

(2020) 01 CAT CK 0018

In the Central Administrative Tribunal

Case No : Original Application No. 2643 Of 2014

Dharampal And Ors

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20, 21, 21(2)
Constitution Of India, 1950 — Article 14, 21

Citation : (2020) 01 CAT CK 0018

Hon'ble Judges : Vijay Lakshmi, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Pradeep Kumar Arya, Deepika Khari, Priyanshu Malik, Anshul Malik, Prateek Singh, Sriparna Chatterjee, Himanshi Malhotra

Final Decision : Dismissed

Judgement

Vijay Lakshmi, J

1. The applicants are aggrieved by the various orders passed by respondent - Delhi Development Authority (hereinafter referred to as "DDA") (Annexure A (Colly.)) whereby some employees junior to the applicants were given higher pay scale.

2. The brief facts of the case are that applicant No.1 was appointed as Work Charge Mate (hereinafter referred to as "WCM") on 23.11.1976 in the pay scale of Rs.210-290 in DDA. The applicant No.2 was appointed on 14.8.1975 as WCM in the pay scale of Rs.210-290 and applicant No.3 was also appointed as WCM on 19.11.1976 in the same pay scale. The educational qualification of applicant Nos.1 and 2 was higher secondary from Delhi Central Board and applicant No.3 was Graduate at the time of his initial appointment. All the applicants were promoted to the post of Assistant Supervisor on 30.6.1984 in the pay scale of Rs.260-400. According to the applicants, one Jai Prakash was appointed as WCM on 1.8.1980 in the pay scale of Rs.210-290. His educational qualification at the time of appointment was intermediate. Thus, admittedly the said Jai Prakash was

junior to the applicants being appointed on a later point of time. However, the respondent - Department arbitrarily promoted him as Work Assistant w.e.f. 26.3.1982 in the pay scale of Rs.260-430. When the applicants moved an application under RTI Act on 18.5.2009 asking about this anomaly, the respondent -Department informed that Jai Prakash was not promoted but his post was only re-designated.

3. The grievance of the applicants is that all of them and Jai Prakash were initially appointed on the same post for the same work with almost same qualification. Rather the applicant nos.2 and 3 were more qualified than him but the said Jai Prakash, junior to the applicants, was given higher pay and higher pay scale arbitrarily due to which Jai Prakash was granted first ACP w.e.f. 1.7.2008 in the pay scale of Rs.5000-8000 and second ACP in the pay scale of Rs.6500-10500 whereas the applicants were granted first ACP in the pay scale of Rs.3200-4900 w.e.f. 1.8.1999 and second ACP in the pay scale of Rs.4000-6000. Therefore a huge difference and discrimination was caused between their pay scale and pay scale of Jai Prakash, which amounts to violation of well settled legal principle of "equal pay for equal work"; and is also violative of Articles 14 and 21 of the Constitution of India.

4. On the aforesaid grounds, it has been prayed that respondent may be directed to remove the disparity in pay and pay scale, designation etc. of the applicants by granting and placing them in the pay scale in which their juniors and persons who worked under them have been placed, by upgrading/stepping up the pay scale and designation of the applicants.

5. In the counter affidavit filed by respondent, four preliminary objections have been raised. The first preliminary objection raised by learned counsel for the respondent is that the OA filed by the applicants is vague and unclear. The relief sought in the OA is general in nature. The applicants have failed to make any specific prayer against any specific person except one Jai Prakash and that Jai Prakash has not been made a party in the OA. Hence, the OA is liable to be dismissed as being bad in law for non-joinder of necessary party.

6. The second preliminary objection raised by the respondent is that OA is barred by limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985 because the applicants have raised an issue that could have been raised 32 years back. Learned counsel for the respondent has contended that the applicants are allegedly aggrieved by the difference between their pay scale and pay scale of Jai Prakash who was posted as Work Assistant in the year 1982. For all these years, the applicants have taken no action in this regard. Moreover, the present OA is not even accompanied by any application for condonation of delay. Therefore, it is liable to be dismissed on the ground of delay and laches. In this regard, reliance has been placed on the law laid down by the Hon"ble Apex Court in the case of D.C.S. Negi vs. Union of India & Ors. in SLP (Civil) No.7956/2011 with C.C. No.3709/2011 decided on 07.03.2011 in which the Hon"ble Apex Court has held that the Administrative Tribunal established under the Act is duty

bound to first consider whether the application is within limitation and application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3). Reliance has also been placed on the case of Bhoop Singh vs. Union of India and others, 1992 (3) SCC 136, wherein it has been held by the Constitution Bench of Hon"ble Apex Court that inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner irrespective of the merit of his claim. If a person, entitled for a relief, chooses to remain silent for a long time, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief.

