

Reserved
(On 29.10.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 19th day of December 2018

Original Application No 330/00396 of 2012

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Rajesh Kumar Pal, /o late D.R. Pal, R/o D-64/151/1-A Nagar Nigam Colony, Sirgra, Varanasi, District Varanasi.

. . . Applicant

By Adv: Sri Sameer Srivastava

V E R S U S

1. Union of India, Ministry of Textile, Udyog Bhawan, New Delhi – 110107, Through its Secretary.
2. Development Commissioner (Handicrafts), West Block No. 7, R.K. Puram, New Delhi – 110066.
3. Regional Director (Central Region), Office of the Development Commissioner (Handicrafts) Kendriya Bhawan, 7th Floor, Sector – H, Aliganj, Lucknow – 226001.
4. Assistant Director (A&C), office of the Development Commissioner (Handicrafts), Handicrafts Marketing & Service Extension Centre, Akasdeep Bhawan, Panna Lal Park in the campus of Varanasi Development Authority, Varansi – 221001.

. . . Respondents

By Adv: Sri S. Srivastava

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The applicant Sri Rajesh Kumar Pal has filed this OA for the following reliefs:-

- a. *To issue a mandamus directing to the Respondent No. 2 to grant the pay scale of Rs. 2610 – 3540 which is the revised pay scale of Rs. 775 – 1025 to the Applicant according to recruitment rules for the post of “Jobber” (Group-D) dated 30.05.1990 w.e.f. 21.01.1999 (date of joining) with all consequential benefits as the Respondent No. 2 has already granted to Sri Jagjiwan Ram (Jobber) vide order dated 04.01.2001.*
- b. *To issue a direction to the Respondent NO. 2 to pay the arrear to the Applicant according to law with 10% interest per annum till the date of actual payment.*
- c. *To issue any other suitable and equitable order or direction to the Respondents which the Hon'ble Tribunal may deem fit and proper in the circumstances of the present case.”*

2. In para 4.3 of the OA, the applicant has stated the following facts regarding his appointment against the post of 'Jobber' by the respondents vide order dated 14.12.1998 (Annexure A-3 to the OA):-

4.3. *That the office of the Respondent No. 2, Development Commissioner (Handicrafts) advertised the post of "Jobber" (Group "D") in the year 1998. The applicant applied for the same because he was eligible and qualified for the above post. Thereafter, the selection committee selected the Applicant for the post of "Jobber" and recommended the name of the applicant for appointment for the post of "Jobber". After receiving the recommendation, the competent authority issued an appointment letter to the applicant for the post of "Jobber" vide appointment letter dated 14.12.1998 in the pay scale or Rs. 2550 – 55 – 2660 – 3200 in place of Rs. 2610 – 60 – 3150 – 65 – 3540. It is pertinent to mention here that Rs. 2550 – 3200 is the revised pay scale of Rs. 750 – 940 w.e.f. 1.1.1996 on the basis of the 5th Pay Commission Report. Similarly, the pay scale of Rs. 2610 – 3540 is the revised pay scale of Rs. 775 – 1025 w.e.f. 1.1.1996 on the basis of 5th Pay Commission Report. In pursuance of the above said appointment letter, the Applicant joined in his office on 21.01.1999.*

3. The grievance of the applicant that he was not being allowed the pay scale of Rs. 2610-3540 which was allowed to another employee Sri Jagjiwan Ram who was also appointed as a Jobber vide order dated 3.6.1998 in the pay scale of Rs. 2550-3200, the pay scale which was allowed to the applicant at the time of his appointment. But Sri Jagjiwan Ram moved a representation for the pay scale of Rs. 2610-3540 which was applicable for the post of Jobbers as per the Recruitment Rules, which was duly considered and he was allowed the pay scale of Rs. 2610-3540 vide order dated 4.1.2001 (Annexure A-4 to the OA). The applicant claims that after he came to know about this order, he also moved a representation dated 30.4.2008, on which no action was taken by the respondents. Then he obtained a reply dated 13.1.2009 alongwith a copy of the Recruitment Rule for Jobbers (Annexure A-6 to the OA) in response to a question under RTI Act, 2005.

