

(2015) 03 KAR CK 0207

In the Karnataka High Court

Case No : Writ Petition Nos. 38313-38317 of 2011(S-CAT)

Central Provident Fund Commissioner and Others

APPELLANT

Vs

M.G. Revathi and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Citation : (2015) 03 KAR CK 0207

Hon'ble Judges : P.B. Bajanthri, J.;K.L. Manjunath, J.

Bench : Division Bench

Advocate : B. Pramod, for the Appellant; Vasudeva Rao, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.B. Bajanthri, J.—The petitioners-the Central Provident Commissioner and the Regional Provident Fund Commissioner have questioned the validity of the order dated 10.2.2010 passed in O.A. No. 232/2008 and order dated 8.7.2011 passed in Review Petition No. 4/2010 vide Annexures-"D" and "E" respectively.

2. The respondents are all working as Data Entry Operators (for short "DEO") in the petitioner-Department.

3. In the petitioner-Department method of recruitment to the post of DEO Grade "A" - scale of pay Rs. 4,000/- to Rs. 6,000/- - by direct recruitment/transfer from central Government Department; DEO Grade "B" - scale of pay Rs. 4,500/- to Rs. 7,000/- - 75% by promotion and 25% by direct recruitment and DEO Grade "C" - scale of pay Rs. 5,000/- to Rs. 8,000/- - by promotion/by transfer. These posts are governed by Rules called The Employees' Provident Funds Organisation, (Data Entry Operator Grades "A", "B" and "C") Recruitment Rules, 2003. For the purpose of entry into cadre from Grade "A" to "B" - 75% by promotion with six years regular service in the Grade serving in the respective region/local offices for post arising in the respective region and in the head office in respect of posts arising in the head office. Even by transfer method six years regular service in

the scale of pay of Rs. 4,000/- to Rs. 6,000/-.

For the purpose of promotion to Grade "C" with three years regular service in the Grade "B".

4. On 4.5.2006, Rules were amended called Employees Provident Fund Organization(Data Entry Operator Grade "A"), Amendment Recruitment Rules, 2006. An extract of the amendment is as follows:--

"Initial fitment clause(i) as a one time relaxation, fitment will be made in DEO (Gr-B) and DEO(Gr-C) notionally on completion of three years and six years service respectively in DEO(Gr-A). (ii) No arrears will be paid and will be fixed notionally with benefit to be paid prospectively " Subsequently, by means of a communication dated 8.6.2006 with reference to amendments to the Recruitment Rules for the post of DEO(Gr-"A, B and C") have been carried out vide Circular dated 5.5.2006. In pursuance of the amendment initial fitment clause to the recruitment Rules of DEO(Gr-B) and DEO(Gr-C) has been inserted as under:--

"I)DEO(Gr. B)(Rs.A500-7000)

i)As a one time relaxation, Data Entry Operator(Gr.A) with 3 (three) years regular service will be made Data Entry Operator)(Gr.B) on notional basis.

ii)No arrears will be paid and pay will be fixed notionally, with benefit to be paid prospectively

II)DDEO (Gr.C) (Rs. 5000-8000)

(i)As a one time relaxation, fitment will be made in Data Entry Operator (Gr.B) and Data Entry Operator(Gr.C) notionally on completion of (three) years and 6(six) years service respectively in Data Entry Operator(Gr.A).

(ii)No arrears will be paid and pay will be fixed notionally, with benefit to be paid prospectively

It may be seen from the initial fitment clause, DEO(Gr.A) having six years of regular service may be promoted notionally to the post of DEO(Gr.C) in the pay scale of Rs. 5000-8000 from the date on completing the requisite period of service. Similarly, DEO(Gr.A) having three years of regular service may be promoted notionally to the post of DEO(Gr.B)in the pay scale of Rs. 4500-7000 from the date of completing the requisite period of service."

On 4.12.2006 further it has been clarified by means of issuing circular. An extract of the communication is reproduced as under:--

Recruitment Rules for DEO(Gr.B) - Rs. 4500-125-7000

(i)As a one time relaxation, DEP(Gr.A) with 3 years regular service will be made as DEO(Gr.B) on notional basis.

