

(2014) 11 DEL CK 0004

In the Delhi High Court

Case No : Writ Petition (Civil) No. 5710/2001

D.G., I.C.M.R.

APPELLANT

Vs

R.C. Verma

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 DEL CK 0004

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

Bench : Division Bench

Advocate : Vaibhav Kalra, Advocate for the Appellant; M.C. Dhingra, Advocate for the Respondent

Judgement

Vipin Sanghi, J.—The petitioner Indian Council of Medical Research (ICMR) and Union of India (UOI) have preferred the present writ petition under Article 226 of the Constitution of India to assail the order dated 17.05.2009 passed by the Central Administrative Tribunal (CAT/ Tribunal) in T.A. No.2/1999 preferred by the respondents/applicants. The Tribunal has allowed the said application and directed the petitioner to consider the application of Integrated Recruitment & Assessment Scheme (IRAS) to the technical staff of the petitioner ICMR notionally from the date when the same was made applicable to the scientific staff of ICMR. The Tribunal directed that the actual benefits should be granted to the applicants with effect from 01.01.1996.

2. The facts, in brief, are that the governing body of ICMR constituted a review committee under the chairmanship of one Dr. B. Ramamurthi to review organizational set up, personnel policies and service conditions of the staff of ICMR in the light of policies and practices obtaining in other agencies such as CSIR, ICAR, BARC etc., and suggest improvements. The committee made its recommendations in November 1984. It, inter alia, recommended that the scales of pay being provided by CSIR to comparable posts, with comparable qualification, be made applicable to the staff of ICMR - in both scientific and

technical cadres.

3. The governing body of ICMR in its 60th meeting held on 19.05.1986 recommended implementation of the review committee recommendations for introduction of parity in ICMR pay scales with CSIR pay scales i.e. adoption of IRAS. The governing body, in its 63rd meeting, expressed concern about the deviation and anomalies in the pay scale of ICMR vis-?-vis CSIR staff. In the CSIR, the IRAS had been made applicable to the technical and scientific staff. The respondents/applicants are the technical staff and their association working with the ICMR.

4. The case of the respondents/applicants was that the IRAS had been made applicable to the scientific staff and some of the technical staff in the ICMR, but the remaining categories of technical staff had been deprived of the IRAS. Consequently, the respondents/applicants alleged discrimination and preferred a writ petition before this Court being CWP No.28/1997, wherein the respondents sought a direction to the petitioner to extend to the technical staff the IRAS with effect from 01.01.1986 in consonance with the directions of the governing body, and also sought arrears of salary accrued on application of the IRAS along with interest. During the pendency of the writ petition, ICMR was notified under the Administrative Tribunals Act, 1985 and, consequently, the writ petition was transferred to the Tribunal and registered as T.A. No.2/1999.

5. Before the Tribunal, the stand of ICMR was that its governing body had passed a resolution on 19.05.1986 favouring adoption of CSIR pattern for the ICMR employees. It was stated by the petitioner/ICMR that in its meeting held on 08.06.1988, the governing body of ICMR had approved the assessment scheme for the scientific staff and implemented the same with effect from 01.01.1986. The petitioner claimed that the said scheme had not been approved for application to the technical staff by the Ministry of Finance on the basis of an apprehension that it would have wide spread repercussion. The petitioner ICMR expressed its inability to apply IRAS to the technical staff without the approval of the DOPT and Ministry of Finance, whose decision was awaited.

6. The further stand of the petitioner was that the CSIR pattern had been implemented in respect of scientific staff of the petitioner, but not for the administrative staff. It was further disclosed that the Ministry of Finance had directed to forward a proposal of recruitment and merit assessment scheme for the technical staff on the basis of DRDO pattern. Even though the Ministry of Finance, Department of Expenditure and DOPT were impleaded as respondents and served notice, they chose to remain absent and did not participate in the proceedings before the Tribunal. They were, accordingly, proceeded ex-parte.

