(2016) 03 KAR CK 0265

In the Karnataka High Court

Case No : W.P. Nos. 39163-39165/2013 (S-CAT)

P. Mohan Krishna and Others APPELLANT

Vs

Surveyor General of India and Others RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Citation : (2016) 03 KAR CK 0265

Hon'ble Judges : Mohan M. Shantana Goudar and K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : Jayakumar S. Patil, Sr. Counsel for Pruthvi Wodeyar, Advocate, for the Appellant; B. Pramod, C.G.C., for the Respondent

Final Decision : Allowed

Judgement

K.N. Phaneendra, J.—1. The Survey of India vide its Circular Order No. 435 (Administrative) dated the 1st August, 1950 framed "Rules relating to recruitment and promotion of Topographical and Map Reproduction personnel in Division II of Group ''C'' Service of the Survey of India". The rules relating to Group-C Division I personnel are in Circular Order No. 436 (Administrative) dated the 1st August, 1950. According to these rules, the Division I contains-

(i) Surveyors (Ordinary Grade)

(ii) Geodetic Computers and Scientific Assistants

(iii) Survey Assistants

(iv) Draftsmen and Engravers

(v) Technical Assistants (Reproduction)

(vi) Stores Assistants

(vii) Observatory Assistants

There are two types of trainees, who are styled as TTT-A for Group-C Division-I

Establishment and TTT-B for Group-C Division-II Establishment. After amendment to the Rules on 26.6.1989, the minimum educational qualification for recruitment of TTT-A is B.Sc., with Mathematics, whereas the minimum educational qualification for recruitment of TTT-B is SSLC Intermediate with Science (10+2) or equivalent with Maths as one of the subjects.

2. The petitioners joined as Topo Trainee Type-A (hereinafter referred to as ''TTT-A'' for short), a Group-C Division-I Post on different dates. The petitioner No. 1 joined on 13.7.2005, in the pay scale of Rs. 3050-75-4900/- whereas the petitioner Nos. 2 & 3 joined on 1.9.1997 in the then pay scale of Rs. 1150-25-1500/-, against a regular post of Surveyor. They were selected after objective and descriptive written examination and they are duly qualified with the requirement of selection for the post of Surveyor. However, they had to undergo two years rigorous training. During that training period, their designation is styled as ''Topo Trainee Type-A''.

3. The pay scales of TTT-A Group-C Division-I Establishment and TTT-B Group-C Division-II Establishment have been revised with reference to the respective cadres which can be easily understood by means of the following tabular column:

4. It is evident from the records that after successful training of TTT-As, the petitioners would work as Surveyors, whereas the persons who successfully complete TTT-B training, would work as subordinate staff and they will occupy the place of Plane Table Grade IV, afterwards GDE-III, GDE-II and etc., whose job is only to assist the Surveyors in the section or while discharging their duties in the field. Admittedly, the petitioners who are B.Sc., graduates with Mathematics having minimum qualification were selected for TTT-A Group-C Division-I Establishment trainee. The 5th Central Pay Commission in its recommendations, recommended that the said recommendations have to be implemented from 1.1.1996. Therefore, the 5th CPC is applicable from 1.1.1996 so far as the petitioners are concerned.

5. It is the case of the petitioners that the minimum educational qualification for recruitment to TTT-B (Topo & Repo) is SSSC (10+2) or equivalent with Maths as one of the subject or Intermediate with Science as one of the subjects. Therefore, comparatively the posts of TTT-A Group-C Div. I and TTT-B Group-C Div. II Posts are all together different and the persons who have undergone TTT-A training successfully, will become Surveyors and the persons who successfully complete the training of TTT-B Group-C Div. II, will be designated as the Subordinate Staff. As per 5th Central Pay Commission, the pay scale attached to the entry level of Surveyors is Rs. 5,500/- - 8,000/-, and the pay scale attached to the Subordinate Staff is Rs. 3,200/- to Rs. 4,900/-. The post of Surveyors can only be filled up by direct recruitment method to the extent of 66 2/3 % and remaining 33 1/3 % is by way of promotion from TTT-B Group-C Div. II Sub-ordinate staff category. Without taking into the educational qualification at the entry level for the Surveyor and the Sub-ordinate staff, the pay scales have been fixed for both TTT-A Group-C Division-I and TTT-B Group-C Division-II at the pay

scale of Rs. 3,050 - 4,590/-, during training period of two years. They will get their regular pay after completion of the successful training and from the date of their assuming charge as surveyors.

