(2013) 04 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No''s. 39338 and 39339 of 2011 (S-RES)

BEL Technical Cadre Association and Another — APPELLANT

Vs

The Management of BEL and Another — RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2013) 4 KarLJ 111

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : H. Mangalamba Rao, for the Appellant; P.S. Vishwanath for M/s. AGH Associates, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—First petitioner, claims to be an association comprising of BEL technical cadre represented by its president and the second petitioner, who is the organising Secretary of first petitioner-association, a technician, have presented these writ petitions against the first respondent-management of BEL represented by its chairman and managing director and the second respondent-Government of India. Petitioners have approached this Court, purporting to espouse the cause of such employees of BEL who were hitherto working as workman in Wage Group ''X'' and promoted to the cadre of TC-1. The grievance of the petitioners is that such of those employees who were working in Wage Group ''X'' in the workmen category, having been promoted to TC-1 cadre, which is a supervisory cadre, though got promotions, nevertheless, on such promotion their overall emoluments are now sought to be reduced in terms of OM dated 15-7-2010 (copy at Annexure-A to the writ petition) and further clarification dated 21-12-2010 (copy at Annexure-B to the writ petition) purporting to be by way of an illustration of the manner of implementation or working of Annexure-A.

2. Petitioners have approached this Court, purporting to be aggrieved by the provisions in Annexures-A and B to the extent they have the effect of reducing the total emoluments of the workmen promoted as supervisors and also reducing

their basic pay on promotion, in the sense that the increments earned on the basic pay while working as workmen are now being reduced on promotion by their fitment into the starting point of the pay scale in the promoted cadre. Under such circumstances, contending that such pay fixation and revision as per Annexures-A and B is in violation of the principles of natural justice and promotion of persons like second petitioner suffers the anomaly of getting less emoluments and in the entire industry, employees are enjoyed additional increments and denying such benefit to the second petitioner, who has, though, been promoted to TC-1 amounts to discrimination; that the assurance on promotion of persons like the second petitioner has been belied; that the reduction in the basic pay is due to withdrawal of additional increments which were being added to the basic salary in workmen cadre; that the management has no right to reduce the basic pay of the promoted workmen on being promoted to TC-1 cadre; that the future increments though earned by the second petitioner in TC-1 cadre has been withheld and therefore the prayer as under sought for in the petition should be granted in favour of the petitioners:

1. Writ in the nature of certiorari quashing the circular withdrawing Additional increments as per Annexure-A, No. 17556/251/HOA, dated 15th July, 2010 and Annexure-B, No. 17556/251/HOA, dated 21-12-2010.

2. To direct the respondent to do pay fixation taking basic pay at ''X'' Group workman to technical cadre as on 31-12-2006 and prior to date of the promotion month, thereafter to add all the consequential benefits with increments, Further, to grant a proper fixation of pay and to pay back all the arrears. The respondent has recovered from the petitioner salary as on 1-1-2007 and onward promotes including those who had retired on attaining superannuation and voluntary retirement.

3. The respondent has recovered from petitioner and members from their basic pay, DA, HRA, Leave Encashment, perks, etc., made pay recovery from 1-1-2007 onwards.

4. Issue any other orders or writ in the circumstances of the case as the case may be. This Hon''ble Court deems fit to grant in the facts and circumstances of the case in the interest of justice, equity and fair-play.

3. Notice had been issued to the respondents. First respondent is represented by its Counsel Sri P.S. Vishwanath and detailed statement of objections has been filed.

