

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: July 08, 2013*
Judgment Pronounced on: July 22, 2013

+ **W.P.(C) 7652/2010**

UNION OF INDIA & ORS. Petitioners
Represented by: Mr.Ashish, Advocate for
Mr.M.K.Bhardwaj, Advocate

versus

KULDEEP KUMAR SHARMA Respondent
Represented by: Ms.Jyoti Singh, Sr.Advocate with
Ms.Saahila Lamba, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. The factual backdrop leading to filing of the above captioned petition is that on August 13, 1969 the Electronic Data Processing (hereinafter referred to as the 'EDP') cell started functioning in the Border Security Force.
2. The respondent was appointed on the post of Key Punch Operator in the EDP cell on October 4, 1971 and was promoted to the posts of Auditor in said cell on June 17, 1980.
3. On February 28, 1974 one P.B.Mishra was appointed on the post of Auditor in EDP cell and got promoted to the posts of Assistant

Superintendent and Programme Assistant in said cell on August 1, 1979 and July 8, 1993 respectively.

4. On September 11, 1989 the Ministry of Finance, Government of India issued an Office Memorandum regarding rationalization of pay-scales of Electronic Data Processing posts, the relevant portion whereof reads as under:-

“The undersigned is directed to refer to the recommendations of Fourth Central Pay Commission contained in paragraph 11.45 of the Report wherein it was suggested that the Department of Electronics should examine and suggest reorganization of existing Electronic Data Processing posts and prescribe uniform pay scales and designations in consultation with the Department of Personnel. In pursuance of above suggestion, a Committee had been set up by Department of Electronics in November, 1986. After careful consideration of the recommendations made by the Committee, Government of India has decided to introduce following pay structure for Electronic Data Processing posts:-

.....

2. All Ministries/Departments having Electronic Data Processing posts under their administrative control will review the designation, pay scales and recruitment qualification of their posts and revise the same in consultation with their Financial Advisors to the extent necessary as per pay structure indicated in para 1 above....”

5. In the year 1993 the respondent, P.B.Mishra and some other persons working in the EDP cell of BSF filed an application being OA No.2158/1993 under Section 19 of the Administrative Tribunals Act, 1985 before the Central Administrative Tribunal, Principal Bench, New

Delhi seeking issuance of directions to the Government to review the designation, pay-scales and recruitment qualifications of the posts in EDP cell of BSF in terms of the Office Memorandum dated September 11, 1989. Vide order dated July 16, 1999 the Tribunal allowed the aforesaid OA in the following terms:-

“4. This O.A. accordingly succeeds and is allowed to this extent that respondents are directed to review the designations, pay scales and recruitment qualifications of posts held by applicants in EDP Centre of BSF Headquarters in the background of Finance Ministry’s O.M. dated 11.8.89, and to take a decision in this regard in accordance with the contents of that O.M. as well as other rules and instructions on the subject as expeditiously as possible and preferably within four months from the date of receipt of a copy of this order. In case as a result of such review, any of the applicants become entitled to the revised scales contained in Finance Ministry’s O.M. dated 11.8.89, the same shall be paid to them along with arrears with effect from that date, together with other consequential benefits but without any payment of interest. No costs.”

6. Sometime thereafter the applicants of OA No.2158/1993 including the respondent and P.B.Mishra filed a contempt petition being C.P.No.179/2000 before the Tribunal alleging non-implementation of the directions contained in the order dated July 16, 1999 passed by the Tribunal in OA No.2158/1993.

7. While aforesaid C.P.No.179/2000 was pending adjudication, on June 23, 2000 the Ministry of Home Affairs issued an order regarding rationalization of pay-scales of posts in the EDP cell of BSF, the relevant portion whereof reads as under:-

“As far as the posts of Auditor and Assistant Supdt. are concerned, BSF are advised to treat these posts as part of the Pay and Account Division of BSF Headquarters. The officers of EDP Cell who have been promoted to these posts, may be treated to have opted for going outside the cadre of EDP to avail of better promotional avenues.”

8. Pursuant thereto, the Government filed a compliance affidavit in C.P. No.179/2000 stating therein that the Government is in the process of granting consequential benefits flowing out of transfer of posts in EDP cell to the Pay and Accounts Department (hereinafter referred to as the “PAD”) of the BSF to the applicants of O.A.No.2158/1993. In view of aforesaid stand of the Government, the Tribunal closed C.P.No.179/2000 vide an order dated July 13, 2000.

