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

+ **W.P.(C) 2158/2015**

D.C. NINAN & ANR.

..... Petitioners

Through Mr. Anil Singal, Mr. Hilal Haider & Ms. Prabha Sharma, Advocates alongwith petitioner in person.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Manish Mohan, CGSC, Mr. Vinod Kumar Tiwari, Ms. Manisha Saroha & Ms. Priyansha Sinha, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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04.11.2016

We have heard learned counsel appearing for the petitioners and the respondents in this writ petition, which impugns the order dated 4th September, 2014 passed in OA No. 1297/2013. Sudhir Kumar, one of the co-applicants before the Tribunal, in the aforesaid OA, who was appointed as a Lower Division Clerk on 24th July, 1979, has not filed the present writ petition.

2. D.C Ninan and Achiamma R. Nair, the petitioners herein were appointed as Lower Division Clerks in the Central Vehicle Depot, Ministry of Defence on 9th July, 1979 and 6th February, 1979. The petitioners were promoted as Stenographer Grade-III on 8th August, 1994 and 1st August, 1971 respectively after passing the departmental competitive test.

3. As per the petitioners, the Department of Personnel and Training vide OM dated 6th February, 1989, had directed that the post of Stenographer

Grade-III should be upgraded to that of Stenographer Grade-II. This OM, It is urged by the petitioners, was not implemented. Aggrieved, some Stenographers Grade-III had approached the Ernakulum Bench of the Central Administrative Tribunal in OA No. 539/1990, titled ***K.M. Rajan and 13 Others versus Union of India*** and vide the order dated 9th September, 1991, the prayer of the applicants was accepted and it was held that in terms of the OM, Stenographers working with officers drawing the scale of Rs.1500-1800-2000 and above should be upgraded to the scale of 425-700. The exact direction given in the order was to the following effect:-

“It presupposes that posts of Stenographers had been attached to some officers in the scale of Rs.1500 – 7 000 and above for good reasons and taking into account the nature of work discharged by such officers and the norms on the basis of which such officers were given stenographer assistance. Given the posts of Stenographers attached to such officers, the decision was to alter the pay scale of Rs.425 – 700 to such posts. The question of any conditionality or norms etc does not arise. However, this does not mean that whosoever Stenographer happens to be attached to that category of officers he would automatically get the higher pay scale of Rs.425 – 700. It is the posts which are upgraded and not the incumbent of the posts. The entitlement of the Stenographer to the higher grade will be determined by his merit and seniority in the cadre of Stenographer Grade – III including those who are in the Selection Grade of Rs.425 – 640.”

4. Thereafter, other similarly situated stenographers had filed original applications before the Guwahati Bench in OA No. 49/2005 ***Mahendra Prasad v. Union of India and Others***, and the Calcutta Bench of the Tribunal in OA No. 129/1993 ***Shri Kodumonchira Nanoo Nadarajan and Others***. The later OA was disposed of vide order dated 05.12.1995 observing as under:

“We are aware that we are merely repeating what was done by the Ernakulam Bench as back as in 1991. (When that Bench had indicated a time limit the respondents were expected to take the necessary steps relating not only to the applicants in that case, but also in respect of other eligible Stenographers who fell in the category within a reasonable time. Although it has been stated that some time in the year 1993 steps were initiated the respondent have not as yet considered the cases of the applicants save and except perhaps applicant who it is stated has in the meantime been promoted.”

Mahendra Prasad who had approached the Calcutta Bench of the Tribunal is the batch mate of the present petitioners.

5. The two petitioners along with Sudhir Kumar had thereafter made representations seeking upgradation of pay scale as they were working with officers in the pay scale 1500 – 2000 or more. When the said representations were rejected, they filed OA No.4540/2011 before the Principal Bench of the Central Administrative Tribunal. The respondents had contested the said OA primarily on the ground that the OA was barred by limitation, as the applicants therein were seeking benefits of enhanced pay scales from 1989 onwards. The petitioner no.1 was promoted to Stenographer Grade – II with effect from 01.03.2000 and Stenographer Grade – I with effect from 01.02.2006. The petitioner no.2 was promoted as Stenographer Grade - II on 01.03.2000 and Stenographer Grade – I with effect from 01.09.2007. The Tribunal disposed of the OA noticing that it was not clear whether the respondents had considered the order of the Guwahati Bench of the Tribunal in OA No.129/1993 while passing the order rejecting the claims of the petitioners. Apparently, the respondents had failed to furnish a detailed reply denying each averments. The following directions were issued by the Tribunal:

“7. Having regard to the above noted circumstances, following order is made:-

The respondents are directed to consider the case of each applicant for promotion / upgradation keeping in view DoP&T OM dated 06.02.1989 issued by Government of India and also decisions of Ernakulam and Guwahati Benches of this Tribunal in OA – 539/1990 and OA 129/1993, if applicable, within a period of three months from the date of communication of this order to them and pass speaking order giving compressive reasons keeping in mind applicants’ seniority in Steno Grade – III as well as merit.

