
(2017) 04 RAJ CK 0213
In the Rajasthan High Court
Case No : 2742 of 2012

Madhu Misra

APPELLANT

Vs

Union Of India & ors.

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

Constitution of India, Article 14, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Dissolution of a Distr

Citation : (2017) 04 RAJ CK 0213

Hon'ble Judges : Pradeep Nandrajog, Pushpendra Singh Bhati

Bench : DIVISION BENCH

Advocate : S.K. Malik, Vipul Singhvi

Judgement

1. Granting partial relief to the petitioners, the reasons with the direction given by the Central Administrative Tribunal, Jodhpur Bench (hereinafter referred to as "Tribunal"), are as under: "6. During the course of hearing, the learned advocate of the applicants submitted that all the four cases before this Tribunal are fully covered by the decision of the Central Administrative Tribunal, Bangalore Bench dated 24.2.2011 passed in OA 469/2008 in the case of Shri E.Unnikrishnan and 5 others Vs. Union of India and others. The learned counsel of the applicant had brought the said judgment of Bangalore Bench on record. Relying upon the above mentioned decision, the applicants" lawyer claimed that on the basis of the decision, the applicants are entitled for grant of benefit under 2nd ACP in the pay scale of Rs.10000-325-15200 as and when they completed 24 years of regular service or with effect from 9.8.1999 whichever is later with all consequential benefits. On the other hand Shri Kuldip Mathur, learned counsel for the respondents submitted that although he agrees that the applicants are entitled to get the salary at par with the salary which is being paid to their juniors on grant of benefit under 2nd ACP in the pay scale of Rs.10000-325-15200 but the applicants will be entitled to receive the said pay

scale by way of stepping up and not by way of grant of benefits under the 2nd ACP which had already been granted to them before 17.2.2005, the cut off date prescribed under policy of the Government of India dated 22.3.2007 (Annexure.A1). We are of the opinion that the arguments advanced by the learned counsel for the respondent is correct as we are of the view that if the applicants are allowed to get the benefit under 2nd ACP in the scale of Rs.10000-15200 from the date on which they were granted benefit under 2nd ACP in the scale of pay of Rs.8000- 13500 this will amount to grant of 2nd ACP to the applicants twice and so we are of the view that the applicants are only entitled for stepping up of their salary in the pay scale of RS.10000-325-15200 from the date on which their juniors were granted benefit under the ACP Scheme in the scale of Rs.10000-325- 15200."

2. The grievance of the petitioners is that the Tribunal, without distinguishing the decision dated February 24, 2011 passed by a coordinate Bench of the Tribunal sitting at Bangalore, could not have taken a contrary view because judicial discipline demanded so. More so, for the reason the decision of the Bangalore Bench of the Tribunal was upheld by the High Court of Karnataka in Writ Petitions No.37676-680/2011, against which petition seeking special leave to appeal filed before the Supreme Court was dismissed.

3. Relevant facts to be noted are that the petitioners were claiming second financial upgradation under the Assured Career Progression Scheme (hereinafter referred to as "ACP Scheme") on completing 24 years of service with effect from August 9, 1999 or whichever date is later when they completed 24 years service and desired to be upgraded in the scale ?10000-325-15500.

4. The admitted facts are that Junior Engineers of Military Engineering Service (MES) were earlier called Superintendent (B&R) Grade-I & II, Superintendents (E&M) Grade-I & II, Surveyors Assistants (Quantity Surveying & Contacts) Grade-I & II. Their service conditions such as qualifications, pay scale etc. were the same as was that of Junior Engineers working under CPWD, Ministry of Urban Affairs & Employment, Union of India. Redesignated, the posts were called JE (Civil), JE (E&M) and JE (QS&C).

5. The Central Government notified the ACP Scheme vide OM dated August 9, 1999. Vide an office memorandum dated January 23, 2002 it was extended to MES. Junior Engineers (Civil), (E&M) and (QS&C) were treated equally. The respondents treated all Junior Engineers at par for the purpose of granting the benefit under the ACP Scheme.

6. The Recruitment Rules pertaining to the Junior Engineers of (B&R) and (E&M) were amended vide SRO dated June 2, 2004 published in the Gazette of India on July 10, 2004 and came into effect with effect from the same date. Similar amendment was also made to the Recruitment Rules pertaining to Surveyors of Works Cadre by SRO 18 dated February 17, 2005 published in the Gazette of India on March 12, 2005. It came into force on the same date. After the

amendment of the Recruitment Rules, vide office memorandum dated February 21, 2006, respondents granted second ACP with effect from the date of the Notification dated July 10, 2004 to the diploma holder AEs who have been promoted after July 9, 1991, subject to the fulfilling of the necessary eligibility criteria including 24 years regular service. Further, it was decided that the second ACP be granted to the eligible diploma/degree holder Assistant Engineers/Junior Engineers who have completed 24 years of eligible service with effect from August 9, 1999 instead of July 10, 2004. This decision was taken vide office memorandum dated March 14, 2007. Accordingly, the respondents superseded Appendix-A to the office memorandum dated January 23, 2002 by granting second ACP to the Junior Engineers in the scale of ?10000-325-15200 on completion of 24 years of service as on August 9, 1999, or whichever was later, and also superseded Appendix-B/1 to the letter dated November 1, 2004 and allowed second ACP benefit to the Junior Engineers (QS&C) with effect from February 17, 2005. As a result, except the writ petitioners who were eligible and were granted the second ACP benefit prior to February 17, 2005, all others were granted the second ACP benefit in the pay scale of Rs.10000-325-15200. The petitioners were granted ACP benefit in the pay scale of Rs.8000-225-13500.