4. It is the version of the first respondent-management that there is no reduction of basic pay of the promoted workmen to TC1 cadre; that it has been protected even in terms of Annexures-A and B; that it is precisely for protecting the basic pay, Annexures-A and B formula has been worked out; that though in respect of employees who have been promoted upto 2007, protection was in a different manner and in respect of employees promoted after 1-7-2007, protection is now as contemplated under Annexures-A and B, which is part of office order at

Annexure-R9 produced along with additional statement of objections; that it indicates the manner of implementation of pay revision for the period 1-1-1997 to 1-1-2007; that the petitioners'' contention that their basic pay is not protected on being promoted is incorrect; in fact it is protected, as, in the revised scales of pay, the pay scale of TC-1 employees is Rs. 11500-29700, whereas in respect workmen in wage Group ''X'', the revised pay scale of TC-1 is above the pay scale of workmen in wage Group ''X'' and in terms of the Para 4.0 of memorandum at Annexure-A to the writ petition only seeks to protect the pay in the promoted cadre; that clause (e) of Para 2.0 only indicates that a special pay as per clause (11.0) of the memorandum of understanding entered into between different trade unions and the management and which is given only to non-executive employees, automatically discontinued or ceased on promotion to TC-1/ executive cadres on and after 1-1-2007 and in this view of the developments, there is absolutely no anomaly of deduction of pay as alleged and claimed by the petitioner.

5. Para 2.0 of Annexure-A reads as under:

2.0 Consequent to wage revision of non-executives, the following has been decided by Management:

(a) The Personal Pay (arising out of pay protection paid to TC cadre due to difference in the end scale of Wage Group ''X'' and TC-1 in 1997 revision, excluding Additional increments) shall be considered as basic for all purposes for employees promoted to TC/Executive grade prior to 1-1-2007. The amount of Personal Pay shall be added to the pre-revised basic pay as on 1-1-2007 and considered for fixation as per clause (5.2) of the Office order No. HO/250/044, dated 15-7-2010.

(b) Cumulative Protection of Increment (CPOI): The CPOI amount as on 31-12-2006 will be added to the revised basic pay for employees in TC/executive grade promoted prior to 1-1-2007, as done in the case of non-executive employees.

(c) The pre-revised service weightage amount drawn by the TC Personnel/ Executive promoted prior to 1-1-2007 will be continued to be paid separately till retirement/next Pay revision, whichever is earlier. The pre-revised service weightage amount will be considered as Basic Pay for the purpose of DA, HRA, Leave encashment, PF and Gratuity with effect from 1-1-2007 including for all deductions such as AWL/LWP.

(d) In case of employees promoted to TC/Executive grade on or after 1-1-2007, the revised service weightage amount will continue to be paid separately till retirement/next Pay revision, whichever is earlier. The service weightage amount will be considered as Basic Pay for the purpose of DA, HRA, Leave encashment, PF and Gratuity with effect from 1-1-2007 including for all deduction such as AWL/LWP.

(e) The Special Pay as per clause (11.0) of the MoU granted to non-executive employees shall be discontinued on promotion to TC/Executive grades on or after 1-1-2007.

6. The management, in fact, has received a further representation from the employees promoted to TC-1 cadre on and after 1-1-2007 in the wake of the office memorandum at Annexure-A and on the representations of such persons to continue the special pay granted to non-executive cadres even on being promoted to TC-1/executive cadres, the matter was examined further and it was decided that the difference in total pay components before and after promotion will also be protected and clarified as under:

7. It is also indicated that the difference in total emoluments as calculated above between the pre-promoted cadre and promoted cadre, is the amount attributable to special pay plus applicable dearness allowance in the workmen cadre, being further protected and adjusted in future increments. The manner of protection in respect of difference is as per para 4.1 of Annexure-A, which is as under:

4.1 The amount so protected will be reckoned for computation of DA, HRA, contribution to PF, payment of gratuity and Leave encashment only. This amount will be adjusted in future increments.

The manner of adjustment in future increments is also indicated in the promoted cadre.

8. It is also the stand of the respondent-management that the second petitioner was in fact a signatory to the settlement of these terms between different trade unions and the management and was very well-aware of it; that it has been implemented in respect of all workmen who were represented by the trade unions existing and recognised by the management in the organisation; that no exception can be made in the case of any employee; that protection is sought to be given to their wages and earnings, but a special pay which had been accorded to be conferred only on the workmen as per the settlement between the management and the workmen cannot be automatically extended to supervisory cadre and it is because of this reason, there appears to be a difference in the pay in the promoted cadre, but it is not actually so; that the basic pay and other benefits are all protected; that as per the policy decision and the settlement amongst all workmen/trade unions and the management, insofar as the special pay given to workmen is concerned, it is not made applicable to the supervisory or executive cadre and therefore the anomaly is sought to be pointed out.