7. Third preliminary objection raised by the respondent is with regard to the jurisdiction of this Tribunal. The contention of learned counsel for the respondent is that the cause of action in this OA has arisen more than three years prior to establishment of Central Administrative Tribunal. Hence, this Court has no jurisdiction to entertain this OA. In this regard, reliance has been placed on an earlier judgment passed by the Principal Bench of this Tribunal in OA No.2898/2003 (Govind Singh and others vs. Union of India and others) decided on 23.8.2004.

8. The fourth preliminary objection raised by learned counsel for the respondent is that the applicants have failed to exhaust all the departmental remedies prior to filing of the present OA. Our attention has been drawn to Section 20 of the Administrative Tribunals Act, 1985 which is reproduced as under:-

"20. Applications not to be admitted unless other remedies exhausted -

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor

of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

9. Learned counsel for the respondent has further contended that all the four preliminary objections mentioned above are required to be decided first as has been directed by the Hon"ble Apex Court in the case of Arun Kumar Aggarwal vs. Nagreeka Exports Pvt. Ltd. & Anr., 2002 (10) SCC 101.

10. Apart from the above mentioned four preliminary objections, the present OA has also been contested by giving parawise reply. According to the respondent, Jai Prakash was not similarly placed employee as the applicants. Therefore, the question of uniformity of pay, post and nomenclature does not arise. Jai Prakash was appointed as Work Assistant in the Work Charge Establishment w.e.f. 26.3.1982 in the pay scale of Rs.260-430 + usual allowances.

11. It is next contended that apart from Jai Prakash, no other similarly placed employee has been named by the applicants to show that the juniors have been arbitrarily promoted and have been given higher pay scale than the applicant. In absence of any specific name, no reply can be given as to which employee was arbitrarily promoted and discriminated.

12. It is further contended by the respondent that the pay of Jai Prakash was a consequence of his appointment, as Jai Prakash was appointed as Work Assistant, Work Charge (Regular) in DDA in the year 1982. The applicants for the first time have raised this issue in the year 2014 and remained silent for the last 32 years. The initial scale of the applicants and Jai Prakash was the same. Subsequent scale was on account of revision of pay scales and grant of first and second ACPs.

13. It is next contended by the respondent that the applicants have themselves stated that the pay of the Work Assistant is higher than the pay of Assistant Supervisor and hence, it cannot be said that the duties and responsibilities of the Assistant Supervisor and Work Assistant are same. Since the applicants are holding different posts as compared to Malies and Work Assistant, the principle of "equal pay for equal work" does not arise. It is lastly contended that the applicants have not exhausted the departmental remedy prior to filing of this OA.

14. On the aforesaid grounds, it has been prayed by the respondent that the OA be dismissed.

15. In the rejoinder affidavit, the applicants have denied the averment that they have not exhausted the departmental remedy. It has been stated in the rejoinder affidavit that they have approached the Department from time to time with various representations and only after exhausting all departmental remedies, they have approached this Tribunal.

16. With regard to the delay, the applicants have submitted that the cause of action of the applicants, being continuous, is still exist and would remain alive on

day to day basis.

Hence, there is no need for filing the delay condonation application.

17. We have considered the rival submissions advanced by learned counsel for the parties and have carefully gone through the records.

18. Before going to the merit of the case, we would like to delve upon the preliminary objections raised by the respondents. Admittedly, the applicant had never agitated their claim prior to 16.2.2009 when they, for the first time moved an application under RTI Act. Thereafter they filed an appeal under RTI Act on 17.3.2009. It is pertinent to mention that the applicants have not annexed the copy of any such representation with their OA. However, they have filed copies of three letters dated 20.3.2013, 1.4.2013 and 23.12.2013 sent to the Department along with his rejoinder for the first time. In the rejoinder affidavit, nowhere it has been stated that why these letters were not filed with the OA.

19. Section 21 (2) of the Administrative Tribunals Act, 1985 prescribes statutory bar against agitating claim(s) which are beyond three years prior to commencement of Administrative Tribunal Act which came into force on 1.7.1985. For ready reference, provisions of Section 21 (2) of the Act *ibid* are quoted below:-

"(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later."

20. A careful perusal of the facts, as mentioned in the OA, shows that the cause of action in this case arose on 26.3.1982 when Jai Prakash was appointed as Work Assistant in the pay scale of Rs.260-430. Thus, there is no doubt that the cause of action in this case had arisen on more than three years prior to the commencement of the Administrative Tribunals Act which came into force on 1.7.1985. It is also evident that at that time, no representation or application was made within one year from the date when the cause of action arose. Therefore, this Tribunal has no jurisdiction over the present matter, cause of action of which, had arisen more than three years prior to establishment of Central Administrative Tribunal.

21. In this view of the matter, it is not necessary to delve upon the merit of the

case and that too when Jai Prakash has not even been made a party and the OA is liable to be dismissed as not maintainable for want of jurisdiction, barred by limitation and non-joinder of necessary party.

22. Accordingly, the O.A. is dismissed. No costs.

23. The pending MA(s), if any, also stand disposed off and no separate order is being passed.