9. Yet again, the applicants of OA No.2158/1993, including the respondent and P.B.Mishra filed a miscellaneous application being M.A.No.2860/2000 alleging that the Government has not fully implemented the directions contained in the order dated July 16, 1999 passed by the Tribunal in O.A.No.2158/1993, in that, they i.e. the applicants of O.A.No.2158/1993 have not been granted consequential benefits flowing out of transfer of posts in EDP cell to PAD in terms of dated June 23, 2000 issued by the Ministry of Home Affairs.

10. While the aforesaid application was pending adjudication, on September 10, 2001 the Ministry of Home Affairs issued another order regarding rationalization of pay-scales of posts in the EDP cell of BSF, the relevant portion whereof reads as under:-

“2. Shri P.B. Mishra, Programme Asstt. (Now on deputation to Cabinet Sectt.) was holding the post of Asstt. Supdt. and Shri D.P. Sharma was holding the post of Auditor respectively on 11.9.89. As per MHA letter quoted above, these posts are treated as non-EDP posts. Therefore, Shri P B Mishra, Programme Asstt (presently on deputation to Cabinet Sectt) and Shri D P Sharma, Programme Asstt are also treated to have opted for going outside the cadre of EDP w.e.f. 11.9.89 and posted to PAD BSF.

...

Copy to:-

Director (Accounts) - He is requested to fix the inter-se
PAD BSF seniority of above personnel in PAD
viz-a-viz in their respective grades as
under and consequential benefits may
be given to them immediately:-

(a) Asstt. Supdt – Jr Accounts Officer
(b) Auditor - Sr Accountant

The inter-se seniority in respect of following personnel who have since retired or presently on deputation to NSG may also be fixed in PAD BSF viz-a-viz in their respective grades and consequential benefits may also be given to them immediately.” (Emphasis Supplied)

11. Vide order dated September 18, 2001 the Tribunal disposed of aforesaid MA No.2860/2000 in the following terms:-

“Heard both sides.

In the light of the Respondents order dated 10.9.2001 (copy of which is taken on record) the MA No.1128/2000 is disposed of with a direction to respondents to ensure that the consequential benefits flowing from their order dated 10-9-

2001 are made available to applicant within six months from the date of receipt of a copy of this order, with particular reference to refixation of seniority in respective grades” (Emphasis Supplied)

12. In the year 2002 the applicants of O.A.No.2158/1993, including the respondent, and P.B.Mishra filed a contempt petition being C.P.No.51/2002 before the Tribunal again alleging that the Government has not fully implemented the directions contained in the orders dated July 16, 1999 and September 18, 2001 passed by the Tribunal.

13. During the pendency of aforesaid C.P.No.51/2002, vide office order dated the Directorate General, BSF issued a tentative seniority list of the personnel of EDP who got transferred to PAD, as per which the seniority of the respondent and P.B.Mishra were fixed in the grades of Auditor and Programme Assistant respectively in PAD.

14. Vide order dated February 5, 2002 the Tribunal dismissed the aforesaid C.P.No.51/2002, the relevant portion whereof reads as under:-

“2. Learned counsel for respondents has submitted an order dated 4.2.2002 issued by the respondents and a Assistant Superintendent/Auditors, copies placed on record, which he submits are in pursuance of the Tribunal’s directions contained in the order dated 16.7.99 in OA-2158/93. Learned proxy counsel for the petitioners seeks an adjournment, although earlier he had himself submitted that he understands that the respondents are implementing the Tribunal’s order dated 16.7.99 read with the order dated 18.9.2001 and had no objection if some further time is granted to them for this purpose. The issue in this case has been raised by a Contempt Petition (CP-51/2002), wherein it has been alleged that the respondents have contumaciously

not implemented the Tribunal's orders. In the circumstances, we have heard the learned counsel for respondents and also perused the relevant documents on record and are fully satisfied that the respondents cannot be held to have contumaciously and willfully disobeyed the Tribunal's order, requiring further action to be initiated for punishing them under the provisions of the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985. It is relevant to note that the tentative seniority list issued by the respondents dated 11.1.2002 itself provides for objections to be filed by persons having any such objections which, we have no doubt, will be considered in due course by the respondents. Shri Madhav Panikar, learned counsel has also drawn our attention to another order passed by the respondents dated 10.9.2001 on the subject of re-designation of EDP posts.

