

(2015) 01 DEL CK 0160

In the Delhi High Court

Case No : Writ Petition (C) No. 8502/2010

Devendra Naraian

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 39(d)
Electricity (Supply) Act, 1948 — Section 60
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 68F, 68K(1), 68N
Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 — Section 10, 12, 12(1), 7, 9(1)

Citation : (2015) 01 DEL CK 0160

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

Bench : Division Bench

Advocate : Abhay Singh, Yasmin Zafar, Veena Singh, Vindhya Singh and Chiral Dugar, for the Appellant; Ruchir Mishra and Mukesh Kumar Tiwari, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Vipin Sanghi, J.—The present Writ Petition- preferred under Article 226 of the Constitution of India, assails the notification dated 24.12.2001, amending the Appellate Tribunal Forfeited Property (Conditions of Service of Chairman and Members) Rules, 1989 (hereinafter "ATFP Rules, 1989") under Narcotics Drugs and Psychotropic Substance Act (hereinafter "NDPSA"), and Notification No. 10/2001 dated 01.10.2001, amending the Appellate Tribunal Forfeited Property (Conditions of Service of Chairman and Members) Rules, 1978 (hereinafter "ATFP Rules, 1978") framed under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter "SAFEMA"), whereby he is being denied a higher pay scale applicable to the post of "member" of the Appellate Tribunal Forfeited Property (ATFP) held by the Petitioner.

2. The Petitioner was appointed as a member of the ATFP in exercise of powers

under Section 12 of SAFEMA, 1976 read with sub Rule (2) of Rule 11 of the ATFP Rules, 1978 vide order dated 13.04.1999 in the pay scale of Rs. 22,400-525-24,500. His term ended on 31.12.2002, after he attained the age of 62 years.

3. The ATFP is a common Appellate Tribunal under SAFEMA, 1976 and NDPSA, 1985. It was originally constituted under Section 12(1) to deal with appeals under Sections 7, 9(1) or 10 of the SAFEMA, 1976, and later when NDPSA, 1985 came into force, ATFP was constituted as the appellate body under Section 68N of NDPSA as well, to deal with appeals under Sections 68F, 68-I and 68K(1) of NDPSA. ATFP has been hearing appeals under SAFEMA and NDPSA since May, 1989. In other words, the two Acts constitute- ATFP with different set of Rules under both the Acts, laying down the conditions of service of the chairman and members.

4. Rule 4 of the ATFP Rules, 1978 framed under SAFEMA, 1976 states that whoever is appointed as a member of the ATFP will draw a salary of Rs.3,000 per mensem, and is entitled to draw such allowances as permitted to a Government officer with equivalent pay. The pay scale of Rs.3,000 per mensem was revised to Rs.7300-100-7600 after the implementation of 4th Central Pay Commission (CPC). After the implementation of the recommendations of the 5th CPC, the pay scale was further revised to Rs.22,400-525-24,500 w.e.f. 01.01.1996.

5. Under NDPSA, 1985, members appointed in accordance with Rule 4 of the ATFP Rules, 1989 were entitled to draw a salary of Rs.7,600 per mensem. After the recommendations of the 5th CPC, the pay scale was revised to Rs.24,050-650-26000 w.e.f. 01.01.1996. Thus, the pay scale granted to members of the ATFP under the SAFEMA was lower, when compared to the pay scale granted to members appointed under the NDPSA.

6. The ATFP Rules, 1989 also contained the following as Rule 13:

"The Chairman or a member of the Tribunal shall not be entitled for any salary, remuneration, allowance or any other benefits to which the Chairman or member is entitled under these rules, if the Chairman or member is a sitting Chairman or member, as the case may be, of the Appellate Tribunal for Forfeited Property constituted under the SAFEMA and the terms of office of such Chairman or member shall be co-terminus with the terms of office of the Chairman or member, as the case may be, of the Appellate Tribunal for Forfeited Property constituted under SAFEMA."

The petitioner was aggrieved by the different pay scales prescribed for members of the ATFP under the two Acts aforesaid. Accordingly, he made a representation to the Chairman of the ATFP on 09.10.2000. In the representation, the petitioner claimed that Rule 13 of the ATFP Rules, 1989 has no application in his case, as he was not a member when the ATFP under NDPSA, 1985 was constituted, and that he was wrongly being denied the higher pay scale admissible to members appointed under the NDPSA.

