
(2021) 02 JH CK 0078

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2605 Of 2017

Ajit Kumar Ojha And Ors

APPELLANT

Vs

Director General And Ors

RESPONDENT

Date of Decision : 10-02-2021

Acts Referred:

Citation : (2021) 02 JH CK 0078

Hon'ble Judges : Aparesh Kumar Singh, J;Anubha Rawat Choudhary, J

Bench : Division Bench

Advocate : M. M. Paul, Amrita Sinha

Final Decision : Dismissed

Judgement

1. Heard learned senior counsel for the petitioner, Mrs. M.M.Paul and Ms. Amrita Sinha, learned counsel for the respondent department.

2. This writ petition essentially raises a question whether learned Central Administrative Tribunal was right in holding that no deliberate disobedience of the order dated 24th November, 2008 passed in O.A. No. 10 of 2007 is made against the respondents.

3. In order to trace back the controversy, the Chronology of facts are being briefly dealt with hereunder:

By order dated 24th November, 2008 passed in O.A No. 10 of 2007, learned C.A.T, Circuit Bench, Ranchi directed the respondents to accommodate

the applicants in Group-D post by holding as under:

8. Counsel for applicants submits that applicants are prepared to go to any division or unit where they could be appropriately accommodated. Thus,

submission is recorded. Taking into account the totality of circumstances, it is directed that the 2nd respondent should pass a reasoned order before

31.3.2009 for accommodating the applicants as group 'D' staff in any Sectors in the Department at his discretion, where vacancies might be available.

On conferring such posting, their services should be treated as continuous. Since it could be visualized that possibly they would be accommodated in

altogether new places excepting fixation benefit arising of continuous service, the service will not entitle them to claim any seniority, and during the

interregnum, benefits of arrears of pay will not be there, but only a notional fixation. O.A stands allowed as above. The parties are to suffer their

respective costs.

4. Writ Petition no. 3325 of 2009 preferred by the Union of India against the order dated 24th November, 2008 passed in O.A. No. 10 of 2007 by

learned C.A.T was dismissed by Division Bench of this Court (Annexure-2), order dated 23rd November, 2011. Petitioner preferred C.C.P.A No. 09

of 2010(R) for compliance of the order. Although, a plea was taken by the respondents that on the recommendation of 6th Pay Commission post of

Group-D were merged into Group-C in terms of notification dated 29th August, 2008 and there were no Group-D vacancies in the department either

at CCIT (CCA), Patna or NADT, Nagpur and they were facing technical difficulties in implementing the order, the learned Tribunal rejected such

plea. By order dated 27th August, 2012 passed by learned C.A.T (Annexure-4), respondents were allowed further three months' time to comply with

the order of Tribunal dated 24th November, 2008.

5. Union of India being aggrieved again moved in W.P.(S) No. 7238 of 2012. Learned Division Bench of this Court by order dated 29th January, 2013

held as under:

We are of the considered opinion that since the petitioner was entitled to appointment in Group 'D' and since that post has merged into Group 'C' post

and till the order dated 24.11.2008 remains as it is, the workman is entitled to get the benefit which were available to the staffs of the Group 'D' post

who also without there being any order from the Staff Selection Commission, got the post in Group 'C'. Therefore, we are of the considered opinion

that the Tribunal has not committed any error in directing the petitioner to comply with the order dated 24.11.2008.

It will be relevant to mention here that the petitioner also challenged the order dated 24.11.2008 by preferring writ petition before this Court being

W.P(S) NO.3325/2009 which was dismissed on 23.11.2011 wherein direction was also given to implement the order. In that also there was no plea

that workman cannot be given appointment in Group 'C' post by virtue of merger of Group 'D' post in Group 'C'.

There is no merit in this petition. The writ petition is accordingly dismissed.

6. Union of India being aggrieved went up to Hon'ble Supreme Court in Special Leave to Appeal being S.L.P No. 14740 of 2013. By order dated 7th

October, 2013 (Annexure-6), the S.L.P. was dismissed. Thereafter pursuant to the decision of Central Board of Direct Taxes, applicants were

appointed in Group-D post. Some of the orders of appointment are at Annexure-7 series. The applicants were appointed in the scale of Rs. 4440-

7440 in grade pay of Rs. 1300/- on the post of Farash.

7. Respondent-Union of India through its supplementary counter affidavit dated 5th November, 2020 has brought on record the communication dated

4th July, 2014 (Annexure-E) issued by the office of Principal Chief Commissioner of Income Tax, Patna to the Chief Commissioner of Income Tax,

Ranchi on the subject of appointment of these nine applicants. It indicates that CBDT is in agreement on two points, on which clarification was sought

(i) Whether the applicants are to be appointed on the erstwhile Group- D post having minimum scale of pay i.e., Rs. 2550-55-2660-60-3200 on the post

of Peon/Watchman/Sweeper/Farash/Mali (ii) Whether regular procedure for appointment on direct recruit i.e., police and antecedent verification,

medical examination report etc. were to be followed. CBDT agreed on both the points.