4. Thereafter, the applicant moved another representation dated 4.10.2010 (Annexure A-7 to the OA) to the respondents claiming the pay scale of Rs 2610-3540 from the date of his initial appointment at par with Sri Jagjiwan Ram. When no action was taken by the respondents, he filed the OA No. 1150/2011 which was disposed of vide order dated 19.9.2011 directing the respondents to dispose of the representation dated 4.10.2010 of the applicant by a reasoned order. In compliance of the said order of this Tribunal, the respondents passed the impugned order dated

3.1.2012 (Annexure A-1 to the OA), rejecting the representation dated 4.10.2010. This OA has been filed impugning the order dated 3.1.2012.

5. The reasons for rejecting the applicant's representation dated 4.10.2010 as mentioned in the impugned order dated 3.1.2012 are as under:-

"On a careful examination of the representation of the Applicant dated 04.10.2010 read with the direction of the Hon'ble CAT as contained in judgment & order dated 19.09.2011 in OA No. 1150 of 2011, Rajesh Kumar Pal V/s UOI & Others, it is noticed that the Applicant was a Jobber in the scale of pay of Rs. 2550-3200 at LTC i.e. Laceware Training Centre, Diara under Metal Scheme. Whereas, Shri Jagivan ram, Jobber was appointed at RDTDC, Okhla.

It is further noticed that the RR of the Jobber dated 30.05.1990 has been notified for RD&TDCs, Bamboo and Cane institute and Development Centers for Red Clay Ptery. Thus is not applicable on the Applicant being appointed as Jobber LTC i.e. Laceware Training Center, Diara under Metal Scheme, which is having a separate RR Providing the same pay scale in which the applicant is placed.

Further, it is not out of place to mention here that both the posts of Jobber are existing under different instruments and the nature of duties attached to the posts are also different.

In view of the above, the claim of the Applicant seeking parity with Shri Jagivan Ram as contained in his representation dated 04.10.2010 cannot be acceded to."

Similar plea has been taken in the Counter affidavit filed by the respondents in reply to the OA. It is further mentioned in the Counter affidavit that the post of Jobber in the Laquareware Training Centre (in short LTC), Karnataka, was different from the post of Jobber in the Regional Design and Technical Development Centers, Bamboo and Cane Development Institute (in short RD&TDC), which is a different establishment from the LTC under the respondents.

6. The applicant has filed Rejoinder affidavit mainly reiterating the averments in the OA and that from the rule dated 30.5.1990 enclosed in the Annexure No. C.A. 3 for the post of Jobber Group D in the office of the respondent no. 2, it is clear that the higher pay scale of Rs. 775-1025, which was revised to the pay scale of Rs. 2610-3540 w.e.f. 1.1.1996, is applicable for the post of Jobber Group D to which the applicant was appointed. Copy of the Recruitment rule given by the respondents in response to his RTI query, has been attached to the Rejoinder.

7. At the time of oral submissions, learned counsel for the applicant drew our attention to the rule enclosed by the respondents with the

Counter affidavit to argue that the pay scale applicable for the post of Jobbers was Rs. 775-1025, which was revised to Rs. 2610-3540 w.e.f. 1.1.1996 and the said pay scale was applicable for all the posts of Jobbers under the respondents, not for the post of RD&TDC only as averred by the respondents. Hence, he argued that the applicant is entitled to the pay scale of 2610-3540, which was allowed to Sri Jagjiwan Ram, vide order dated 4.1.2001 (Annexure A-4). Learned counsel for the applicant cited the judgment of Hon'ble Apex Court in the case of State of Punjab vs. Senior Vocational Staff Masters in Civil Appeal No. 632 of 200. In this case, the dispute was on the issue of admissibility of higher pay scale to the vocational Masters under Government of Punjab who were appointed prior to 8.7.1995. Government, vide notification dated 7.11.2002 specified that vocational Masters appointed on or after 8.7.1995 cannot be allowed the benefit of higher pay scale of Rs. 6400 – 10640. This notification was cancelled on 16.7.2003, clarifying that the higher pay scale is permissible to Vocational Masters appointed prior to 8.7.1995 provided they have acquired post graduate or degree in engineering by 8.7.2003 was challenged by the affected employees successfully in the Writ Petition before Hon'ble High Court. Hon'ble Apex Court has held as under:-

