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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.322/2003

New Delhi this the 11th day of September, 2003.

HON'BLE MR. V. K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Sh. Yoginder Kumar
S/o late Sh. Jaswant Rai
2. Sh. Ram Sarup Bhumbee,
S/o late Sh. S.R. Bhumbee
3. Sh. Ram Kanwar Bhatta,
S/o Sh. Hari Singh Bhatta
4. Sh. Sher Singh,
S/o Sh. Devi Sahai
5. Smt. Nirmal Sehgal,
W/o Sh. Ashwani Kumar Sengal
6. Sh. Virender Singh,
S/o Sh. Sattar Singh
7. Sh. Satish Kumar,
S/o late Sh. Hoshiar Singh
8. Sh. Jagat Singh,
S/o late Sh. U.S. Negi
9. Legal Heirs of deceased
Sh. Sudershan Biswas
S/o late Sh. B.,C. Biswas
 - i) Smt. Gouri Biswas,
w/o late Sh. Sudershan Biswas
 - ii) Miss Deepa Biswas
d/o late Sh. Sudershan Biswas
 - iii) Miss Meeta Biswas,
D/o late Sh. Sudershan Biswas
 - iv) Mr. Tushar Biswas,
S/o late Sh. Sudershan Biswas

(all residents of RZ-61A/81A, Vashist Park,
Pankha Road, New Delhi-110046.

-Applicants

(By Advocate Ms Sita Kaul)

-Versus-

1. The Union of India,
through the Secretary,
Ministry of Defence,
South Block,
New Delhi-110001.
2. Director General of Ordnance Services (Ordnance),

(2)

MGO Branch, Army Headquarters,
DHQ Post, P.O., New Delhi-110011.

3. The Chief Record Officer,
AOC Records,
Secundrabad-15.

4. The Commandant,
Central Ordnance Depot,
Delhi Cantt-110010.

-Respondents

(By Advocate Shri Rajinder Nischal)

O R D E R (ORAL)

By Mr. Shanker Raiu, Member (J):

Applicants impugn respondents order dated 2.4.2002 and 10.4.2002 and have claimed extension of the benefit of the Apex Court's decision in CA No.11730/1996 dated 27.4.2000 for revision of their pay scale in the pay scale of Rs.260-380 with all consequential benefits.

2. Applicants No.1-6 were appointed as Telephone Operators from 1962 onwards in the pay scale of Rs.260-400, whereas applicants No.7&8 were appointed as Telephone Operators in December, 1995 in the replacement pay scale of the above pay scale. Applicants No.2&3 have been promoted in the supervisory cadre. ^(x) "As applicant No.1 had died, OA ~~abates for want of substitution of his legal representatives."~~

3. The higher scale of pay was allowed to the Telephone/Switch Board Operators employed in offices/establishments/installations of Defence by OM dated 22.8.1972, subject to fulfilment of conditions that the Operators perform 45 hours duty per week are not entitled to holidays and perform night duty as well. The sanction of the President for revision of the pay scale was communicated on 4.4.1977. As applicants fulfil all the conditions as stated and the pay scale has been extended to

(x) Deleted vide orders dated 9.12.2003 in MA 2581/2003 in D.A. 322/2003.

(3)

all other establishments of Defence to similarly circumstance the Jodhpur Bench of this Court in OA-133/1987 in **Ravindra Kumar Parashar v. Union of India & Ors.**, decided on 10.12.1987 accorded the pay scale of Rs.260-480 w.e.f. 1.4.1997 with all consequential benefits.

4. The decision of the Chandigarh Bench was assailed before the Apex Court in Civil Appeal No.11730/1996 in **Western Command Civilian Employees Union v. Union of India & Others**. By an order dated 27.4.2000, taking cognizance of various decisions of Jodhpur and Allahabad Benches of the Tribunal similar relief was accorded on the statement of learned A.^wS.G. on the basis of letter dated 25.4.2000 extending the benefits to the identically situated. Representations preferred by applicants for extension of benefits of the judgment were turned down on the ground that decision cannot be extended universely, giving rise to the present OA.

5. Learned counsel for applicant contends by referring to the duties chart of Telephone Exchange staff that the eligibility condition of 45 hours duty is fulfilled by all applicants. They are not entitled to any holidays and work in night duty as well. As they are similarly circumstance, the decision of the Apex Court squarely covers their case and they cannot be denied the same benefits which are extended to identically situated and equally placed Telephone Operators of Switch Board Operators.

(4)

6. By referring to the statement made by the learned A.S.G. on the basis of the letter issued by the Legal Cell it is stated that if the judgments of the Tribunal by various Benches had been implemented applicants who are also similarly placed should not be left on the technical plea of not being the parties to the OA. According to the learned counsel the decision of the Apex Court is to be treated in rem.

7. On the other hand, learned counsel states that the decision of which extension has been sought applies only to the members of the Western Command Civilian Employees Union. As applicants do not fulfil the conditions laid down in Government of India's memorandum dated 22.8.1972, they are not entitled for the benefits.

8. We have carefully considered the rival contentions of the parties and perused the material on record. In view of the decision of the Constitutional Bench of the Apex Court in **K.C. Sharma v. Union of India**, 1998 (1) SLJ 54, the benefit of a judgment has to be extended to similarly circumstance which avoids expenditure of Public Exchequer as well as multiplicity of litigation. In our considered view applicants have demonstrated which has not been rebutted by respondents that they worked for more than 45 hours in a week and are not entitled for holidays. They also perform night duty, as such in view of the OM dated 22.8.1972 they are not entitled for the revision of pay scale with all consequential benefits.

(5)

9. We also find that the similarly circumstance employees have sought for the same relief in OA-2577/2002, S.K. Singh & Ors. v. Union of India & Ors., decided on 23.6.2003, which was disposed of with the following observations:

"In the above view of the matter the OA succeeds and is accordingly allowed. The respondents are directed to place all the applicants in the pre-revised scale of Rs.260/- - 460/- from the date of their appointment with proper replacement scales, on the acceptance of the 4th & 5th Central Pay Commission recommendations. They would be entitled for notional fixation of the scale with increments. They would however, get the benefit of the arrears in the revised/upgraded scale of pay only from one year prior to the filing of this OA. i.e., the arrears would have to be worked out from 30.9.2001. This exercise shall be completed by the respondents within three months on receipt of certified copy of this order. No costs."

10. As applicants are equals in all respects with those who were petitioners before the Apex Court, where on the basis of the statement made by the learned A.S.G. the benefit of the various decisions of this Tribunal was extended to all the employees would equally applicable in the case of applicants herein also, as they fulfil all the conditions laid down. In this view of the matter the rejection of their request is unfounded and cannot be sustained in law. The OA is accordingly allowed. Impugned orders are quashed and set aside. Respondents are directed to extend the benefit granted to the members of the Western Command Civilian Employees to applicants herein in so far as the revision of the pay scale is concerned. This would be implemented by placing applicants in the pre-revised pay scale of Rs.260-480 from the date of their appointment with proper replacement scales, as per the recommendations of the 4th and 5th Central Pay Commissions.

(6)

They would be entitled for the notional scale of pay with increments. However, they would get the benefit of the arrears in the revised/upgraded scales of pay only from one year prior to the filing of the OA, i.e., the arrears would have to be worked out from 11.2.2002. The aforesaid exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.

S. Rajm

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

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