9. On the other hand, Ms. H. Mangalamba Rao, learned Counsel for petitioner, contends that the management itself had initially extended the special pay even in the promoted cadre for sometime, but thereafter it is sought to be reduced and also recovered etc.; that it is unjust, opposed to service law principles and therefore to that extent, the provisions made under Annexures-A and B to be quashed.

10. A perusal of the terms of Annexures-A and B read with the revision of pay scales as per Annexure-R9, produced along with additional statement of objections by the respondent-management, shows the manner of pay revision and the efforts made on the part of the management to protect the pay in the promoted cadre of TC-1.

11. It is no doubt true that if one views from the total emoluments received by a workmen in Wage Group ''X'' depending upon the position being at the higher level of the pay scale and the total emoluments received immediately on promotion to the cadre in TC-1, it does appear that the emolument is less. As noticed above, this is attributable to the fact that the workmen and their unions had bargained for getting a special pay or additional emoluments in the cadre of workmen and the management had agreed to and that was being extended only to workmen and not to any supervisory cadre. The workmen after promoted to the supervisory cadre ceased to enjoy this benefit and special pay or additional increment which was exclusively meant to workmen and obtained after bargain by the trade unions with the management. The workmen ceased to be so after promotion and cannot still reckon for special benefits extended to workmen. This position was quite clear even before. It is, therefore, I do not see any reduction in the basic emoluments and on the other hand even as per the worksheet produced at page 141 of the writ petition. The further clarification regarding pay fixation of TC personnel and ''even executives issued on 26-4-2011 has illustrated as to how the pay protection is ensured to such employees who were promoted to TC-1 cadre.

12. Even the argument of discrimination does not hold good, because the employees of the second respondent organisation on promotion to TC-1 cadre form one class and employees elsewhere, similarly situated or otherwise in difference Central Government organisations, form a different class or group. Even the guidelines issued by the public enterprises department, ministry of heavy industries, Government of India as per official memorandum dated 26-11-2008, a copy of which is produced at Annexure-R5 to the statement of objections filed by the first respondent, only makes it clear that the management of individual public sector enterprise has to examine all other aspects apart from pay revision which has been revised in terms of the recommendations made by the second pay revision committee applicable to such public sector enterprises. Therefore, it is the decision of the individual managements on other aspects regarding service conditions of its employees including supervisor cadre and there is no question of discrimination in such a situation. When all employees similarly situated are treated alike, discrimination does not arise.

13. Nevertheless, it is contended by the learned Counsel for petitioners that on promotion, total emoluments cannot come down to a promoted employee and therefore this anomaly be necessarily set right and promotion should not be a losing proportion for the employees. But, on realising this, though such promoted employees wanted to go back to the earlier post, that has not been permitted

and this is a clear case of injustice meted out to the promoted employees.

14. The anomaly relating to total emoluments of pay loss in the promoted post and the earlier workmen cadre is clearly attributable to the pay given to the workmen in terms of the settlement between the trade unions and the management. It is the decision of the management providing a special pay in the supervisory cadre. Therefore it cannot be said that there is an anomaly in true sense that their emoluments getting reduced on promotion.

15. However, if any of the employees are not keen on retaining the promoted post, it is open to them to give a representation to the management seeking for reversion in view of reduction in emoluments and the emoluments in Work Group ''X'' are more attractive to them than what they got on promotion. I do not find any scope for either quashing of any part of Annexure-A or issue of a consequential direction in the nature of mandamus to fix the pay of second petitioner in any particular scale. Moreover, an individual case cannot govern the relationship between the management and entire class of such employees in which the individual figures. It is to be noticed that settlement between the workmen and the management was through their recognized representative trade unions and that cannot bind the management in respect of supervisory class of employees. It is, therefore, these writ petitions are dismissed as not warranting interference with the impugned notifications/orders.