8. The OA is partly allowed in terms of the above order. No order as to costs.”

6. It is noticeable that the Tribunal while passing the said order had not examined and considered the plea of limitation. The respondents for some reasons did not challenge or object to the aforesaid directions given in the order dated 20.07.2000 passed by the Principal Bench in OA No.4540/2011. Possibly they were of the view that they could reject the representation on all grounds including limitation.

7. The respondents thereafter passed the order dated 04.02.2013, which in the operative portion records as under:

“AND FAIRNESS, the recommendations of the Forum Central Pay Commission the pay scales were revised and the Government of India issued circulars dated 6th January, 1977 vide OM dated 06.02.1989 issued by the Ministry of Personnel (Department of Personnel and Training) declaring that the Stenographers attached to the officer drawing salary of Rs.3700-5000 (revised) and above and below Rs.5100 – 5700 (revised) would be Grade-II Stenographers. The applicants contend that the rule framed by the President of India in exercise of power under Article 409 of the Constitution of India for the recruitment in post of Grade – II Stenographer namely Army (Stenographer Grade III) Recruitment Rules provide that a Grade III Stenographer who is in regular service for a period of 5 years is entitled to be promoted as Grade II Stenographer. In view of these two provisions the applicants contend that they have become eligible to be upgraded to the post

of Stenographer Grade.

11. It is evident from aforesaid facts that the case of the applicants is not covered by the decision referred aforesaid. As such, they cannot claim any parity. Furthermore, decision taken in particular facts and circumstances of the case cannot be treated as precedent for all other subsequent cases, which are distinguishable. Since the case of applicant is distinguishable on facts as mentioned above therefore, I hereby reject the claims for upgradation preferred by P. No.6961360 Steno Gde-I Shri D.C. Ninan of CVC Delhi, P.No.6961043 Steno Grade-I Shri Sudhir Kumar of IHQ of MoD (Army) and P.No.6960993, Steno Gde-I, Smt. Achiammo Nair of AOC Centre, in OA No.4540/2011, being devoid of merit and lack of substance.”

We are in agreement with learned counsel for the petitioners that the aforesaid reasoning does not deal with or meet the issues which were required to be determined and decided by the authorities in terms of the operative directions given in the order dated 20.07.2012 passed by the Tribunal. However, this would, in our opinion, not justify an order of remand for fresh determination in the present case. The reason is that the claim of the petitioners was clearly barred by limitation.

8. As noticed above, the petitioners were promoted to Stenographer Grade – II in the year 2000 and further promoted to Stenographer Grade – I in the year 2006 – 2007. The issue raised by the petitioners relates to their pay or rather arrears of pay from 1989 till 2000. This claim was made for the first time in 2011. Reliance placed on the order dated 05.12.1995, in the OA No. 129/1993 in the case of **Kodumonchire Nanoo Nadarajan** (supra) is misconceived. The order in turn refers to the order dated 09.09.1991, in OA No. 539/1990, in the case of **KM Rajan & Ors.** (supra). The later order had not granted upgraded pay scales. It was held that the posts, and not the incumbent, had to be upgraded. Entitlement to the higher grade would be

determined on merits and seniority in the cadre of Stenographers Grade-III. The question of upgradation of posts in 1989-2000 at the belated stage would create administrative difficulties and problems. The exercise would be an impossible task. It is in this context that in the impugned order dated 04.09.2014, the Tribunal went into and had examined the question of limitation, after extensively referring to the case law on the subject.

9. Keeping in view the facts and circumstances of the present case, we are of the opinion that the Tribunal was justified in not opening the Pandora's box creating administrative difficulties by first directing the authorities to go into the question whether any posts were required to be upgraded in the year 1989 – 2000 and then examine the service profile of all the Stenographers in Grade-III to determine whether the two petitioners could have been eligible for appointment to the upgraded post. The aforesaid exercise at this belated point of time would not only be a difficult and cumbersome exercise, but also be incorrect in the eyes of law.

10. In this case, the petitioners have already been promoted to a higher post in the year 2000. They have retired as Stenographer Grade –I, a post which they held since 2006 and 2007.

11. We, therefore, do not find any merit in the present petition. The same is accordingly dismissed. There shall be no orders as to costs.

SANJIV KHANNA, J

SUNITA GUPTA, J

NOVEMBER 04, 2016/vkrd