

(2002) 07 CAL CK 0016
In the Calcutta High Court

Case No : MAT No's. 2016 and 2017 of 2001 and CAN No. 5949 and 5950 of 2001

Mining and Allied Machinery Corporation Ltd.

APPELLANT

Vs

Chandranath Chatterjee (3891) and Others and Abani Mohan Roy (3899) and Others

RESPONDENT

Date of Decision : 26-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 4 CHN 676

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Jayanta Kumar Biswas, J

Bench : Division Bench

Advocate : Lakshmi Kumar Gupta, Saptangsu Basu and Asit Bhattacharjee, Swapan Garai and Ashim Kumar Ganguly, for Union of India, for the Appellant; K.K. Moitra and Samir Ghosh, for the Respondent

Judgement

Ashok Kumar Mathur, C.J.—Both these appeals arise against the order passed by a learned single Judge dated 11th May, 2001 whereby he disposed of two writ petitions, that is, W.P. No. 1077(W) of 1999 and W. P. No. 11986(W) of 1999. Both the writ petitions were clubbed up together as it involved common question of law, therefore both these appeals are also disposed of by common order.

2. The only question which was pressed before the learned Judge was that the writ petitioners should be given the same benefit in terms of the decision of this Court given in the case of F. M. A. 346 of 1997. The question was, whether the petitioners are entitled to Industrial Dearness Allowance (I. D. A. for short) or Central Dearness Allowance (C.D. A. for short). The learned single Judge held that the respondent-Company in their return has not given any reason that why the benefit of the aforesaid judgment be not given to the writ-petitioners. It was only stated by the management in their affidavit-in-opposition that the petitioners are not similarly circumstanced therefore they are not entitled to the benefit as was given in the Division Bench judgment. The learned single Judge on this basis came to the conclusion that there is no reason why similar benefit be

not given to the petitioners. He however observed that since the company sick and issue of revival is pending before the B. I. F. R. and any financial implication of giving financial burden of the Company may be approved or sanctioned from the B. I. F. R. Accordingly both the writ petitions were disposed of.

3. Aggrieved against this, the present appeal has been filed. We have heard learned Counsel for the parties at length and perused the record.

4. All these writ petitioners in both the writ petitions initially were appointed as workmen in the said Company and thereafter they were promoted to the position of Supervisory staff in the said Company and they are still working in the said Company. The appellant, that is, Mining & Allied Machinery Corporation, (hereinafter referred to as M. A. M. C. Ltd.) is a Public Sector Enterprise of Govt. of India. A Tripartite Settlement on 19th May, 1970 came to be settled with the workmen's representatives, the Union of India and Govt. of West Bengal. Therein, it was decided that the workmen of the said Company would be entitled to get Industrial Dearness Allowance pattern and related scales. At present petitioners are getting the Industrial Dearness Allowance pattern of scales of pay from 1963 to 1975, It is alleged that there is a convention in the Company to give Central D. A. in the scales of pay to the promotees from workmen to Supervisory Officers. It is alleged that all the petitioners have been promoted as Supervisor. Therefore, they are entitled to get C. D. A. It is alleged that the Company has been paying C. D. A. scale of pay to non-unionised Supervisory Officers of, the Company after 31st December, 1988, but the writ petitioners who were promoted as Supervisory Officers from 30th October, 1992 to 31st October, 1992 with effect from 1st October, 1992, but they were not getting C. D. A. pay scale and they are continued to be paid in the I. D. A. pattern of scale. In 1984 the Department of Public Enterprise issued an office Memo, calling upon all the managements of Public Sector Undertakings of Central Government pay scale and dearness allowance pattern to give proposals for switch over to Industrial Dearness Allowance pattern of pay. This switch over of the pattern by the unilateral decision of the Public Enterprises Bureau came to be challenged by the persons who are enjoying the Central D. A. pattern by filing writ petitions in the various High Courts. A High Powered Committee was constituted and the High Powered Committee gave their recommendation on 2nd November, 1988 and submitted the same to the Central Government on 24th November, 1988. But the Central Government did not implement that report and no action was taken. Various writ petitions were filed and ultimately the matter came to be decided by the Apex Court in its judgment in the case of Jute Corporation of India Officers' Association Vs. Jute Corporation of India Ltd. and Another, The Apex Court gave following directions at page 439:

"7. *****

We, however, direct as follows:

(i) The scales of pay and dearness allowance as recommended in the report will be extended to those employees who have been appointed with specific terms for grant of Central Dearness Allowance. This will be equally applicable to the employees who by rules laid down by the Public Sector Enterprises are being paid Central Dearness Allowance.

(ii) The employees appointed on or after January 1, 1989, will be governed by such pay scales and allowance as may be decided by the Government in its discretion. Those appointed earlier with IDA pattern will continue to be governed in accordance with the terms and conditions of their appointment.

(iii) The pay revision for those employees in respect of whom the recommendations are hereby being directed to be implemented hereafter, will take place only as and when similar changes are effected for the Central Government employees. These employees will, however, continue to enjoy the option to switch over to the IDA pattern of the scales of pay etc. on a voluntary basis.

(iv) The various recommendations made in the report will be implemented with effect from the dates as follows. These dates are broadly in conformity with those specified in the report:

Item To be implemented w.e.f.

1. Revised pay scales and revised DA formula January 1, 1986 (Para 16.1)

2. First instalment of interim relief June 1, 1983 (Para 16. 3)

3. Second instalment of interim relief March 1, 1985 (Para 16.3)

4.