(ii) No arrears will be paid any pay will be fixed notionally with benefit to be paid prospectively

Recruitment Rules for DEO(Gr.C) - Rs. 5000-150-8000

(i) As a one time relaxation fitment will be made in the DEO(Gr.B) and DEO(Gr.C) notionally on completion of 3 years and 6 years service respectively in DEO (Gr.A).

(ii) No arrears will be paid any pay will be fixed notionally with benefit to be paid prospectively "

5. In this background, among others the respondents were promoted on 18.1.2007 to the post of DEOs, Grade "B" and Grade "C" in the pay scale of Rs. 4,500/- to Rs. 7,000/- and Rs. 5,000/- to Rs. 8,000/- respectively w.e.f. the dates indicated in the office order No. 233 against their names on notional basis as one time relaxation. The respondents were promoted with effective date of notional promotion with various dates as shown in the office order, which is between 2004 to 2006. Thereafter on 7.3.2007 by Office Order 280, among others pay of the respondents were refixed to the post of DEO, Grade "B" and Grade "C".

6. When things stood thus, on 17.9.2007 the first petitioner among others and the second petitioner were directed to re-fix the pay of the respondents and others. Consequently, the second respondent re-fixed the pay notionally at (financial effect from 12.1.2007). The respondents came to know that their pay would be re-fixed in DEO, Grade-C consequently their pay would be reduced drastically and so also they are going to lose number of increments. Thus, they submitted representation to the second respondent to re-examine the re-fixation order of DEO, Grade "C" vide communication dated 17.9.2007. They have specifically pointed out that DEOs who are promoted from Gr-A to Gr-B and then to Gr-C are financially more benefited than the DEOs who are awarded one time relaxation. Ignoring the grievance of the respondents, the petitioners proceeded to reject the request of the respondents on 27.5.2008. Similar O.Ms were issued to each and every respondents and so also pay slips for the month of October 2007 was issued to each one of them. Consolidated statement showing the financial loss incurred by the DEOs Grade-C after implementation of Central Office Circular dated 17.11.2007 has been prepared and produced as Annexure-A26 to the O.A.

7. The respondents are aggrieved by the order dated 17.9.2007 (Annexure-A9); Office order No. 235 dated 14.11.2007 (Annexure-A10) and O.Ms. dated 27.5.2008 (Annexure-A19 and A20) approached the Central Administrative Tribunal, Bangalore Bench, Bengaluru.

8. On 10.2.2010, Original Application No. 232/2008 filed by the respondents were allowed by giving following directions:--

"(i) The arrears of pay and allowances that are due from October 2007 till

24.7.2008 shall be paid with 9% simple interest.

(ii) The arrears from 24.7.2008 till the date of payment will be paid with an interest of 18% compounded every month.

(iii) The respondents are directed to fix the responsibility on officers who have disobeyed the stay order given by this Tribunal on 24.7.2008 and take appropriate action against them as per Rules.

(iv) The interest that is payable as per directions at (ii) above shall be recovered from the officers on whom responsibility is fixed as at (iii) above.

(v) The directions at (i) and (ii) above shall be complied with within a period of 3 months from the date of receipt of a copy of this order.

16. The O.A. is disposed of as above.

17. As the respondents have acted in utter disregard to the statutory Rules and the judicial orders passed by this Tribunal on 24.7.2008, the respondents are directed to pay the cost of this application which is assessed as Rs. 15,000/- in equal share to each of the applicants within a period of one month from the date of receipt of a copy of this order."

9. Aggrieved by the order passed in O.A. No. 232/2008 dated 10.2.2010 the petitioners filed review application before the Central Administrative Tribunal, Bangalore, on 8.7.2011 (Review Application No. 4/10 (in O.A. No. 232/2008) was dismissed with cost of Rs. 3,000/- to be paid to each of the review respondents for unnecessarily dragging them to the Tribunal.

10. The petitioners aggrieved by both the order passed in O.A. No. 232/08 dated 10.2.2010 and R.A. No. 4/10 dated 8.7.2011 preferred these petitions.

