as under:

2. The applicants are working as UDC / Stenographer in the respondent-organization – National Zoological Park (NZP), which is an attached office of Ministry of Environment & Forests (MoE&F). They have been granted financial upgradation under the Assured Career Progression (ACP) Scheme notified vide Government Notification dated 09.08.1999, as indicated in the table below:-

Sl.	Name	DOB	DOA & Designation	Dt of Promotion	ACP in the pay scale of Rs. 5000-8000/-
01	Ram Kumar	02.11.1962	19.12.1988 Artisan		1 st ACP on 15.10.2003
02	Saibal Das	16.10.1961	26.03.1982 as LDC	07.03.2003 as UDC	2 nd ACP on 26.03.2003
03	Smt. Veena Saini	14.11.1951	10.02.1972 as LDC	01.12.1992 as UDC	2 nd ACP on 24.08.1999
04	R.R. Bahl	07.02.1951	06.05.1974 as LDC	1999 as UDC	2 nd ACP on 09.08.1999
05	Dee Chand	08.10.1957	01.05.1980 as LDC	01.12.1992 as UDC	2 nd ACP on May 2004
06	Rajinder Kumar	17.06.1965	26.09.1965 as Steno	-	1 st ACP on 27.09.2001

3. The ACP Scheme stipulates grant of two financial upgradations on completion of 12 and 24 years of regular service. Such financial upgradation is given in the pay scale of the promotional hierarchy. The claim of the applicants is that in terms of the Recruitment Rules (RRs), they are entitled

for financial upgradation in the pay scale of Office Superintendent (OS) in the pay scale of `5500-9000, which has been denied to them.

4. It is further stated that the 5th Central Pay Commission (CPC) had recommended the pay scale of `5500-9000 for the post of OS. One Mr. Mohan Lal, an employee of NZP, was promoted as OS but was granted the pay scale of `5000-8000 instead of `5500-9000. He filed O.A. No.1519/2000 before this Tribunal, which was allowed vide order dated 28.08.2001 granting him the pay scale of `5500-9000. The said order of the Tribunal was upheld by the Hon'ble High Court of Delhi in W.P. (C) No.706/2002 vide order dated 31.01.2002. The respondents have also implemented the orders of the Tribunal and the Hon'ble High Court vide Annexure A-3 order dated 07.10.2002.

5. Yet another employee of NZP, namely, Om Prakash approached this Tribunal by filing O.A. No.1127/2010 seeking parity with Mohan Lal. The said O.A. was also allowed by the Tribunal vide order dated 30.11.2010 (Annexure A-4), which has been implemented by the respondents vide Annexure A-7 office order dated 05.09.2011.

6. The contention of the applicants is that they have been given ACP financial upgradation in the pay scale of `5000-8000, whereas they are also entitled for the ACP financial upgradation in the pay scale of `5500-9000 at par with Mohan Lal and Om Prakash. The applicants had submitted several representations to respondent No.2 for grant of the pay scale of `5500-9000 to them vide their representations at Annexure A-8. They have further stated that their cases for grant of `5500-9000 pay scale has been duly recommended by respondent No.2 to respondent No.1 vide

Annexure A-9 letter dated 12.09.2011, but no action has been taken on it by respondent No.1. As no decision is being taken by respondent No.1 in this matter, they have approached this Tribunal in the instant O.A. praying for the following main relief:-

“(a) Declare the action of the respondents as illegal, unjust, arbitrary and discriminatory in not considering the cases of the applicants for grant of pay scale of Rs.5500-9000/- under ACP scheme.”

7. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicants thereafter filed their rejoinder. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 26.10.2016. Mr. A K Trivedi, learned counsel for applicants and Mr. Gyanendra Singh, learned counsel for respondents were heard.

8. Learned counsel for applicants, besides reiterating the averments made in the O.A., stated that as per the 5th CPC's recommendations for MoE&F, the pay scale of `5500-9000 only has been prescribed for the OS (page 87 of the paper book). He further stated that in terms of the amended RRs for the post of OS (pages 73-75 of the paper book), the applicants are entitled for the financial upgradation under the ACP Scheme in the pay scale of OS, which is `5500-9000. He further submitted that the applicants have been granted financial upgradation between the years 1999 to 2004 in the pay scale of `5000-8000 and not in the pay scale of `5500-9000. Concluding his arguments, the learned counsel submitted that this matter has already been adjudicated by this Tribunal and Hon'ble High Court of Delhi in the cases of Mohan Lal and Om Prakash (supra), and that the applicants are only seeking parity with those two cases.