CCA as per revised slabs (Para 11.6 of Chapter 11 of the Report)

January 1, 1989 (From January 1, 1986 to December 31, 1988 CCA will be paid at the existing rate at notional pay in the revised pay scales (Para 11. 7 of the Report)

5.

House Rent Allowance Percentage rates as per BPE's OM No. 1(3)83-BPE(WC), dated July 1, 1983 subject to overall ceiling of Rs. 1250, 1000, 680, 340 & 310 for Delhi/ Bombay, A, B1 and B2, C and unclassified cities respectively

Ceiling on payment of HRA without production of rent receipt to be revised from December 1, 1988. The existing(HRA) structure to be reviewed by BPE and revised norms and rates fixed from prospective date (Ref. Para 11.15)

6.

Medical facilities in terms of Para 11.21 of the Report

From a prospective date to be decided by the management of the PSEs.

7. Leave Travel Concession do

8.

Other allowance and perquisites as per recommendations contained in Chapters 12 and 13 of the Report

The quantum of benefits to be decided by the management of PSEs should be given effect to prospectively in terms of Para III. 7 Part III of the Report.

(v) The arrears arising on account of pay, DA and other allowances etc. would be adjustable against ad hoc payments made from time to time."

5. So far as we are concerned, Clause (ii) of the above direction is relevant. According to Clause (ii) the employees appointed on or after January 1, 1989, will be governed by such pay scales and allowances as may be decided by the Government in its discretion. But so far as the employees appointed prior to 1.1.89 is concerned Their Lordships directed that those appointed earlier with IDA pattern will continue to be governed in accordance with the terms and conditions of their appointment.

6. In the present case the incumbents were appointed prior to 1.1.89 with the IDA pattern. Therefore as per the direction given by the Apex Court the persons who were appointed earlier with the IDA pattern will continue to be governed in accordance with the same terms and conditions of appointment. Thus in view of the categorical direction given by the Apex Court all these writ petitioners who have been appointed much prior to 1.1.89 they will continue to be governed by the I. D. A. pattern and they will not be entitled to CDA pattern. But it appears that the learned single Judge has not properly appreciated the controversy and applied the decision of a Division Bench judgment of this court which is also not applicable to the facts of the present case.

7. On 22nd April, 1991 the Govt. of India issued a Memo. bearing No. 2(48)/90 DPE(WG) with specific direction that in accordance with the directive of the Supreme Court all employees appointed on or after 1.1.89 are deemed to have been appointed by IDA pattern on related pay scales.

8. On 9th May, 1991 another directive was issued by the Central Govt. being Memo No. 6/41/90 PEW stipulating that appointment made on promotion after 1.1.1989 will be deemed to be governed by IDA and related pay scales. The controversy in the Division Bench judgment was that the Officers of the M. A. M.C. who were in CDA pattern prior to 1.1.89 were switched over to I. D. A. pattern. Therefore the Division Bench took the view that those who were already appointed in CDA scale of pattern on their promotion their pattern cannot be changed from CDA to IDA as it will adversely affect them. In that context the question arose that whether the appointment includes promotion and it will depend upon the Service Rules, but vice versa is not true. But so far as the

petitioners are concerned, they were all appointed in IDA pattern much prior to 1.1.89 and on their promotion they continued to draw the IDA scale. Therefore the case of these petitioners are just contrary to that of the case which was there before the Division Bench. In the Division Bench, the incumbents were drawing CDA prior to 1.1.89 and on their promotion the CDA pattern was changed to their disadvantage and they were given the IDA pattern. Therefore, the Division Bench of this court held that this cannot be done. But the petitioners in the case in hand were appointed prior to 1.1.89 in IDA pattern and they were promoted, they continue to be governed in IDA pattern. Therefore the decision cannot be of any assistance to the petitioners of this case. The learned single Judge has proceeded to apply the case of the Division Bench that all those persons who are similarly situated cannot be discriminated on their promotion to the higher grade and they should also be given the same CDA pattern. In fact the attention of the learned single Judge was not drawn to the very categorical direction given by the Apex Court which is quoted above and which clearly stipulates that persons who were appointed earlier i.e. prior to 1.1.89 with IDA pattern will continue to be governed in accordance with the terms and conditions of their appointment. All the petitioners were appointed in IDA pattern prior to 1.1.89 and when they were promoted to the higher pay scale they cannot, as a matter of right, claim CDA pattern. In fact the idea was that the CDA pattern should be phased out and all the incumbents should be given IDA pattern scales of pay. Therefore, in view of the decision of the Apex Court the view taken by the learned single Judge relying on the decision of the Division Bench case, is not correct as we have already explained above that the Division Bench was not called upon to decide the controversy involved in the present batch of writ petitions, but it was the other way round i.e. the persons who are drawing pay scales in CDA pattern that was sought to be revoked in pursuance of the decision of the Apex Court by issuing necessary circulars. That was found by Division Bench unsustainable, but that is not the case. Here, the incumbents were appointed in IDA pattern of scale prior to 1.1.89 and on their promotion they will be continued to be governed by the IDA pattern. Therefore, the petitioners are not similarly situated as that of the persons covered by the Division Bench judgment. In this view of the matter we are of the opinion that the learned single Judge has gone wrong and therefore, we set aside the order of the learned single Judge and allow this appeal being MAT 2016/ 2001 [arising out of W. P. No. 1077 (W) of 1999] and dismiss the writ petition. No order as to costs.

9. On the basis of the same reasoning the appeal being MAT 2017/2001 [arising out of W. P. No. 11986 (W) of 1999] is set aside and the writ petition is dismissed. No order as to costs.

Jayanta Kumar Mitra, J.

10. I agree.