
(2014) 09 DEL CK 0120

In the Delhi High Court

Case No : Writ Petition (Civil) No. 6771/2014

Council of Scientific and Industrial Research

APPELLANT

Vs

Anang Pal

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 DEL CK 0120

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Ravi Sikri, Senior Advocate and Gourav, Advocate for the Appellant

Judgement

Vipin Sanghi, J.—The Council of Scientific and Industrial Research and Ors. have preferred the present writ petition under Article 226 of the Constitution of India to assail the order dated 27.11.2013 passed by the Central Administrative Tribunal (for short, "the Tribunal") in O.A. No. 2201/2011 whereby the Tribunal has allowed the said original application and quashed the order dated 30.01.2003 by which the pay scale of Senior Hindi Officers had been reduced from Rs. 10000-15200 to Rs. 8000-13500. The Tribunal directed that Senior Hindi Officers would continue to draw higher pay scale of Rs. 10000-15200 and held that there was no question of making recovery of any excess amount from the respondents-applicants. It was directed that in case recovery had been made, the same shall be paid back to the respondents.

2. Senior Hindi Officers were earlier getting the pay scale of Rs. 8000-13500. On 02.08.2000, in 148th meeting of the governing body of the CSIR, a proposal for increasing the pay scale to Rs. 10000-15200 was approved so as to bring the same at par with Central Secretariat Official Language Service (CSOLS) . However, on 30.01.2013, the governing body reviewed the position again, and decided to reduce the pay scale of Senior Hindi Officers to Rs. 8000-13500 and ordered recovery of excess amounts paid to the respondents. Thereafter, on the recommendations of the Sixth Central Pay Commission, the pay scale was again

increased to Rs. 10000-15200 with effect from 01.01.2006. Consequently, only those Senior Hindi Officers who had been promoted, as such, between the period 30.01.2003 to 31.12.2005 were given the scale of Rs. 8000-13500 while those promoted to the said post before and after this period, got the benefit of the higher pay scale of Rs. 10000-15200. All the respondents-applicants were promoted on dates falling in the aforesaid period i.e. 30.01.2003 to 31.12.2005. The respondents represented against denial of higher pay scale of Rs. 10000-15200. They also placed reliance on the Sixth Central Pay Commission report which had granted parity to them with the staff of Raj Bhasha Vibhag, as also the decision of the CSIR in its 148th meeting wherein the CSIR accepted the pay parity. Since the representations of the respondents- applicants did not bear fruit, they preferred the aforesaid original application.

3. The petitioner contested the aforesaid original application primarily on two grounds. Firstly, it was contended that the original application was barred by limitation inasmuch, as, the respondents-applicants were seeking to challenge a policy decision taken on 30.01.2003, which had been acted upon in the same year. Secondly, the petitioner contended that while in the 148th meeting of the governing body of CSIR it had been decided to give the pay scale of Rs. 10000-15200 to Senior Hindi Officers, there were other similar cadres which had not been given this benefit-leading to an anomalous situation. Consequently, the petitioner constituted a Committee of Dr. Kishan Lal to review the existing scheme and examine the anomaly in the pay scales. The Committee considered the pay scale given to Raj Bhasha Staff in the CSIR as compared to the Department of Official Language in Government of India, and found that in the Government of India, the official language cadre is an organized one and the promotions in that cadre are vacancy based, whereas the Raj Bhasha cadre in CSIR is an isolated one and there is no similarity amongst the two cadres. The Committee also considered the financial difficulties created by this upgradation of pay scale as other cadres, such as security officers, were aggrieved by the same. Consequently, the earlier decision was recalled by the governing body in its 155th meeting held on 19.12.2002 and a memorandum dated 30.01.2003 was issued retaining the pay scale of Rs. 8000-13500 for Senior Hindi Officers - with the rider that those promoted between the period 02.08.2000 to 30.01.2003 as Senior Hindi Officers, will continue to draw pay in the scale of Rs. 10000-15200.