9. *Per contra*, learned counsel for respondents submitted that the O.A. is hopelessly time barred. The financial upgradation was granted to the applicants between the years 1999 to 2004, whereas they have filed the instant O.A. on 17.11.2010. Such a hopelessly time barred O.A. cannot be entertained in view of the judgment of Hon'ble Apex Court in the case of **State of Orissa & another v. Mamata Mohanty** (Civil Appeal No.1272/2011) decided on 09.02.2011 wherein it is held that "A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time". He further submitted that the post of OS in the subordinate offices is different than those in the Ministries/ Secretariat. He said that the OSs in subordinate offices are in the pay scale of `5000-8000 whereas those in the Ministries/Secretariat are in the pay scale of `5500-9000.

10. Replying to the arguments of learned counsel for respondents, Mr. A.K. Trivedi, learned counsel for applicants stated that the claim of the applicants for pay scale of `5500-9000 is a recurring cause of action, for which the limitation of time will not come in the way, as held by the Hon'ble Apex Court in **M.R. Gupta v. Union of India & others**, [1996 AIR 669].

11. We have considered the arguments of learned counsel for the parties and have also perused the documents annexed thereto. Admittedly, these applicants have been given the financial upgradation under the ACP Scheme between the years 1999 to 2004, as indicated in paragraph 2 supra. They have filed this O.A. on 17.11.2010, i.e., after a long delay. It is

understandable as to why these applicants have approached this Tribunal so belatedly. They could muster strength and conviction for furthering their claim only after they came to know of the judgments of this Tribunal and Hon'ble High Court in the cases of Mohan Lal and Om Prakash (supra). In both those cases, the Tribunal/Hon'ble High Court have held that the applicants in O.A. No.1519/2000 and O.A. No.1127/2010 were entitled for grant of financial upgradation in the pay scale of `5500-9000, holding that in their promotional hierarchy, the next post is that of an OS in the pay scale of `5500-9000. In view of judicial findings in these two cases, it is now well settled that the pay scale of OS in NZP is `5500-9000 and this issue is no more *res integra*.

12. Learned counsel for applicants, in support of his argument that the O.A. is not barred by limitation, has placed reliance on the judgment of the Apex Court in **M.R. Gupta's** case (supra) wherein the ratio of law laid down is as under:-

“The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Others vs. Mattapalli Raju and Others, AIR 1950 Federal Court 1).

Learned counsel for the respondents placed strong reliance on the decision of this Court in *S.S. Rathore vs. State of Madhya Pradesh*, [1989] Supp. 1 SCR 43. That decision has no application in the present case. That was a case of termination of service and, therefore,

a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case.

For the aforesaid reasons, this appeal has to be allowed. We make it clear that the merits of the appellant's claim have to be examined and the only point concluded by this decision is the one decided above. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on merits in accordance with law. No costs.”

In view of the law laid down by the Hon’ble Apex Court in **M.R. Gupta’s** case (supra), we are of the view that the instant O.A. is not barred by limitation of time as the claim of the applicants is recurring in nature.

13. The applicants claim that they are entitled for the financial upgradation in the pay scale of `5500-9000, which has been denied to them. As a matter of fact, a recommendation to that effect has been made by respondent No.2 to respondent No.1, on which no decision has been taken. Referring to the amended RRs for the post of OS (pages 73-75 of the paper book), the pay scale for the post of OS in MoE&F as recommended by the 5th CPC (page 87 of the paper book), and the ratio of law laid down by the Apex Court in the case of **M.R. Gupta’s** case (supra), we are quite convinced that the claim of the applicants for their financial upgradation in the pay scale of `5500-9000 (and not in the pay scale of `5000-8000) is a recurring cause of action, and as such the limitation of time will not come in their way as observed by us in the preceding paragraph. It is well settled that the post of OS carries the pay scale of `5500-9000 and thus the applicants are entitled for their placement in the said pay scale on account

of their financial upgradation under the ACP Scheme. This view is also fortified by the decision of a Constitution Bench of the Hon'ble Apex Court in **K.C. Sharma & others v. Union of India & others**, [1998 (1) SLJ (SC) 54].

14. In the conspectus of the discussions in the foregoing paragraphs, this O.A. succeeds. Respondents are directed to grant the financial upgradation to the applicants in the pay scale of `5500-9000 under the ACP Scheme with effect from the dates of their entitlements, as indicated in 6th column of the table in paragraph 2 (supra), with all consequential benefits. This shall be done by the respondents within a period of three months from the date of receipt of a copy of this order. It is, however, made clear that the applicants shall not be entitled for any interest on the arrears payable to them.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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