“8) Learned senior counsel further submitted that it has been held in a catena of cases of this Court that the doctrine of ‘equal pay for equal work’ has no mechanical application in every case and Article 14permits reasonable qualification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. For claiming the benefit of the doctrine of ‘equal pay for equal work’, the concerned employee has to establish that the qualification, eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. In support of this claim, learned senior counsel pointed out the judgments of this Court in *Shyam Babu Verma and Others vs. Union of India and Others* (1994) 2 SCC 521 and *Government of W.B. vs. Tarun K. Roy and Others* (2004) 1 SCC 347.”

8. Learned counsel for the respondents, on the other hand, argued that the higher pay scale claimed by the applicant as per the rules cited by the applicant, was applicable only for the Jobbers of the RD&TDC, which will not be applicable to the applicant who was appointed in another establishment i.e. LTC, Karnataka.

9. The question to be decided in this case is whether the Recruitment rules dated 30.5.1990 which is being relied upon by the applicant, is also applicable for the Jobbers appointed under the Laquareware Training Centre, Karnataka. The respondents claim that the said rules are applicable for the RD&TDC, not for the LTC under which the applicant was

appointed. The applicant has given the example of another Jobber (Sri Jagjiwan Ram) who was allowed the higher pay scale of Rs. 2610-3540 after considering his representation. He has also referred to the reply dated 13.1.2009 of the respondents in response to his RTI query where it is stated that the pay scale applicable for the Jobbers was Rs. 775-1025 which was revised subsequently to Rs. 2610-3540. The applicant has also referred to a letter dated 26.10.2008 (Annexure A-5) written by the respondent no. 3 to the respondent no. 2 recommending the case of the applicant. Further, the judgment in the Civil Appeal No. 632 of 2008 in the case of State of Punjab vs. Senior Vocational Staff Masters has been relied upon by the applicant's counsel.

10. The notification dated 30.5.1990 notifying the Recruitment rule which is being relied upon by the applicant states as under:-

"New Delhi, the 30th May, 1990

G.S.R. 346 – In exercise of the powers conferred by the proviso to article 309 of the Constitution and superseding of the office of the Development Commissioner (Handicraft), (Regional Design and Technical Development Centres, Bamboo and Cane Development Institute and Development Centre for Red Clay pottery) (Group 'C') Recruitment Rules, 1984 in so far as they relate to the post of Jobber, except as respects things done or omitted to be done before such supersession, the President hereby makes the following rules regulating the method of recruitment to Group 'D' post of Jobber in the Office of the Development Commissioner (Handicrafts), namely :-

1. *Short title and Commencement. – (1) Those rules may be called the Office of the Development Commissioner (Handicraft) (Jobber Group 'D' post) Recruitment Rules, 1990*
2. *(2) They shall come into force on the date of their publication in the Official Gazette."*

11. It is not specifically mentioned in the above notification dated 30.5.1990 if the said rules are applicable to the Jobbers appointed under the Laquareware Training Centre, under which the applicant was appointed. As mentioned in the notification, the said rules replaced the earlier rules for the RD&TDC and the Development Centre for Red Clay pottery, which implies that the rules dated 30.5.1990 replaced the earlier rules which were applicable for the RD&TDCs and the Development Centre for Red Clay pottery under the respondent no. 2. There is nothing in the said notification dated 30.5.1990 which stated that these provisions were applicable for the Laquareware Training Centre under the respondent no. 2. Further, no evidence has been produced before us to prove if the nature of job for the jobbers in LTC is similar or if the respondents had given same status to the Jobbers of LTC as the Jobbers

