(2017) 02 JH CK 0123

In the Jharkhand High Court

Case No : 4565 of 2015

Arjun Prasad — APPELLANT

Vs

State of Jharkhand & Ors — RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Constitution of India, Article 14, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Dissolution of a Distr

Citation : (2017) 02 JH CK 0123

Hon'ble Judges : H.C. Mishra, Dr. S.N. Pathak

Bench : DIVISION BENCH

Advocate : Manoj Tandon, ?Gautam Shresth

Final Decision : Dismissed

Judgement

1. Heard the parties.

2. The present writ has been preferred challenging the order dated 18.05.2015 passed by learned Central Administrative Tribunal, Patna Branch, Patna (Ranchi Circuit Bench) in O.A. No.81 of 2013(R) whereby the original application preferred by the petitioner has been dismissed. Further prayer is for quashing the order dated 18.05.2015 granting all the reliefs the petitioner is found to be entitled in the facts and circumstances of this case. 3. Earlier in the O.A. filed before the Central Administrative Tribunal the petitioner had prayed for quashing the order dated 22.02.2010 to the extent it relates to the petitioner by which he was placed in the grade of E-5 detrimental to his interest as prior to merger of the Transferor Company, Bharat Refractory Limited (BRL), the petitioner was in the grade of E-7, holding the post of General Manager, Bhilai Refractory Plant. The applicant has also challenged the order dated 23.11.2010 Annexure-13 to the O.A. No.18 of 2013 by which his representation has

been rejected.

4. The factual exposition, as has been delineated in this writ petition is that the applicant was promoted to the post of General Manager (E-7) w.e.f. 01.10.2007 and after undergoing the mandatory period of probation was confirmed as such on 12.02.2009 by Bharat Refractories Ltd (BRL). According to the applicant, the decision of the respondents not to put the petitioner in the Transferee Company on equivalent scales and in absence of the equivalent scale in the next above scale is contrary to the decision of the Hon''ble Supreme Court passed in the case of K.A. Ansari & Anr. v. Indian Airlines Ltd . reported in (2009) 2 SCC 164 wherein it has been categorically held that if the cadre of a persons is changed, he will be entitled to an equivalent pay scale and in the absence of an equivalent pay scale, he would be entitled to be placed in the next above scale.

5. Before the learned Central Administrative Tribunal, the respondent-SAIL filed written statement. The financial position of the company (BRL) did not improve and owing to the continued poor financial condition, the Company had to be referred to BIFR time and again and was finally merged with Steel Authority of India Limited. As per notification of merger dated 28.07.2009, the service conditions of SAIL have been made applicable to executive of BRL retrospectively w.e.f. 01.04.2007. There was no discrimination between employees of the transferor company and the transferred company. Even the promotions effected after 01.04.2007 in erstwhile BRL have also been reviewed and after considering their eligibility as per the SAIL Executive Promotion policy, appropriate decisions were taken and the applicant was promoted as Assistant General Manager, E-6 scale in SAIL, Refractory Unit, Steel Authority of India. The respondent in their pleadings stated that the placement of pay fixation of executive of erstwhile BRL in SAIL revised 2007 pay scales on 01.04.2007 has been done as per Clause-9(ii) of MOCA notification dated 28.07.2009 and basic pay and D.A. of the employees of the Transferor Company were so low that even after allowing all protection, they were getting fixed at the minimum of the scale of the transferor company i.e. SAIL and in the case of the applicant, his basic pay and D.A. as on 31.03.2007 was Rs.20203/- (Rs.10950 plus Rs.9353/-) whereas the beginning of the corresponding scale in SAIL was Rs.43200 [Rs.43200-3%-66000] which was much higher than his total basic plus D.A. Similar was the situation for all executives of