7. The Joint Secretary, Department of Revenue, GoI vide letter No. F.No. A-11018/1/2000-CA, dated 30.01.2002, communicated that the ATFP Rules, 1979 under SAFEMA, 1976 and the ATFP Rules, 1989 under NDPSA, 1985 had been amended and the discrepancy with regard to the pay scale admissible to the members of the ATFP- whether appointed under the SAFEMA or NDPSA, had been removed.

8. Accordingly, vide Notification No. 10/2001 dated 01.10.2001, Rule 4 of the ATFP (Conditions of Service of Chairman and Member) Rules, 2001 under SAFEMA, 1976 was amended. Similarly, vide notification dated 24.12.2001, Rule 4 of the ATFP (Conditions of Service of Chairman and Member) Rules, 2001 under NDPSA, 1985 was amended. The pay scale of the members appointed under both the Acts was made as Rs.22,400-525-24,500. This was the same as that being paid to members appointed under SAFEMA. In effect, the pay scale of the members appointed under the NDPSA was downwardly revised from Rs.24,050-650-26,000 to Rs.22,400-525-24,500.

9. Not satisfied, the petitioner approached the Central Administrative Tribunal (CAT/Tribunal) by preferring OA. No. 1557/2002, seeking the higher pay scale of Rs. 24050-26000. The Tribunal, by order dated 02.05.2003, allowed the application on the basis that the ATFP was one body exercising functions under SAFEMA and NDPSA, and two different pay scales could not be prescribed in respect of one post under the different Acts. The different pay scales were held to be a clear case of discrimination.

10. The respondents assailed of the order of CAT in OA No. 1557/2002 by filing W.P.(C) 1448/2004 before this Court. By order dated 28.07.2010, this court allowed the writ petition on the ground that it was beyond the scope of jurisdiction of the CAT to entertain claims of members of the ATFP under SAFEMA or NDPSA.

11. Consequently, the petitioner has now approached this court in its writ jurisdiction seeking direction for grant of higher pay scale.

12. Learned counsel for the Petitioner submitted that he was not a sitting member of the ATFP under SAFEMA, 1976 when the ATFP was constituted under NDPSA, 1985. Therefore, Rule 13 of the ATFP Rules, 1989 will have no application in his case. The Petitioner submits that the restriction in Rule 13 applies to the sitting chairman and members of ATFP, who were appointed under SAFEMA, at the time of the constitution of ATFP under NDPSA, in order to prevent them from drawing salary under both the Acts. Since, the petitioner was not a member at that particular time, the rule has no application to him.

13. Ld. counsel of the petitioner submits is that the appointment order dated 13.04.1999 - by which he was appointed to the post of member, ATFP did not specify the Act- whether SAFEMA or NDPSA, under which he was being appointed. Therefore, the Respondent cannot fix his scale of pay in accordance with SAFEMA and the Rules framed thereunder on its own, and pay the lower pay

scale of Rs.22,400-525-24,500 to him.

14. Learned counsel for the Petitioner submits that the principle of equal pay for equal work is a well settled principle, and it has been violated by the respondents, by having two different pay scales for the same post in ATFP under two different Acts. It is argued that irrespective of the enactment under which the members of the ATFP may be appointed, all of them are functionally, and in terms of their status and responsibility, identically situated. The members sit in Benches and hear the cases arising out of both the enactments - irrespective of which enactment they trace their appointment to. The Petitioner, therefore, alleged discrimination and submits that the classification sought to be made on the basis of the enactment to which the appointee/ member traces his/ her appointment, is not a reasonable classification because functionally, and in terms of status and responsibility there is no differentiation between them.

15. Learned counsel for the Respondents submits that the petitioner is not entitled to the pay scale of Rs.24050-650-26000, as the appointment order dated 13.04.1999 clearly mentions that the pay scale payable to the petitioner is Rs.22400-525-24500, and the petitioner did not challenge the said appointment order at any stage, much less in the present petition. He accepted the terms and conditions offered to him and, now, cannot turn around and challenge the same at this belated stage.