7. The Tribunal, while allowing the TA, took note of the respondents/applicants submission that the IRAS had been made applicable not only to the scientific staff but a part of the technical staff as well and that it would be discriminatory if the CSIR pattern, i.e. IRAS is not made applicable to the remaining technical

staff, who were the applicants. The difference in the schemes followed by the CSIR and DRDO were also brought out before, and appreciated by the Tribunal. The reasoning found in the impugned order which persuaded the Tribunal to allow the TA of the respondents/applicants reads as follows:

"8. According to the own version of the respondents, ICMR vide Annexure - R3 dated 9.4.1999 wrote to the Secretary of Ministry of Health and Family Welfare that the Governing Body of ICMR in its meeting held on 28.1.1999 considered the suggestions of the Government regarding Recruitment and Merit Assessment Scheme for Technical staff of ICMR on DRDO pattern and observed that categories of posts such as Lab Assistants, Lab. Attendants, Assistant Technicians etc. (Group "C") numbering over 400 have been missed out by DOPT from the Technical categories. DOPT has also not considered the post of Animal House Assistants, Animal house Keepers, Field Assistants, etc. with similar nature of skilled work. Similarly, the entire category of Statistical Assistance have been left out. 284 Hospital and Nursing staff; 124 Engineering and Maintenance Staff and 64 publication staff have also been left out. Thus, the ICMR admitted that DRDO Scheme could cover only a part of the technical staff which will lead to discrimination within ranks and frustration among the technical staff.

9. The learned counsel of respondent 2 could not indicate any further progress on the observations made by the Governing Body through Annexure-R-3 dated 9.4.1999. In the absence of representatives of Department of Expenditure and Department of DOPT, the learned counsel of ICMR could not explain the reasons for the non-application of IRAS for the entire technical staff which in itself is based on the CSIR pattern when it has already been applied to ICMR scientific staff. We could not be provided any satisfactory explanation on the application of DRDO pattern to the uncovered categories of technical staff of ICMR. Obviously, the respondents' action in not taking a final decision on application of IRAS for the technical staff of ICMR for a long time and then suggesting application of DRDO pattern to some of the technical staff of ICMR when about 2000 technical staff cannot be covered by DRDO pattern at all, is arbitrary, irrational and unjustified".

8. The submission of learned counsel for the petitioner is that the IRAS could not be made applicable to the respondents/applicants, who belong to the technical staff, since IRAS had been made applicable only to the scientific staff and not to the technical staff. Learned counsel submitted that even though ICMR had sought the approval of the Government to adopt IRAS even for the technical staff, such approval was not granted. Learned counsel submitted that the Tribunal could not have determined the pay scales etc. of the technical staff of ICMR as the same is an executive function and a matter of policy.

9. We have perused the impugned order and heard learned counsel for the parties. A perusal of the impugned order shows that the IRAS had been made applicable not only to the scientific staff of the ICMR, but also to some of the technical staff of ICMR. So far as ICMR is concerned, it had recommended

application of the IRAS i.e. CSIR pattern in respect of the entire staff of ICMR. No justification was offered before the Tribunal, and none has been offered before us, as to why the remaining technical staff of ICMR is sought to be denied the application of IRAS, when some of the technical staff - apart from the scientific staff, have been covered by the IRAS. Moreover, the proposed DRDO scheme covered only a part of the technical staff, which would have led to discrimination within the ranks, and frustration among the technical staff of ICMR. Neither the Ministry of Finance, nor the DOPT appeared before the Tribunal, and even before us no material has been placed - either by the Ministry of Finance, Department of Expenditure or DOPT to justify the treatment of the respondents/applicants as a separate class from the technical staff who have already been covered by the IRAS. Thus, it appears that the denial of the IRAS to the applicants was discriminatory.

10. The petitioners have not disputed that a large number of technical staff - the Tribunal noted that about 2000 of them, cannot be covered by the DRDO pattern at all. Thus, the application of DRDO pattern to the remaining technical staff of the ICMR could not have been resorted to, in any case. In view of the aforesaid discussion, we find no infirmity in the direction issued by the Tribunal that the respondents/applicants should be covered by the IRAS.

11. Learned counsel for the petitioner also contended that the direction of the Tribunal to cover the respondents by the IRAS from 01.01.1996 was not justified. Once again, we find no merit in this submission for the reason that the scientific staff had been covered by the IRAS much earlier i.e. with effect from 01.01.1986, and the respondents/applicants had preferred the writ petition in the year 1997. This was, in fact, after the governing body of the ICMR had itself sent a proposal for adoption of the IRAS for all its staff in May 1986, and that decision was reiterated even subsequently.

12. For the aforesaid reasons, we find no merit in the petition, which is, accordingly, dismissed. In the circumstances of the case, the petitioners are directed to ensure that the order of the CAT is complied within eight weeks from today. The petitioner ICMR, the Union of India through its appropriate departments, i.e. DOPT, Ministry of Finance and Ministry of Health & Family Welfare are directed that the orders of the Tribunal are complied within the said period.