4. The Tribunal rejected the petitioner's objection with regard to limitation by placing reliance on the decision of the Supreme Court in *M.R. Gupta Vs. Union of India and others*, . The Tribunal took note of the fact that the respondents had been promoted as Senior Hindi officers only in the year 2006 - with retrospective effect and, therefore, they could not have come to the Tribunal before their promotion. Secondly, the grant of pay is a recurring cause of action and, therefore, the original application could not be said to be barred by limitation. Thirdly, the grievance of the respondents arose when the impugned order of recovery was made on 25.01.2011. The original application has been filed on 03.06.2011. Consequently, there was no delay. On merits, the Tribunal observed

that Senior Hindi Officers promoted between 30.01.2003 and 31.12.2005 had been granted lower pay scales, when compared to those promoted before or after the intervening period as aforesaid. Thus, the petitioner had sought to make distinction on the basis of dates of promotion, and different class of Senior Hindi Officers were created without any rationale. The classification had no nexus with the objects sought to be achieved. The Tribunal held that the cut-off date of 30.01.2003 itself was arbitrary, based on the fortuitous circumstances of the governing body meeting being held just prior to that date. The Tribunal held:

"While the CSIR were well within their rights to decide whether to grant a particular pay scale to the applicants or not, their action in dividing the Senior Hindi Officer into two classes by allowing those promoted before 30.01.2003 to continue to enjoy the higher pay scale of Rs. 10000-15200 is unsustainable."

5. The Tribunal also held that the petitioner could not have effected recovery, by placing reliance on the judgment of the Supreme Court in Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and others (Civil Appeal No. 5899/2012 decided on 17.08.2012) wherein the Supreme Court had held that recovery could not be effected in cases where such recovery would cause extreme hardship. Since the Tribunal held the action of the petitioner in lowering the pay scale of the respondents to Rs. 8000-13500 as unsustainable, obviously recovery could not be made.

6. The submission of learned counsel for the petitioner before us is once again on the same lines as advanced before the Tribunal. Mr. Sikri submits that the original application was barred by limitation since the decision of the governing body to restore the pay scale of Rs. 8000-13500 was taken on 30.01.2003 whereas the original application had been preferred only in June, 2011. On merits, he submits that grant of the higher pay scale of Rs. 10000- 15200 to the respondents, who were appointed between 30.01.2003 and 31.12.2005 would cause financial burden on the petitioner.

7. Having heard learned counsel for the petitioner and perused the impugned order, we are of the view that there is no merit in this petition since there is no error in the impugned order calling for interference by this Court in exercise of its jurisdiction of judicial review. The Tribunal has adequately dealt with the defence of limitation raised by the petitioner. The respondents had been promoted, retrospectively, only in the year 2006. Obviously, there was no question of their assailing the decision of the governing body taken in its meeting held on 30.01.2003 soon after the said decision was made and implemented vide memorandum dated 30.01.2003. Secondly, the recovery was sought to be made only by the order dated 25.01.2011. The cause of action arose in favour of the respondents on the said date and the original application was preferred within five months thereof. Thirdly, as held in M.R.Gupta's case (supra) , a "fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid

according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period". We, therefore, find no merit in the submission of Mr. Sikri that the original application was barred by limitation.

8. On merits, the petitioner could not defend the classification sought to be made amongst the Senior Hindi Officers on the basis of the dates of promotion, when the respondent maintained the higher pay scale of Rs. 10000-15200 in respect of those Senior Hindi Officers who were appointed prior to 02.08.2000 and after 30.01.2003. There was no justification to grant the lower pay scale of Rs. 8000-13500 to those promoted in the said period. There is no rational basis for this classification, as all officers in the cadre of Senior Hindi Officers are performing the same functions and discharging the same responsibilities under the same employer. As held by the Tribunal, there is no basis for fixing the cut off dates.

9. Consequently, we find no merit in the present petition and dismiss the same.