4. In the circumstances, Shri Madhav Panikar, learned counsel submits that he does not press MA-61/2002 for further extension of time as the aforesaid orders of the Tribunal have been implemented. Accordingly, MA-61/2002 is dismissed as infructuous.

5. In the facts and circumstances of the case mentioned above, CP-51/2002 is also dismissed. Notice to alleged contemnors are discharged. (Emphasis Supplied)

15. Thereafter P.B.Mishra filed a representation before the competent authority stating therein that the action of the Government/BSF in fixing his seniority in the grade of Programme Assistant in PAD is arbitrary for the reasons:- (i) the Government had committed before the Tribunal on several occasions that it would grant consequential benefits flowing out of the transfer of posts in EDP cell to PAD to the applicants of O.A.No.2158/1993 and that the seniority of persons working on the post of Assistant Superintendent in EDP cell including P.B.Mishra would be

fixed in the grade of Junior Accounts Officer in PAD and (ii) once it issued the order dated September 10, 2001 prescribing therein that the seniority of persons working on the post of Assistant Superintendent in EDP cell including P.B.Mishra would be fixed in the grade of Junior Accounts Officer in PAD it was not open to the Government to fix the seniority of P.B.Mishra in the grade of Programme Assistant in PAD, more so when there is no post of Programme Assistant in PAD. Vide order dated January 9, 2007 the competent authority rejected the representation made by P.B. Mishra.

16. Aggrieved by the aforesaid, P.B.Mishra filed an application being O.A. No.560/2007 before the Tribunal assailing the action of the Government /BSF of fixing his seniority in the grade of Programme Assistant in PAD on the same grounds as raised by him in the representation submitted by him.

17. Vide judgment dated July 18, 2008 the Tribunal allowed the OA filed by P.B.Mishra, the relevant portion whereof reads as under:-

“11. The Applicant has been working in the Accounts before moving to EDP Cell. The posts of Auditor and Assistant Superintendent in the EDP Cell were also created by the PAD. He was working as Assistant Superintendent in the EDP Cell. It was only the Government in the Ministry of Finance and MHA, which decided that the posts of Auditor and Assistant Superintendent did not fall in the category of EDP posts. It was entirely the decision of Government conveyed to the DG, BSF by letter dated 23.06.2000 that the posts of Auditor and Assistant Superintendent should be treated as part of the PAD, BSF headquarters. Clear instructions had been given by the DG, BSF (Staff Selection)

to the Director (Accounts) to fix the inter-se seniority of the Applicant in the PAD, BSF. Further clear instructions were given by the order of same date that Assistant Superintendent was to be treated as JAO. A commitment was given to this Tribunal by the compliance affidavit dated 27.06.2000, adverted to above, that all consequential benefits as a result of the order dated 23.06.2000 are being worked out. It is, therefore, difficult to understand how the Respondents can renege on their commitment made to the Applicant and to this Tribunal. The argument that the Applicant has not passed various examinations for coming to the post of JAO is not acceptable because he came as JAO before such provision was made in the recruitment rules. The Respondents have produced a copy of the recruitment rules notified on 3.12.2001, which has been taken on record. Since the Applicant was directed to be equated with JAO by order dated 10.09.2001, whereas the recruitment rules are dated 3.12.2001, the order that the PAD and EDP Cell are two different Directorates under DG, BSF and governed by the different recruitment rules for the posts in both the Directorates for rejecting the representations of the Applicant also cannot be accepted. This has been reiterated in paragraph 2 of the counter affidavit also. At the cost of repetition, it is reiterated that it was not the Applicant who by some sleight of hand moved into PAD from the EDP Cell of DG, BSF. This is a result of decision taken by the Ministry of Finance, MHA and NIC. This decision has been accepted by the BSF. There cannot be any going back on a decision already taken and a commitment already made to the Applicant and to the Tribunal.

12. In view of the above discussion, the OA succeeds. The impugned order dated 9.01.2007 is quashed and set aside. The DG, BSF, second Respondent herein is directed to fix the seniority of the Applicant in the cadre of PAD in the grade of JAO at the appropriate place with effect from the date the Applicant was holding the post of Assistant

Superintendent with all consequential benefits.” (Emphasis Supplied)

18. In the month of August, 2009 the Directorate General BSF, Ministry of Home Affairs, Government of India implemented the judgment dated July 18, 2008 passed by the Tribunal and approved the fixation of seniority of P.B.Mishra in the grade of Junior Accounts Officer in PAD with effect from the date he was holding the post of Assistant Superintendent in EDP cell with all consequential benefits.

