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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1174/2003

New Delhi this the 1st day of January, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)  
HON'BLE MR. S.K. NAIK, MEMBER (ADMNV)

Smt. Veena Sehgal,  
P. No.14203531,  
Sr. Store Supdt.  
Delhi Cantt-110 010. -Applicant  
(Under Ministry of Defence)

(By Advocate Sushil Kumar Sharma)

-Versus-

1. Union of India,  
through Secretary,  
Ministry of Defence,  
South Block,  
New Delhi.
2. The Commandant,  
Central Ordnance Depot,  
Delhi Cantt-110 010.
3. Director General of Ordnance Services,  
(OS-8C) (ii), Sena Bhawan,  
Army Headquarter, DHQ, PO,  
New Delhi-110 011. -Respondents

(By Advocate - None)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

As none appeared for respondents, even on the second call and the matter has figured in the regular list, OA stands disposed of in terms of Rule 16 of the Central Administrative Tribunal (Procedure) Rules, 1987.

2. By this OA applicant has sought extension of benefit of protection of pay under the provisions of CPRO 77/70 readwith AO 69/81, which had been extended to similarly circumstance Smt. Kusum Sharma in the wake of the decision of the Tribunal in order dated 14.12.2001, with all consequential benefits.

3. On being declared surplus in 1972, under the

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provisions of SAO 4/S/53 applicant was offered alternate employment as Civilian Assistant Storekeeper. At that time pay was not protected with the result a representation made under the provisions of CPRO 77/70, case was observed to be under active consideration by the respondents. Though similarly circumstance had been granted benefit of protection of pay on deployment to lower post.

4. In the light of the amendment made in SO 8/S/76 through AO 69/81 in June, 1981 it had been clarified that an individual posted in lower scale of pay due to non-availability of matching scale of pay will be allowed to carry his previous scale of pay, even if officiating in it.

5. Applicant who was working on permanent and regular basis was declared surplus before being re-deployed to the post of CASK. However, vide communication dated 20.10.1992, addressed to the Commandant COD, it has been observed that implementation of AO 69/81 with retrospective effect has been turned down by the Ministry of Finance.

6. However, vide letter dated 5.7.93, forwarded to the Army Headquarters financial implications towards treatment of pay on being declared surplus was under active consideration.

7. Sh. G.S. Rathore and Sh. S.C. Upadhyaya were given benefit of protection of pay. One of the employees, i.e., Kusum Sharma by filing OA-200/2001 and by an order dated 14.12.2001, rejecting the contention of

respondents as to retrospective application of Ao 69/81, protection of pay was accorded with all consequential benefits, which stood implemented.

8. In the aforesaid background, learned counsel for applicant Sh. Gushil Kumar Sharma contends that being similarly circumstance and identically placed applicant cannot be deprived of the benefit of pay protection and her case at every stage had been proceeded and processed along with Kusum Sharma. He assails discrimination violative of Articles 14 and 16 of the Constitution of India.

9. In their reply respondents vehemently opposed the contentions and stated that the case of Kusum Sharma was different as she was Examiner declared surplus as LDC, whereas applicant was given alternate employment as ACSK. It is, however, stated that case of applicant had been rejected by the Government on 20.10.92 and the OA filed in 2003 is barred by limitation. In the case of others Ministry of Defence had accorded the benefit of protection of pay scale whereas in case of applicant, for want of sanction, the same was not accorded.

10. In the rejoinder, applicant has re-iterated her pleas taken in the OA.

11. We have carefully considered the submissions made by the learned counsel of applicant and the reply filed by respondents.

12. The objection of the respondents that the case of Kusum Sharma was different inasmuch as she was declared surplus as LDC, whereas applicant was given alternate employment is of no consequence, as admittedly case of Kusum Sharma and Veena Sehgal applicant was referred to by respondents for protection of pay.

13. Moreover, the Tribunal while considering the case of Kusum Sharma having regard to the clarification and amendment in AO 69/81, clearly observed that as it has been applied retrospectively in the case of Sh. Upadhyaya applicant therein could not be discriminated. Applicant, who has been declared surplus and was accommodated in an alternate employment as per AO 69/81 readwith CPRO 77/70 was entitled for protection of her pay being similarly circumstance in all respects. She cannot be deprived of the same benefits, which would violate the mandate of Articles 14 and 16 of the Constitution of India.

14. The objection as to limitation cannot be countenanced, as even after rejecting the case of applicant in 1992 matter was forwarded to the Army Headquarters on 5.7.1993. Moreover, ratio of the Apex Court in *M.R. Gupta v. Union of India*, 1995 (5) SCALE 29 covers the issue, as the claim and cause of action are recurring. It is well settled that similarly circumstance cannot be deprived of extension of benefit of a judgment and limitation would have no role to play, as held by the Constitutional Bench of the Apex Court in *K.C. Sharma v. Union of India*, JT 1997 (7) SC 58.

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15. In the result, for the foregoing reasons, OA is allowed. Respondents are directed to extend to applicant benefit of protection of pay, which had been extended to Smt. Kusum Sharma in OA-200/2001 as per the provisions of CPRO 77/70 readwith AO 69/81. Applicant shall also be entitled to all consequential benefits. The aforesaid directions shall be complied with, within a period of three months from the date of receipt of a copy of this order. No costs.

S.K. Naik

(S.K. Naik)  
Member (A)

S. Raju

(Shanker Raju)  
Member (J)

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