16. Ld. Counsel for the Respondents submits that the petitioner cannot claim a higher pay scale on the ground that the Act under which he was appointed was not specified in his appointment order. There is clearly no dispute about that fact that ATFP is the Appellate Tribunal under both the Acts, SAFEMA and NDPSA. Learned counsel further submits that this contention of the petitioner cannot be sustained, as it had been notified vide notifications Nos. 6/1999 and 7/1999 issued on 21.05.1999 that the Petitioner was obliged to hear appeals under both said Acts. We may note that the Respondent has not placed the said notifications on record. The averment of the Respondent in Para 23 of the counter affidavit dated 20.05.2011 reads as follows:

"23. It cannot be disputed by the petitioner that after his appointment as member of ATFP and issuance of notifications No. 6/1999 and 7/1999, petitioner was obliged to hear the appeals under the both Acts i.e. SAFEMA and NDPS."

17. It is evident from the record that the Petitioner was appointed to the post of member of ATFP in exercise of the powers under Section 12(1) of SAFEMA, 1976 read with Rule 11(2) of ATFP Rules, 1978. Under SAFEMA pay scale admissible to a member was Rs.22400-525-24500, whereas under NDPSA, 1985 the pay scale was Rs.24050-650-26000. Therefore, the petitioner is not correct in his submission that the order of his appointment did not indicate whether the same was under SAFEMA, 1976 or NDPSA, 1985. The respondents have admitted in their counter affidavit, as extracted hereinabove, that all the members of the ATFP were obliged to discharge functions and responsibilities as members of the

common ATFP under both the enactments, i.e. SAFEMA, 1976 and NDPSA, 1985. It is not that the petitioner - being an appointee by reference to SAFEMA, 1976 was assigned functions and responsibilities only under the said enactment as a member of the Appellate Tribunal, each member - irrespective of the enactment to which he/ she traces its appointment, was obliged to hear appeals under both the enactments. The status of all the members - irrespective of whichever of the two enactments they traced their appointment to, was identical. Clearly, therefore, there was no difference in the level of responsibilities, nature and quantum of work that all the members of the ATFP had to perform even though they trace their appointment to one or the other SAFEMA, 1976 or NDPSA, 1985

18. The Supreme Court in *Randhir Singh Vs. Union of India (UOI) and Others*, , while acknowledging the principle of "equal pay for equal work" observed as follows:

"8. It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the state not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean some thing to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay.

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Construing Articles 14 and 16 in the light of the Preamble and Article 39(d) we are of the view that the principle "Equal pay for Equal work" is "deducible from those Article and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though these drawing the different scales of pay do identical work under the same employer."

19. In *Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others*, , the Supreme Court held:

"4. The doctrine of "Equal Pay for Equal work" is not expressly declared fundamental right under the Constitution. But Article 39(d) read with Articles 14 and 16 of the Constitution declares the constitutional goal enjoining the State not to deny any person equality before law in matters relating to employment including the scales of pay. Article 39(d) read with Articles 14 and 16 of the

Constitution enjoins the State that where all things are equal and person holding identical posts performing identical and similar duties under the same employer should not be treated differently in the matter of their pay. The doctrine of "Equal pay for Equal Work" is not abstract one. it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of "Equal pay for Equal Work" is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay."

20. Thus, the principle of "equal pay for equal work" can be legally enforced in an appropriate and deserving case.

21. In the light of the aforesaid discussion, we are of the view that since the petitioner performed the same functions and discharged the same responsibilities as a member of the ATFP as any other member appointed under the NDPSA, 1985, at the time when the petitioner was appointed, he could not have been granted a pay scale or other service conditions, which were less advantageous when compared to a member appointed under the NDPSA, 1985. Such differentiation would be clearly discriminatory. The classification of members of the same Tribunal, i.e. ATFP on the basis of the enactment to which they trace their appointment could not be said to be a reasonable classification much less one having nexus to the object sought to be achieved. The members of the Tribunal being co-equals in terms of their functions, responsibilities and status, such classification was most unreasonable and arbitrary. Consequently, when the petitioner was appointed as the member of the ATFP vide order dated 13.04.1999, he was entitled to the same pay scale that is offered to the other members of the Tribunal appointed under NDPSA, 1985, i.e. Rs.24050-650-26000.

22. The respondent effectively realized that the two pay scales offered to members appointed under the SAFEMA, 1976 and NDPSA, 1985 led to discrimination and, consequently, sought to amend the rules framed under the aforesaid two enactments by the impugned notification by equalizing the pay scales of the members appointed under both the enactments. However, while doing so, the pay scale permissible to members appointed under NDPSA, 1985 was lowered and made equal to that prescribed for members appointed under the SAFEMA, 1976.