19. Immediately thereafter, on August 7, 2009 the respondent submitted a representation to the competent authority praying therein that his seniority should be fixed in the grade of Senior Accountant in PAD with effect from the date he was holding the post of Auditor in EDP cell as done in the case of P.B.Mishra for the reason he is similarly situated as P.B.Mishra, in that the post held by him in the EDP cell i.e. the Auditor was also transferred to PAD and the Government had made commitments before the Tribunal on several occasions that the seniority of the personnel working on the post of Auditor in EDP cell including the respondent would be re-fixed in the grade of Senior Accountant in PAD.

20. In its reply, the Government primarily contended that the respondent is not entitled for the relief prayed by him for the reason the application filed by him is barred by limitation.

21. In the rejoinder filed, it was pleaded by the respondent that he did not assail the legality of the seniority list dated October 11, 2002 for the

reason he was not aware of the existence of said list as he was on deputation to NSG at the time when said list was circulated in his parent department.

22. Vide judgment dated August 31, 2010 the Tribunal allowed the application filed by the respondent, the relevant portion whereof reads as under:-

“5. We have pondered deeply about the issue. We are unable to agree with the argument of the learned counsel for the Respondents that the present OA is barred by limitation and that the judgment of the Honourable Supreme Court in S.M.Kotrayya (supra) would advance the proposition of the Respondents. The facts of the instant OA are distinguishable from the facts of S.M.Kotrayya (supra). The Applicant herein was also an applicant in OA 2158/1993. P.B.Mishra was also an applicant in the same OA, i.e., OA 2158/1993. The Respondents had given an undertaking in CP-51/2002 in OA-2158/1993 that objections to the seniority list dated 11.01.2002 would be considered. However, the Respondents reneged on their undertaking as this Tribunal had held in the decision in OA No. 560/2007. In OA 560/2007, the directions were given to the respondents to fix the seniority of the applicant in the aforesaid OA, i.e., P.B.Mishra in the cadre of PAD, in the grade of JAO at the appropriate place with effect from the date the said P.B.Mishra was holding the post of Assistant Superintendent, with all consequential benefits. The directions given were complied with by the Respondents by order dated 8.07.2009, placed at page 21 of the paper book. The case of the Applicant is identical to that of P.B.Mishra in OA 560/2007. In case of the said P.B.Mishra, the respondents did not raise any objection regarding the said OA being barred by limitation. In our considered opinion, it would absolutely be iniquitous and discriminatory action on the part of the Respondents to raise the plea of limitation in case of the Applicant in the instant

OA, who is similarly placed as P.B.Mishra and who was an applicant in OA number 2158/1993. In this view of the matter, the judgment in S.M.Kotrayya (supra) would not apply in this case. The Respondents would not be justified in acting in derogation of their action in implementing the judgment in case of P.B.Mishra in OA number 560/2007.

6. On the basis of above consideration and for parity of reasons, the OA is allowed in the same terms as in OA 560/2007, P.B.Mishra Vs. Union of India and others (supra).”

23. Aggrieved by the impugned judgment dated August 31, 2010 passed by the Tribunal the Government has filed the present petition under Article 226 of the Constitution of India.

24. Section 21 of the Administrative Tribunals Act, 1985 reads as under:-

“21. Limitation – (1) A Tribunal shall not admit an application-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(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, power 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 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.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

25. In SLP (C) No.7956/2011 D.C.S.Negi Vs. Union of India & Ors. decided on March 07, 2011, the Supreme Court made following pertinent observations regarding Section 21 of the Administrative Tribunals Act, 1985:-

“A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in the negative form, it is the duty of the Tribunal to first consider whether the application is within

limitation. An 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).

In the present case, the Tribunal entertained and decided the application even without advertting to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicates its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non applicant is not at all relevant.” (Emphasis Supplied)

26. The moot question which arises for consideration in the present case is that whether the application was filed by the respondent within the prescribed limitation period.

27. In the instant case, the Tribunal has not examined whether the application filed by the respondent was within limitation. The Tribunal has repelled the plea of limitation raised by the Government on the ground that it is not justified in denying the relief prayed for by the respondent on the ground of limitation when it i.e. the Government had granted similar relief to P.B.Mishra who was similarly situated as the respondent.

28. Whether the aforesaid view taken by the Tribunal is correct?

29. In the decision reported as (1987) 4 SCC 431 K.I. Shephard & Ors v Union of India & Ors it was held by a 2-Judge Bench of the

Supreme Court that it is the duty of the authority to extend the benefit of a judgment to all similarly situated persons without driving every affected person to the court to seek relief.

