

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

O.A. No.3333/2014

**Reserved On:08.08.2018
Pronounced on:21.08.2018**

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)

1. Tejbir Singh Bhati (age 45 years)
JTO (Elect) Group B Employee
S/o Shri Khajan Singh
O/o Aviation Research Centre (Air Wing)
Palam, New Delhi.
2. Late Dayapal Chhikara
Through LR Smt. Dimpy (age 45)
House No.B-279, Nanakpura, South Moti Bagh,
New Delhi-110021. ...Applicants

(By Advocate: Shri Virender Singh Kadian)

Versus

1. Union of India through
Cabinet Secretary through
Cabinet Secretariat, Government of India,
Rashtrapati Bhawan,
New Delhi-110 004.
2. Director General,
Aviation Research Centre,
Dt. General of Security, Cabinet Secretariat,
Block-V (East), R.K. Puram,
New Delhi-110066. - Respondents

(By Advocate: Shri Rajesh Katyal).

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (J)

The applicants, 2 in number, filed the OA seeking the following reliefs:-

“(a) Direct respondents to fix the pay of the applicants at par with their juniors who joined service before 01.01.2006 and selected under the same advertisement as they are performing equal work in the same department/organisation.

(b) Direct respondents to fix the pay of the applicants at par with the direct recruits JTO-I from the date they were promoted to Grade of JTO-I in the Grade as Entry Grade of Rs.13350/- with Grade Pay of Rs.4800/-.

(c) Direct respondents to pay the due arrears after fixing of the pay of the applicants at par with their juniors with effect from the date they have been paid less with interest @ 12% p.a.

(d) Condone the delay if any being recurring cause of action as the applicants are regularly making representation for their right.

(e) Any other relief may deem fit and proper by the Hon’ble Tribunal in a given circumstances”.

2. The applicants submit that while they were working in the Indian Air Force, an advertisement was issued on 30.12.2004 for filling up the posts of JTO-II carrying scale of pay of Rs. 5500-175-9000 in Aviation Research Centre (ARC) and accordingly the applicants applied for the same and were also selected. Along with the applicants, certain colleagues of theirs were also selected but were placed in the selection panel below the applicants, in view of their less merit, but as the said persons, who were placed below the applicants in the selection panel were allowed to join the ARC prior to 31.12.2005, whereas the applicants could join only after 01.01.2006, i.e. on 04.01.2006 and 08.02.2006 respectively, as they were relieved late. Initially as per the advertisement, on offer of appointment, the pay of the applicants and others, i.e., the persons who were placed below the applicants in the selection panel but joined before 31.12.2005, was fixed at Rs.5500/- with annual

increment of Rs.175/-. But on implementation of 6th CPC recommendations, the pay of the applicants was fixed at Rs.9300-34800 with Grade Pay of Rs.4200/- with effect from the dates of their joining in service whereas the pay of the juniors in merit of selection was fixed at Rs.10240 (5500 x 1.86) with Grade Pay of Rs.4200/- which is more than the applicants. The representations made by the applicants to fix their pay on par with the persons who were placed below them in the selection panel were negated vide letters dated 01.11.2012 and 13.03.2014 and the subsequent representations were unanswered. Hence the OA.

2. Heard Shri Virender Singh Kadian, learned counsel for the applicants and Shri Rajesh Katyal, learned counsel for the respondents and perused the pleadings on record.

3. Shri Rajesh Katyal, learned counsel appearing for the respondents raised a preliminary objection of limitation and submits that the cause of action arose when the applicants came to know about the disparity and at any event when their claim was rejected for the first time on 01.11.2012 and the OA which was filed even without accompanying any MA seeking condonation of delay is liable to be dismissed on the ground of limitation.

4. On the other hand, Shri Virender Singh Kadian, learned counsel appearing for the applicants would submit that wrong fixation of a pay scale is a continuous and recurring cause of action

and hence, no limitation is applicable to the OA. He placed reliance on various decisions in support of his submissions.

5. As held by the the Hon'ble Apex Court in ***M.R. Gupta Vs. Union of India (1995) 5 SCC 628***, wrong fixation/non-fixation of a pay scale is a continuous and recurring cause of action. But once the respondents passed the speaking order justifying the alleged wrong fixation of pay scale, the said principle of continuous/recurring cause of action will have no application. Further, as per the procedure whenever an original application is filed belatedly, a separate MA seeking condonation of delay is to be filed. But in the present case, the applicants instead of filing a separate MA sought for condoning the delay in the main OA, itself.

6. It is the settled principle of law that rules of limitation are not meant to destroy the right of a party and liberal construction so as to advance the justice should be given. However, as held by the Hon'ble Apex Court in ***Union of India Vs. Tarsem Singh, (2008) 11 SCALE 94***, if a petition is filed beyond a reasonable period, the court can restrict the relief of benefit which could be granted to a reasonable period. At the same time, the courts are bestowed with the power to condone the delay if sufficient cause is shown for availing the remedy within the stipulated time, and also not denuded of its power to put the parties, to terms.

7. In the circumstances and for the aforesaid reasons mentioned above, the preliminary objection of limitation is held in favour of the applicant and against the respondents and accordingly the delay in filing the OA is condoned, however, subject to payment of cost of Rs.5000/- (Rupees Three Thousand Only) to be paid by each of the applicants to the Delhi Legal Services Authority within 3 weeks from the date of receipt of this order.

8. On payment of the cost, list the OA for final hearing on merits on 4.9.2018.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

RKS