11. The petitioners contended that in respect of the communication No. HRM.III/1(3)99/DEO/SnTY/PTI/dated 17.9.2007 by which the impugned action has been taken, the finding of the Tribunal that it has no legal force is erroneous on the face of the record and the Tribunal failed to note that it is a clarification issued by the competent authority to the amended recruitment Rules of 2006 which was one time measure. It was further contended that the Tribunal has erred in interpreting the Rules governing the post of DEO, Gr. "A" and "C" and holding that Date Entry Operators who had completed six years of service are required to be promoted notionally to DEO Grade "B" and thereafter Grade "C" which is contrary to intention and spirit of the amended Rules, thereby the Tribunal has exceeded in its jurisdiction. It is also contended that the Tribunal committed error in directing to pay interest. The Tribunal erred in holding that communication dated 17.9.2007 (Annexure-A9) is an administrative order whereas the said communication is issued in furtherance of amendment of EPO (DEO Grade-A Amendment Rules) 2006.

12. Per contra, Sri. M. Vasudev Rao, respondents' counsel submitted that the Tribunal has gone into details of the method of recruitment and fixation of pay to

the respondents and held that by means of a communication vide Annexure-A9 refixation of pay of the respondents is not tenable as long as rules of recruitment governing the post is not amended appropriately and clarified fixation of pay in respect of Grade "C" posts filled up directly from Grade "A".

13. Sri. M. Vasudeva Rao, vehemently argued that the communication dated 17.9.2007 to refix the pay of DEO Grade "C" has been implemented only to the respondents. There are large number of DEO(Grade "C") throughout the country who are benefited by one time relaxation. The communication dated 17.9.2007 of the first petitioner has not been implemented. Thus, there is discrimination in implementing the Rules of recruitment read with pay fixation of the DEOs (Grade "C"). It was also contended that before issuance of communication dated 17.9.2007 to refix the pay of those who are promoted to the cadre of DEO-Grade "C" the Rules of recruitment has not been amended appropriately so also no notice has been issued to the affected DEO - Grade "C". Notice is a must for the reasons that if the communication dated 17.9.2007 (Annexure-A9) is implemented the respondents pay would be reduced drastically and so also they would lose number of increments.

14. Heard the counsel for the parties.

15. The respondents have been promoted to DEO -Grade B" and grade "C") on various dates (notional) and further their pay has been re-fixed in both the cadres from the respective dates assigned in the office order No. 233 dated 18.1.2007 on 7.3.2007. It was also made clear that fixation is notional with benefits to be paid prospectively i.e. w.e.f. the date of DPC dated 12.1.2007 and it was also made clear that no arrears will be paid. The first respondent wrongly interpreted fixation of pay read with Rules of recruitment governing the post of DEO-Grade "A", "B" and "C" directed the concerned Officers to refix the pay of the respondents and others. Reading of the Rules of recruitment the earlier decision i.e. fixation of pay on promotion to the post of DEO Grade "B" and "C" vide Officer order No. 280 dated 7.3.2007 is in order, there is no infirmity or lacuna or ambiguity in fixation of pay of the applicants and others. The first respondent unnecessarily issued clarification how the pay is required to be fixed by wrongly interpreting amended Rules. Thus, the Tribunal has not committed any error as contended by the petitioners" counsel.

16. In fact due to lapses on the part of petitioners the respondents" promotion has been unnecessarily postponed for number of years. Delay in giving promotion to the respondents resulted in these litigations. At this juncture it is relevant to reproduce observation of the Apex Court in Bhupendra Nath Hazarika and Another Vs. State of Assam and Others, wherein it is held as follows:--

"65. We have stated to role of the State as a model employer with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are

not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more." Having regard to the various dates of eligibility of the respondents to DEO.Gr-"B" and "C" i.e. 2001-03 and 2004-06, granting of notional promotion itself is arbitrary and further denying the pay fixation is highly improper on the part of the petitioners.

17. Insofar as challenge to review application No. 4/2010 is concerned, there is no error so as to review the order dated 10.2.2010 passed in O.A. No. 232/08. However, insofar as imposing cost of Rs. 3,000/- to be paid to the review respondents no reasons have been assigned except stating that unnecessarily the respondents have been dragged to the Tribunal. Therefore, insofar as imposing cost of Rs. 3,000/- to be paid to the review respondents is set aside and rest of the direction and orders passed in both O.A. No. 232/2008 and order passed in R.A. No. 4/2010 are upheld. Consequently, the writ petitions are dismissed. No order as to costs.