23. The issue which arises for consideration is whether, the respondent could have resorted to such an exercise so as to obliterate the pre-existing discrimination in the matter of pay scales admissible to different members of the same Tribunal, at least, in respect of those who were already holding the posts of the members of the Tribunal.

24. We have already held that the petitioner was entitled to the higher pay scale

of Rs.24050-650-26000 from the date of his appointment, i.e. 13.04.1999. That being the position, the respondent could not have varied, or altered the terms of his engagement to his disadvantage by reducing the pay scale admissible to him since the petitioner was already entitled to the higher pay scale of Rs.24050-650-26000. The same could not have been lowered to Rs.2400-525-24500.

25. The Supreme Court in *Grid Corporation of Orissa and Others Vs. Rasananda Das*, , held that conditions of service of an employee cannot be altered to their disadvantage, by reducing their pay scales or withdrawing any service benefit. It held as follows:

"We are informed that the special leave petition filed against this order in this Court was also dismissed. Thus, the issue that the employees, who were working in the work-charged establishments of the Hirakund Project prior to 1.4.1960 and when finally they became the employees of the Board, could be retired only after their attaining the age of superannuation on completion of 60 years. The appellants by the Office Order No. AW.LW.-11.65/69/8398 dated 22.7.1969 for the various reasons stated therein gave better pay scales to the employees, who came from the Hirakund Project. These pay scales were given without any reservation or subject to any condition and also knowing fully well that such employees were entitled to retire at the age of 60 years and not at the age of 58 years. Apart from the order of this Court passed in the aforementioned appeals, the High Court in the impugned order, referring to Section 60 of the Electricity (Supply) Act, 1948, pointed out to the order passed in O.J.C. No. 4507 of 1992 that the service conditions of such employees are to be protected and cannot be changed to their disadvantage or detriment of their interest by virtue of the regulation of the Board. As already stated above, the special leave petition against the said order was dismissed by this Court. The High Court was right in taking the view that although the service conditions of such employees could not be changed to their disadvantage by reducing their scales of pay or taking away any other service benefit, it cannot be understood as depriving of the benefit of higher scale of pay to them as given to other employees of the same employer. The High Court in the said order also observed that there was a bar to change the service conditions of such employees to their detriment and there was no bar to offer such employees better prospects".

26. The Punjab and Haryana High Court in *The Jullundur District Co-operative Agricultural Service Societies Employees Union (Regd.) vs. State of Punjab and Ors.*, C.W.P. No. 12820 of 1999 decided on 01.10.2010, observed as follows:

"24. Even if it is presumed that letter dated 3.6.1999 (P-9) amounts to exercising the power of amendment and Rule 19(b) of the 1997 Rules has been amended, still it would not be sustainable because no rule could be framed or executive instructions be issued reducing the pay of an employee particularly when under the 1997 Rules it is considered as penal action. Rule 14 of the 1997 Rules postulate infliction of minor and major punishments. Under both the heads,

reduction in emoluments, stoppage of increments and recovery of pecuniary loss are some of the punishments. Therefore, any instruction issued or rule made to the detriment of employees and against their interests causing loss of salary would be considered arbitrary and such an action can be taken only as a measure of punishment. The punishment of minor nature can be inflicted under Rule 14(2), however, a major punishment can be inflicted in accordance with the procedure established by Rule 14(3) of the 1997 Rules. Therefore, on that score also, the amendment is not permissible in law."

27. Consequently, the impugned amendment notifications issued by the respondent, altering the conditions of service to the detriment of members of the ATFP by lowering their pay scale, are illegal, unjust and arbitrary, and are, accordingly, struck down.

28. In view of the aforesaid discussion, this court is of the view that the petitioner was entitled to the higher pay scale of Rs.24050-650-26000 from the date of his appointment, i.e. 13.04.1999. As the petitioner had retired from the post of member, ATFP on 31.12.2002, he is entitled to be granted back wages from the date of his appointment till his retirement. Therefore, we allow the present petition and quash Notification No. 10/2001 dated 01.10.2001 amending the ATFP Rules, 1978 and notification dated 24.12.2001 amending ATFP Rules, 1989 and grant to the Petitioner the pay scale of Rs.24050-650-26000. The petitioner shall be entitled to interest on the arrears @ 8% per annum from the date of retirement till payment. The petition is disposed of in above terms.