7. It is the case of the petitioners that Junior Engineers belonging to B&R, E&M and QS&C cadre were historically treated by the Pay Commission as well as by the Government of India for the purpose of grant of regular pay scales, time bound higher pay scale and other service conditions at par. The Recruitment Rules for both B&R and Surveyor Cadre to the post of Executive Engineer have been amended as per SRO 95 and 18. As per SRO 95, Diploma Engineers of B&R and E&M were not entitled to be promoted to the grade of Executive Engineer in the pay scale of Rs.10000-15200 prior to July 10, 2004. Hence, vide office memorandum dated March 14, 2007 the educational qualifications were relaxed for the purpose of ACP benefit and it was decided to grant second ACP with effect from August 9, 1999 to all those who have completed 24 years service. Accordingly, the grievance is that the respondents cannot deny the second ACP upgradation pay of Rs.10000-15200 to those Junior Engineers who have completed 24 years of regular service on or after August 9, 1999 and before February 17, 2005. Such discriminatory action on the part of the respondents favouring the Junior Engineer (B&R) and (E&M) of one side and depriving JE (QS&C) of the Surveyor cadre on the similar benefit is hit by Article 14 & 16 of the Constitution of India. It is the further case of the petitioners that Junior Engineers who have not completed 24 years of regular service prior to February 17, 2005 but have completed 24 years regular service thereafter have been ordered to be paid the second beneficial upgradation in the pay scale of Rs.10000-15200. The petitioners relied upon Point No.55 of the clarificatory O.M. dated July 18, 2001 which reads as follows:

SI. No. Point of Doubt Clarification

A cadre has been restructured with proper sanction but the Recruitment Rules for

the restructured grades are still to be framed. Whether the individuals be granted financial upgradation in the existing hierarchical order in the revised hierarchical order introduced subsequently? Financial upgradation under ACP Scheme is to be allowed under the hierarchy existing as on 9.8.1999 or at the time one becomes eligible, whichever is later. Since a new hierarchy has come into being, financial upgradations may be allowed only in the restructured hierarchy, If model Recruitment Rules exists for such restructured grades, then Screening Committee may review cases on the basis of such model Rules. Otherwise, ACPs may be allowed after finalisation of Recruitment Rules but the benefit may be allowed from the due date.

8. Noting aforesaid facts, a Bench of the Central Administrative Tribunal at Bangalore, noted the judgment of the Supreme Court reported as 2006(12) SCC (Scale) 440 Commissioner & Secretary, Government of Haryana vs. Ramswaroop Ganda. Para 14 & 15 of the said decision was noted by the Bench of the Tribunal, which read as under: "14. By the impugned judgment, the High Court has held that the respondents are entitled to get the ACP scales that are applicable to Group "C" post, but the Rules, as such, do not provide for that. The Rules say that if there are already two upgradations, then the concerned employees are not entitled to the benefit of ACP scales. Nevertheless, if ACP scales are higher, they are certainly entitled to the ACP scales at the starting point. The date of giving such ACP scales is the date of entry into the service and though these respondents are entitled to get ACP scales and get fixation of the ACP scales as applicable to Group -D employees and in case there are anomalies to the effect that they receive lesser pay than their juniors working in the same cadre/post, such senior Government servants are entitled to step up of their salary to get it on par with the salary which is being received by their juniors.

15. In the result, all the appeals are partly allowed. The appellants shall revise the pay scales of the Respondents. In case of any anomaly, the employee who had fixation of ACP Scales, are in receipt of lesser salary than their juniors in the same cadre/post, than their salary, shall be stepped up accordingly."

9. The conclusion arrived at by the Bench of the Tribunal was that keeping in view the law declared by the Supreme Court in similar matters, the denial by the respondents was arbitrary and discriminatory. The respondents were directed to revise the pay scale of the applicants and grant second ACP benefits to the applicants in the pay scale of Rs.10000-15200 as and when they completed 24 years of service or with effect from the date when the ACP claim was brought into force whichever is later with all consequential benefits.

10. We were informed that qua the applicants before the Bangalore Bench of the Central Administrative Tribunal, the respondents have implemented the decision.

11. Apart from concurring with the view taken by the Bangalore Bench of the Central Administrative Tribunal, which has been upheld by a Division Bench of the High Court of Karnataka at Bangalore, against which decision petition seeking

special leave to appeal has been dismissed by the Supreme Court, we give the additional reason why the instant petitioners be also not entitled to the same relief. The reason is that for similarly situated persons the respondents have granted the benefit as claimed by the writ petitioners herein.

12. The view taken by the Jodhpur Bench of the Central Administrative Tribunal in para 6 of its decision that if the relief is granted it would amount to a second beneficial upgradation is patent erroneous. The petitioners are not claiming double benefit of the ACP Scheme. They are only claiming to be placed in the pay scale of Rs.10000-15000 and not Rs.8000-13500.

13. The petitions are accordingly allowed. The respondents are directed to revise the pay scale of the petitioners and grant second ACP benefits to the petitioners in the pay scale of Rs.10000- 15200 from the date when they completed 24 years of service or with effect from August 9, 1999, whichever date is later. Consequential benefits shall ensue.

14. There shall be no order as to costs in the writ petitions.