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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 350/00470/2013

Date of Order: 5th September,
2018Present: Hon'ble Mrs. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Sri Prabir Kumar Chakraborty, son of Late Chandra Sekhar Chakraborty, aged about 53 years, working as Senior Engineering Assistant in Doordarshan Kendra, Kolkata, Golf Green, residing at 1010, Becharam Chatterjee Road, P.O. – Behala, Kolkata – 700034.
2. Smt. Kanta Paul, wife of Sri Pulak Paul, aged about 52 years, working as Senior Engineering Assistant in Doordarshan Kendra, Kolkata, Golf Green, residing at 1010, Becharam Chatterjee Road, P.O. – Behala, Kolkata – 700034.
3. Sri Alope Kumar Bandyopadhyay, son of Debidas Sarkar Banerjee, about 53 years, working as Senior Engineering Assistant in Doordarshan Kendra, Kolkata, Golf Green, residing at Flat No. G-5, 12/4C/1, P.G.H. Shah Road, P.S. – Jadavpur, Kolkata – 700032.

...Applicants

-Versus-

1. Union of India through the Secretary to the Govt. of India, Ministry of Information and Broadcasting, Shastri Bhawan, Parliament Street, New Delhi – 110001.
2. Prasar Bharati (Broadcasting Corporation of India) through the Chief Executive Officer, Prasar Bharati, Broadcasting Corporation of India, PTI Building, Parliament Street, New Delhi – 110001.
3. The Director General, Prasar Bharati (Broadcasting Corporation of India), Parliament Street, New Delhi – 110001.
4. The Deputy Director General (Engineering), Doordarshan Kendra, 18/3, Uday Shankar Sarani, Golf Green, Kolkata – 700045.

...Respondents

For the Applicants : Mr. S.K. Dutta
For the Respondents : Mr. M.S. Banerjee



ORDER

Per Mrs. Manjula Das, Judicial Member:

Being aggrieved, the applicants have approached this Tribunal by filing the instant application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "8a) An order granting leave to the applicants under Rule 4(5) (a) of the Central Administrative Tribunals (Procedure) Rules, 1987 to move this application jointly.
- b) An order holding that the change of date of increment of the applicants from 1.6.86, 1.6.86 and 1.2.86 in respect of the applicant Nos. 1, 2 and 3 respectively to 1.1.87 is bad in law, arbitrary, discriminatory and cannot be sustained and consequently the orders dated 4.2.87 whereby the date of annual increment of the applicants was changed and/or shifted to 1.1.87 are bad in law and unsustainable.
- c) An order directing the respondents to restore the dates of annual increment in respect of the applicant Nos. 1, 2 and 3 in the scale of Rs. 2000-3200/- to 1.6.86, 1.6.86 and 1.2.86 respectively and further directing the respondents to grant all consequential benefits to the applicants including refixation of pay and allowances till date as well as in future accordingly and to pay them the differential amount with interest within a period as to this Hon'ble may seem fit and proper.
- d) An order directing the respondents to produce/cause production of all relevant records.
- e) Any other order or further order/orders as to this Hon'ble Tribuma may seem fit and proper."

2. Heard Mr. S.K. Dutta, learned counsel for the applicants and Mr. M.S. Banerjee, learned counsel for the respondents.



3. Prayer for granting leave to file this present case jointly under Rule 4(5)(A) of CAT Procedure Rules, 1987 is allowed.
4. The issue in the present case relates to fixing of the crucial date of entitlement of the increment for the services rendered by the applicants.
5. Mr. S.K. Dutta, learned counsel appearing for the applicants submitted that all the three applicants are working as Senior Engineering Assistant at Doordarshan, Kolkata and they were initially directly recruited as Engineering Assistant in the year 1985. The applicant Nos. 1 and 2 were initially appointed in June, 1985 and the applicant No. 3 initially appointed in February, 1985. As such, the date of next increment of the applicants was to be given on completion of 12 months from the date of initial appointment and entry into service as Engineering Assistant. According to the learned counsel, the revised pay scale as per 4th CPC towards the date of increment was shifted and changed to 01.01.1987 from 01.02.1986 is illegal, arbitrary and unilateral and thereby the applicants have been put to financial loss month by month. Applicants represented the matter before the authority. However, the same are not considered.
6. On the other hand, Mr. M.S. Banerjee, learned counsel appearing for the respondents by filing their written Statement submitted that earlier all the applicants approached this Tribunal vide O.A. No. 31 of 2000 where this Tribunal vide order dated 22.07.2002 directed the respondent authorities to consider the representation of the applicant No. 3 dated 17.11.1999 and the decision of the respondents pursuant to the




said order dated 22.07.2002 has not been disclosed in the said application. According to Mr. Banerjee, applicant No. 3 in his representation made Annexure – "A-5" collectively at page 38 of the said application also suppressed material fact that he moved earlier before this Tribunal and pursuant to the order passed by this Tribunal, his representation was decided by the respondent authorities by a speaking order dated 18.07.2005.

7. Mr. Banerjee submitted that the said speaking order has not been challenged by the applicants in this instant application. Hence the present petition is not maintainable.