30. In the decision reported as (2011) 4 SCC 385 Bharat Sanchar Nigam Limited v Ghanshyam Dass a 3-Judge Bench of the Supreme Court considered the decision in Shephard's case (supra) and made following observations in said regard:-

“13. The principle laid down in K.I. Shephard (supra) that it is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief would apply only in the following circumstances:

a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;

b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;

c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and

d) where the court expressly directs that the relief granted should be extended to those who have not approached the court.”

14. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim

that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others.” (Emphasis Supplied)

31. In view of authoritative pronouncement of the Supreme Court in Ghanshyam’s case (supra), we need to examine that whether the principle laid down in Shephard’s case (supra) that it is the duty of the authority to extend the benefit of a judgment to all similarly situated persons without driving every affected person to the court applies in the case.

32. P.B.Mishra had not filed the application in a representative capacity on behalf of all similarly situated personnel of EDP cell; the relief granted in Mishra’s case was not declaratory but specifically granted only to him (see the underlined portion of the judgment passed in Mishra’s case noted by us in the foregoing paras); no order or rule of general application was quashed by the Tribunal in Mishra’s case and no direction was given by the Tribunal in Mishra’s case that relief should be granted to those who have not approached the Tribunal. Such being the position, it can safely be said that the principle laid down in Shephard’s case (supra) had no application in the present case. Thus, the Tribunal clearly committed an error in granting the relief prayed for to the respondent on the grounds of parity of the respondent with P.B.Mishra without examining whether the application filed by the respondent was within limitation or not.

33. In the present case, the respondent and P.B.Mishra started their journey together. In the beginning, they fought with the Government for

rationalization of pay-scales and posts of personnel working in the EDP cell and met with success when the Government issued orders transferring the posts of Auditor and Assistant Superintendent i.e. the posts held by them in the EDP cell in PAD. They continued journey commenced by them when they sought consequential benefits which would flow out of transfer of posts in EDP to PAD, particularly proper fixation of their seniority in PAD. On January 11, 2002 the Government issued the seniority list of the personnel of EDP who got transferred to PAD including the respondent and P.B.Mishra. At this juncture, whereas P.B.Mishra continued the journey the respondent left the same in mid-way. P.B.Mishra assailed the seniority assigned to him in PAD vide seniority list dated January 11, 2002. As regards P.B.Mishra, the journey came to an end only when the application filed by him assailing the seniority assigned to him in PAD was allowed by the Tribunal. On the other hand, the respondent did nothing to assail the seniority assigned to him in PAD vide seniority list dated January 11, 2002 and went into a deep slumber. After more than 7 long years the respondent woke up from his deep slumber when the application filed by P.B.Mishra was allowed by the Tribunal in the year 2008 and attempted to recommence the journey which was left by him mid-way in the year 2002. In other words, the respondent sought re-fixation of his seniority in PAD in terms of the judgment passed by the Tribunal in the application filed by the P.B.Mishra 7 years after his seniority was fixed in PAD and was never challenged by him. This is clearly not permissible in terms of the provisions of Section 21 of the Administrative Tribunals Act, 1985.

34. The principle laid down by the Supreme Court in Ghanshyam's case (supra): '*where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others*' applies on all fours in the instant case.

35. Regarding the plea raised by the respondent in the rejoinder filed by him before the Tribunal that he was not aware of the existence of the seniority list dated January 11, 2002 on account of being on deputation to NSG suffice would it be to state that the order dated February 5, 2002 passed by the Tribunal in C.P. No.51/2002 filed by the respondent, P.B. Mishra and other personnel working in the EDP cell notes the factum of existence of the seniority list dated January 11, 2002. Being a party to C.P. No.51/2002, the respondent became aware of the existence of the seniority list dated January 11, 2002 if not earlier at least on February 5, 2002, The respondent could have assailed the seniority assigned to him in the seniority list dated January 11, 2002 at that stage as done by P.B. Mishra. But he chose not to and went into a deep slumber. The respondent has to suffer consequences for his inaction.

36. In view of above discussion, we hold that the application filed by the respondent before the Tribunal was barred by limitation and quash the impugned judgment dated July 18, 2008 passed by the Tribunal. As a necessary corollary thereof, the application filed by the respondent stands dismissed.

37. The present petition is allowed in above terms.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

JULY 22, 2013
mamta