of the RD & TDC. No rule or notification has been produced before us by the applicant to substantiate his claim that the pay scale for the Jobbers appointed to the Laquareware Training Centre will be Rs. 775-1025, revised to Rs. 2610-3540 w.e.f. 1.1.1996. The facts of the present OA are different from the facts in the Civil Appeal No. 632 of 2008 where Government of Punjab at one point of time had considered both categories of employees to be equal although subsequently it was changed. Hence, the judgment cited by the learned counsel for the applicant will be of no help for the applicant in this case. Accordingly, we are unable to agree with the averments of the applicant in the Rejoinder that he was entitled for the pay scale of Rs. 2610-3540 from the date of his appointment as per the notification dated 30.5.1990 (Annexure no. C.A. 3 to the Counter affidavit).

12. The applicant has also relied upon the letter dated 13.1.2009 of the respondents in reply to the applicant's query under the RTI Act, 2005. It has mentioned that as per the notification, the pay scale applicable for the Jobbers was Rs. 2610-3540. But it is a reply under the RTI Act, under which the document available on record is to be furnished in reply to the query under the RTI Act. It does not imply the correctness of the reply as per the provisions of the law, unless evidence for the same is furnished to that effect. Similarly the letter dated 26.10.2008 (Annexure A-5) can be considered as the opinion of the officer who has signed the said latter which does not imply that such opinion will be binding on the competent authority. Hence, the letters dated 13.1.2009 and 26.10.2008 are not helpful for the applicant's case.

13. The applicant has averred that except the Recruitment rule dated 30.5.1990, there is no other rule applicable for the Jobbers working under the respondent no. 2. But the respondents have averred that the applicant was appointed as a Jobber in the LTC under compassionate ground as per the pay scale applicable for the LTC and the pay scale for the Jobbers for the RD&TDC will not apply to the applicant. It is noticed that the applicant did not disclose in the OA that fact that he was appointed on compassionate ground. In para 4.3 of the OA, it was claimed by the applicant that he was selected as a Jobber in pursuance to an advertisement and after due selection. These averments are wrong as mentioned in para 15 of the Counter Affidavit and these contentions of the respondents are admitted to be correct vide para 13 of the Rejoinder filed

by the applicant in reply to the Counter Affidavit. No reason for such wrong submissions in para 4.3 of the OA has been furnished by the applicant.

14. It is also noticed that the applicant did not raise his claim within the time as stipulated under the law. If he claims that the benefit of the higher pay scale given to another employee is also applicable to him, then he should have raised it before the authorities and if he aggrieved, he should have approached this Tribunal within time as specified under the Administrative Tribunals Act, 1985. In case of delay, an application for condonation of delay should have been filed. No such application to condone the delay in filing the OA has been filed by the applicant in this case. The cause of action for the applicant has to be considered to be from 4.1.2001, when the respondents had allowed the benefit of the higher pay scale of Rs. 2610-3540 to Sri Jagjiwan Ram. If it came to the notice of the applicant in 2008, after which he submitted the representation dated 30.4.2008 to the authorities, on which no action was taken by the respondents. Even after considering the date on which the said decision of the respondents came to the notice of the applicant to be 2008, still the applicant failed to raise his claim within time. He had filed the first OA No. 1150/2011 in the year 2011 and the said OA was disposed of by this Tribunal vide order dated 19.9.2011 without going into the merit of the application, without considering the question of delay as the order dated 19.9.2011 reveals. Since the applicant has failed to raise his grievance within the time stipulated under the provisions of the Administrative Tribunals Act, 1985, it was necessary for the application to submit an application to condone the delay in filing the OA. As per the decision of the Hon'ble Apex Court in the case of Ragho Singh vs. Mohan Singh reported in 2001 (9) SCC 717, the delay cannot be condoned without delay condonation application. Hence, the present OA suffers from the latches and delay on the part of the applicant, which have not been condoned by this Tribunal as per the provisions of law.

15. In view of the reasons mentioned above, we do not find any merit in the OA, which is, therefore, liable to be dismissed. Accordingly, the OA is dismissed with no order as to costs.

(Rakesh Sagar Jain)
Member (J)

/pc/

(Gokul Chandra Pati)
Member (A)