8. Mr. Banerjee submitted that present petition is also barred by limitation inasmuch as said speaking order was passed in the year 2005 and the present petition has been filed on 22.05.2013 that too without challenging the said speaking order dated 18.07.2005. More so, the pay fixation has been made as per clarification for fixation of pay in the grade of Engineering Assistant, Senior Engineering Assistant and Assistant Engineer consequent upon revision of pay scale of Engineering Assistant w.e.f. 01.01.1978/01.01.1986 vide Ministry of Information and Broadcasting, New Delhi's O.M. dated 07.06.1996. Hence the order passed by the respondent authorities is in order.

9. On the other hand, the learned counsel for the applicants controverted the submissions made by the learned counsel for the respondents in regards to the filing of previous filing of O.A. No. 31 of 2000 and submitted that the reasons have been assigned in para 7 of the O.A.



as to why the applicants could not approach before this Tribunal. In reply to maintainability of the case on the point of limitation, learned counsel for the applicants submitted that since the matter relates to pay, question of limitation does not hit by the law of limitation as laid down by the Hon'ble Apex Court rendered in the case of **M.R. Gupta** reported in **1995 SCC (5) 628**.

10. It was argued by the learned counsel for the applicants that when it was a case of revision of pay scale, the question of change of date of increment does not arise at all as stated by the Hon'ble Apex Court also in the case of **Union of India & Anr. Vs. Shyama Pada Sidhanta & ors.**

11. Learned counsel for the applicant has drawn our attention to the RTI reply dated 28.09.2010 which reveals that the applicants joined in their services on 25.06.1985, 18.02.1985 and 05.06.1985 respectively and the next date of increment next date of increment was fixed on 01.06.1986, 01.02.1986 and 01.06.1986 respectively.

12. Having heard the learned counsel for the parties, perusal of the pleadings and the materials and decision relied upon, the factors to be decided are as hereunder:

- (i) Whether the case is barred by limitation?
- (ii) Whether for non-challenging the speaking order dated 18.07.2005 is bad in law?
- (iii) Whether fixation of increment of pay fixed on 01.01.1986 has been changed to 01.01.1997 by



subsequent clarification dated 04.02.1997 on the basis of clarification dated 24.07.1996?

13. For deciding the 1st factor as regards to the barred by limitation, we are in hand the decision of Hon'ble Apex Court in the case of **M.R. Gupta** (supra), where the Hon'ble Apex Court held that – Where the circumstances arise like in the case that after long 11 years, the petitioners filed an application before the CAT for proper fixation of his pay as on the date of joining the Railway Service on the ground that the same had not been done in accordance with rules – representation to the same effect having already been rejected before coming into force of the Administrative Tribunals Act, 1985 – Such a grievance, held, a continuing wrong giving rise to a recurring cause of action every month on the occasion of payment of salary – such application to the extent of proper pay fixation, held, not time barred although the applicant's claim to consequential arrears would be subject to the law of limitation.

14. Thus, the ratio laid down by the Hon'ble Apex Court in the above case of **M.R. Gupta** (supra) and the case of the present applicants are similarly circumstanced so far the pay is concerned. Hence, the point raised in regards to barred by limitation is overruled.

15. In the instant case, the applicants took plea in para 7 of O.A. that the applicants declared that the applicant No. 3 earlier approached this Hon'ble Tribunal inter-alia praying for quashing of the re-fixation order of the applicant No. 3 dated 04.02.1997 and rejection of his representation against such re-fixation and the said original application

being O.A. No. 41 of 2000 was disposed of by order dated 22.07.2002 directing the respondent authorities to consider the representation dated 17.11.99 made by the applicant i.e. the applicant No. 3 for review of earlier order dated 04.02.1997 and pass a speaking reasoned order within a period of three months from the date of communication of the order and communicate the order to the said applicant within two weeks thereafter. Thereafter, the pay of the applicant No. 3 was intimated inter-alia by way of clarification that the pay of the applicant No. 3 had been further re-fixed by granting him the benefit of FR 22(1)(a)(i) and also option under FR 22(2) consequent on his promotion to the post of Senior Engineering Assistant with effect from 08.12.1989 and so far as the change of date of increment was concerned the same was upheld by such communication dated 18.07.2005 and the applicant No. 3 although registered his objection against the same but could not knock the door of judiciary because of his bad health as he had a cerebral attack and also suffering from kidney trouble and now he is approaching this Tribunal along with others as it is not possible to pursue with the case alone and so far other applicants are concerned they have never approached this Tribunal or any other Bench of the Tribunal or any other Court of Law on the self-name fact and on the self-same cause of action.

16. Now the question comes as to if we go on merit in totality whether can we ignore the speaking order passed by the department on 18.07.2005 which is not challenged in the present case and not even asking for setting aside or quashing the decision of the department by



which the order of this Tribunal dated 22.07.2002 passed in O.A. No. 31 of 2000 has been complied with by the respondents.

17. We have noted the reasons assigned by the applicants for not approaching in time after the passing of the speaking order dated 18.07.2005. However, the applicants failed to establish the reasons for not challenging the speaking order dated 18.07.2005 passed by the department. Thus we are in view that it would not be fit for going into logical conclusion without proper finding on the basis of merit. Hence we are unable to accept the present application as discussed in the foregoing paragraphs. However, applicants are at liberty to make fresh application by challenging the speaking order dated 18.07.2005 passed by the respondents by taking the benefit limitation period as held by the Hon'ble Apex Court in the case of **M.R. Gupta** (supra).

18. In view of the above discussion and with the liberty to the applicants, O.A. stands dismissed. No order as to costs.

(DR. NANDITA CHATTERJEE)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)