erstwhile BRL. As per scheme dated 28.07.2009, all the conditions of service and employment of the transferee company have been made applicable to the employees of the transferor company retrospectively w.e.f. 01.04.2007 including enhancement of superannuation age from 58 to 60 years. The reference date of re-designation has been taken as 01.04.2007 which was the appointed date of merger and on that date, the applicant was not working in the pay scale of Rs.8500-300-10050 and rather he was working in the pay scale of Rs.8250-300-10050. The respondents denied the assertion of the applicant that he was down graded by two stage scales. The respondent categorically denied the applicant''s assertion that on the date of merger he was working in the scale of Rs.8500-300-10050 as on 01.04.2007 and he has been placed in the corresponding SAIL scale of pay of Rs.43200-3%-66000. The pay scale of executives of erstwhile BRL have been compared with the scales of pay of SAIL that was prevalent prior to 01.01.1997 as per Clause-9(ii) of the MOCA order dated 28.07.2009. Revised scales of pay i.e. the SAIL pay scales, have been allowed to erstwhile BRL executives w.e.f. 01.04.2007 i.e. date of merger and by doing so, the internal seniority of both BRL and SAIL has not been disturbed. Further case of the respondents is that while placing the executives of erstwhile BRL and equivalent scales of SAIL, no one has been lowered by more than one scale of pay and all cases of pay fixation was done with protection of Basic Pay plus D.A. According to the respondents, the E-6 scale of BRL [Rs.8250-300-10050] was lower to E-5 scale [Rs.7950-300-10050] of SAIL. According to the respondents, had this not been done, the seniority of E-6 executives would have come in conflict with SAIL executives because this would have made his promotion from E-4 scale of SAIL to E-6 scale bypassing E-5 scale. Further case of the respondents is that due to protection of basic plus D.A. and allowances of the employees of erstwhile BRL, the benefit amount has been increased considerably as compared to the pay packet of pre-merger period. Further case of the respondents is that the applicant was even promoted to E-6 scale in SAIL w.e.f. 31.12.2008. Positive case of the respondents due consideration has been given by MOCA to protect the interest of the employees of transferor [BRL] company and since the employees of the transferor company which was a sick company, cannot over-ride the seniority of employees of transferee (SAIL) company.

6. Mr. Manoj Tandon, learned counsel for the petitioner submitted that main grievances of the applicant is that the decision of the respondent to downgrade the petitioner from the post of General Manager (E-7) to Senior Manager (E-5) is wholly arbitrary and illegal in the teeth of Clause- 9(ii) of the Government of India, Ministry of Corporate Affairs Notification dated 28.07.2009. Learned counsel further argued that without considering core issues that as to whether when similarly situated person, namely, Sri K.J. Singh, Ex- C.M.D. of transferor company (BRL) was granted the next higher pay scale because of non-availability of the similar pay scale, why the said benefit cannot be extended to the petitioner in the transferee company (SAIL). It was further argued by learned counsel for the petitioner that case of the petitioner is fully covered by the Judgment of Hon''ble Supreme Court passed in the case of K.A. Ansari (supra) and the action of the respondent is violative of Articles 14 and 16 of the Constitution of India. Learned counsel further submitted that the Government of India, Ministry of Corporate Affairs, in its notification of merger dated 28.07.2009 in its wisdom inserted protective clauses, as enshrined in Clause 9(ii) (iv) and (v) thereof. The respondents do not have power and authority to review/revise the decision taken by BRL on 01.10.2007 in respect of the petitioner herein. It was further argued that it is settled principle of law that a

vested and accrued right of a person cannot be taken away unilaterally and if the same is done, the same would be contrary to the settled proposition in service jurisprudence and as such the respondents have no power, jurisdiction and authority to go behind the terms and conditions as stipulated in Government of India notification dated 28.07.2009. The action of the respondent de hors the provisions engrafted in various clauses of Government of India. The Central Administrative Tribunal dismissed the O.A. Application observing therein that the impugned order donot suffer from any infirmity.

7. On the other hand, learned counsel for the respondent-SAIL, Mr. Shreshth Gautam vehemently opposed the prayer of the petitioner and argued that the petitioner is not entitled for the relief as sought for and the learned Central Administrative Tribunal has rightly dismissed the case of the petitioner as not only the pay but also the pay scale of the applicant prior to the merger has been taken care of and there is no financial loss either at the time of merger or after merger and the petitioner has not

been discriminated at any point of time and as such the writ petition is devoid of any merit.

8. Going through the rival contentions of the parties and considering the aforesaid facts, this Court is of the view that the learned Central Administrative Tribunal has rightly dismissed the O.A. No.81 of 2013(R) as the case of the petitioner is devoid of any merit and no interference is warranted on the following grounds:-

(i) On 01.04.2007, the applicant was in the pay scale of Rs.8250-30- 10050/-, so he was considered in E-5 scale of SAIL whose last point of increment is Rs.10050/- which is equivalent to the last stage of increment of BRL. The applicant was on basic pay of Rs.10950/- on 01.04.2007 as after attaining the maximum scale, he had earned stagnation increment every alternative year. So by fixation, no injustice has been done to the applicant.

(ii) The petitioner has not been able to make out a case of discrimination as the pay scale of K.J. Singh was rightly given and the petitioner could not have been given the same pay scale. The decision of the Apex Court in K.A. Ansari (supra) is of no help to the petitioner as the condition of service in that case was different.

9. As a cumulative effect of the aforesaid facts, rules and guidelines, this writ petition being devoid of any merit, is hereby, dismissed.

