

Date of Decision : 29th November, 2010

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JAIPRAKASH & ORS. Petitioners
 Through : Mr. Avdhesh Kumar Singh, Adv.
 along with the petitioner.
 versus

UOI & ORS Respondents
 Through : Mr. Ankur Chhibber, Adv.

CORAM :-**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | NO |
| 2. | To be referred to the Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

GITA MITTAL, J. (Oral)

1. The writ petitioners have claimed that they had joined service with the Joint Cipher Bureau of the Directorate of Standardization and Indian Air Force under the Ministry of Defence, Government of India. At the time of filing of the writ petitions, the petitioners were working on the post of Offset Machine Man Operator (Grade – I) in the Joint Directorate of Publication (Air Headquarter) in the Ministry of Defence and belonged to the printing press staff of the defence establishment to that of the Government of India press employees.

2. The petitioners have complained that the recommendations in the Fifth Central Pay Commission are arbitrary for the reason that they have failed to maintain parity of scale with similar posts which are under the Ministry of Finance, Ministry of Communication and elsewhere.

3. The above narration shows that the petitioners are in fact civilian employees in defence service under the Ministry of Defence. An objection was taken by Mr. Ankur Chhibber, learned counsel appearing for the respondents that the issue raised by the petitioners falls within the jurisdiction of the Central Administrative Tribunal which is exercising jurisdiction in terms of the Administrative Tribunal Act, 1985 and that the present writ petitions could not be maintainable before this court.

4. We may note that the writ petitions came to be filed as back as on 29th August, 2006. This court issued notice to show cause on 3rd October, 2006 to the respondents who sought time to file a counter affidavit. No counter affidavit was filed till date. In this background, on 19th March, 2007, rule was issued and the matter was admitted for regular hearing. The application of the petitioners bearing CM No.7653/2008 seeking early hearing was also rejected by the court. The respondents thereafter did not put in appearance on several dates.

5. On 10th November, 2009, the matter was placed by the Registry before the court for consideration as to whether it requires to be transferred to the Tribunal constituted under the

Armed Forces Tribunal Act, 2007. In this background, by an order passed on 20th May, 2010, faced with non-appearance on behalf of the respondents, we had requested Mr. Ankur Chhibber, Advocate who represents the respondents and happened to be present in court to appear in the instant matter. We had, on that date, after hearing counsels held that the matter did not fall within the jurisdiction of the Armed Forces Tribunal. The respondents were directed to file a counter affidavit within six weeks.

6. No counter affidavit has still been filed. However, on the previous date of 16th August, 2010, the objection with regard to the matter falling squarely within the jurisdiction of the Central Administrative Tribunal was urged.

In view of this objection, learned counsel for the petitioners prays for leave to withdraw the present writ petitions with liberty to avail the remedy before the Central Administrative Tribunal.

7. In view of the above narration of facts, the petitioners would be entitled to the exclusion of the period spent by them in this court for the purposes of computation of the limitation for filing the petitions before the Central Administrative Tribunal. In case the petitioners file the petition before the Central Administrative Tribunal and seek condonation of delay, this order be placed before the tribunal for appropriate consideration.

8. These writ petitions are dismissed as withdrawn with liberty to the petitioners to avail the appropriate remedy under the provisions of the Administrative Tribunal Act, 1985. It shall be open to the petitioners to file the petition before the Central Administrative Tribunal within the period of four weeks.

9. Dasti to the parties.

GITA MITTAL, J

NOVEMBER 29, 2010
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J.R. MIDHA, J