8. The applicants, however, being dissatisfied again raised this issue in CCPA No. 09 of 2010 [R], which had remained pending. Learned Tribunal

considered the entire gamut of facts and the previous litigation history and ultimately arrived at an opinion that substantial compliance of the order

dated 24th November, 2008 has been made. It held that the plea of the applicants that the order of learned Tribunal passed in O.A. No. 10 of 2007

(R) was modified by the High Court, was not correct. The proceedings were dropped and notices were discharged, however, with a cost of Rs.

20,000/- each to be paid to the applicants by the respondent on account of seven years delay in full compliance to cover legal cost.

9. Before us, learned senior counsel for the applicants/petitioners have reiterated

the submission. It is urged that as per the stand of the respondent themselves Group-D post had merged into Group-C post, therefore, applicants could not have been appointed in Group-D post which were non-existent. Instead they ought to have been appointed in Group-C post. Moreover, the revised scale of pay upon merger of Group-D employees in Group-C being 5200-20,200 with grade pay of Rs. 1800 under 6th Pay revision, the placement of these petitioners in the scale of Rs. 4440-7440 with grade pay of Rs. 1300 is not proper. Grave injustice has been caused to the applicants despite repeated journey up to the Higher Court by the respondent to get over the order of learned CAT has failed. It is submitted that learned Tribunal failed to consider the matter in proper prospective. Therefore, the impugned order deserves to be set aside and the respondents should be directed to comply with the order passed by learned CAT in letter and spirit by modifying their appointment to the post of Group-C in place of Group-D with all consequential benefits. Learned senior counsel for the petitioner further submits that a perusal of the operative part of the order dated 29 th January, 2013 passed in W.P. (S) No. 7328 of 2012, quoted above creates an impression that this Court had expressed its view that the workmen are entitled to get the benefit which were available to the staff of Group-D post who without there being any order from the Staff Selection Commission got the Group-C post till the order dated 24th November, 2008 remained. Group-D post became non-existent, so the petitioners were liable to be appointed in Group-C post pursuant to the direction of learned Tribunal.

10. Learned counsel for the respondents submits that the cadre of Group-D and Group-C had merged on 29th August, 2008 itself prior to the order dated 24th November, 2008 passed by learned CAT. The Union of India had lost in its challenge thereto. Therefore, after obtaining approval of CBDT, Group-D posts were created specifically to accommodate these applicants in compliance of the directions of learned CAT. The scale applicable to these petitioners in Group-D post have been accorded. Petitioners cannot ask for appointment in Group-C post contrary to the direction passed by learned CAT in original application in the contempt proceedings. In any case, when Group- D and C post had already merged but the petitioners have been accommodated in Group-D post in obedience of the orders

of learned CAT, it would not amount to a deliberate disobedience of the order of learned Tribunal. Learned Tribunal considered the entire events and the order passed by learned Tribunal as well orders passed by this Court earlier in two round of litigations and came to a conclusion that there is substantial compliance of the order. If the original court is satisfied with the substantial compliance of the order in the given circumstances, no case of deliberate disobedience of the orders of learned Tribunal can be made out before this Court in the present writ petition. The writ petition being devoid of merit may be dismissed.

11. We have considered the submission of learned counsel for the parties and taken note of the facts and circumstances above, including repeated

journey of litigation, once upto Hon'ble Supreme Court as well. The operative part of the order dated 24th November, 2008 passed in O.A No 10 of

2007(R), quoted above makes it clear that the applicants were prepared to go to any division or unit where they could be appropriately accommodated.

The learned Tribunal on being satisfied with the case of the parties, was pleased to direct the respondent to pass a reasoned order for accommodating

the applicants in Group-D post in any sector in the department at their discretion where vacancies might be available. Having lost up to the Apex

Court in the challenge, the respondent department appointed the applicants in Group-D post after approval of Central Board of Direct Taxes though

Group-D post had already merged in Group-C post. Having perused the orders passed by learned CAT and this Court in the earlier round of litigation,

we do not think that the order of Tribunal was modified in the manner projected by the applicants. The operative direction of learned Tribunal for

appointment of the applicants in Group-D post remained intact. Union of India though had taken a plea that there was no Group-D post in existence

upon its merger in Group-C post pursuant to 6th Pay Revision recommendation but this Court directed the petitioner Union of India/respondent herein

to comply with the order dated 24.11.2008 of learned CAT. As such, the respondents had to implement the order in its letter and spirit, which they

have done. The question of proper fixation of pay scale is not a matter of contempt. We therefore leave it to the applicants to agitate the issue of

proper fixation of pay scale by making representation to the respondents. However, upon due consideration of the entire facts and circumstances and

the reasons recorded hereinabove, we do not find any error in the impugned order neither can the respondents be held liable for deliberate disobedience of the orders of learned Tribunal.

The writ petition is accordingly dismissed.