6. Being aggrieved by this disparity, claiming that they are entitled for Rs. 5,000/- to Rs. 8,000/- pay scale during the training period also, considering their educational qualification at the entry level i.e., B.Sc., with Mathematics, the original applicants made representations to the department. After receipt of the representations by the applicants (petitioners), the department has referred the matter to the ad hoc anomaly committee in order to settle the anomalies arose in the implementation of the 5th Central Pay Commission recommendations. The committee held a meeting on 11.07.2005 under the Chairmanship of Sri Sanjeev Nayak, General Secretary Administration. The said ad hoc anomaly committee has meticulously discussed in detail regarding the distinction between the TTT-A Group-C Division-I and also TTT-B Group-C Division-II, by giving appropriate reasons. The committee has recommended vide its recommendation dated 19.07.2006 as per Annexure-A11 to fix the pay scale at Rs. 5,000-8,000/- during the training period so far as TTT-A Trainees are concerned till the classification is made, instead of giving normal replacement pay scale of Rs. 3,050-4,590/-. Though the department has considered the said anomaly report, it strongly concluded that the case of the petitioners cannot be treated as an anomaly within the accepted definition of "anomaly" and accordingly, they regret their inability to agree with the instant proposal of the ad hoc anomaly committee. Having come to such conclusion, the department has rejected the representation of the petitioners vide its order dated 5.10.2006 as per Annexure-A12.

7. The main ground of the department to reject the application was that, till the classification according to the cadre of the petitioners is made and till they assume charge in the post of Surveyors, they are not entitled for the regular salary. However, it is made clear that during the training period, they are only entitled to the pay scale of Rs. 3,050-4590/- and that they are also entitled for Dearness Allowance, increment and other benefits to the said scale of pay. It is also the contention of the department that TTT-A is not a regular cadre, but it is only a temporary establishment.

8. Being aggrieved by the order passed by the department dated 5.10.2006, the petitioners have approached the Central Administrative Tribunal in OA No. 47/2008. The Central Administrative Tribunal vide its order dated 12.2.2010, considering the relevant rules and facts of the case in detail, quashed the communication dated 5.10.2006 and in-turn directed the respondents therein to consider the recommendations in the last paragraph of the communication dated 10.12.2008 objectively and as per the findings given by the Central Administrative Tribunal in Paragraphs - 14 and 15, and pass necessary orders within a period of two months from the date of receipt of the copy of the said order.

9. As against such directions from the Central Administrative Tribunal, the

respondents have not filed any Writ Petition against the order of the Central Administrative Tribunal. Therefore, the findings given by the Central Administrative Tribunal accepting the report of the ad hoc anomaly committee and the consideration of the disparity between two groups of TTT-A and TTT-B have become final. On the other hand, the department had in fact sought for extension of time to implement the orders of the Central Administrative Tribunal and vide its order dated 30.4.2010, the time was extended by the Central Administrative Tribunal for implementing the order of CAT.

10. The department after considering the directions issued by the Central Administrative Tribunal in OA No. 47/2008 dated 12.2.2010 has again passed an order rejecting the prayer of the petitioners on the ground that there is no functional justification for grant of such relief to the petitioners. The said order/ Office Memorandum dated 21.4.2010 is at Annexure-A24. Being aggrieved by the said order, the petitioners have again approached the Central Administrative Tribunal in OA No. 132/2011. The Central Administrative Tribunal has not accepted the ground taken up by the department, that there was no functional justification to consider the prayer of the petitioners. However, the Central Administrative Tribunal has dismissed the prayer of the applicants and concluded mainly on two grounds of its own invention i.e., to say:

(1) The yardstick extended to TTT-Bs. cannot be extended to TTT-A at the entry level, as it will be conferment of arbitrary benefit to them.

(2) That the applicants being mere trainees at the time of appointment at the entry level, they cannot claim regular appointment and also cannot claim an equivalent benefit as given to the TTT-B employees.

We have discussed the above said points in detail. In our earlier discussions, we have observed that these two grounds are already answered by the Central Administrative Tribunal in its earlier order. There is no reason for the Central Administrative Tribunal once again to consider the said point and rejecting the prayer of the applicants. Therefore, we are of the opinion that the order of the Central Administrative Tribunal in OA No. 132/2011 is also not proper and correct.

11. Having heard the arguments of the learned counsels and also after perusal of the entire materials on record, we find that the ad hoc anomaly committee in their meeting, discussed in detail and came to the conclusion that the 5th Central Pay Commission has only given normal replacement pay scale of Rs. 3,050 to Rs. 4,590/- to TTT-A (Group-C Division-I Post) without taking into account, the educational qualification of TTT-A''s at the entry level and the nature of training. Hence, considering all the facts and circumstances of the case, the ad hoc anomaly committee had rightly recommended for the pay scale of Rs. 5,000-8,000/- to be given during the Training period to TTT-As. In view of the above said report of the ad hoc anomaly committee, the department should not have rejected the prayer of the petitioners unilaterally vide its order dated 5.10.2006 on the ground that there is no anomaly at all within the accepted

definition of ''Anomaly''. It is also to be noted that in the second order dated 21.4.2010 passed by the Government after the Central Administrative Tribunal''s direction at paragraph 8(xiii), it is observed thus-

"8(xiii) Further, it will give rise to another anomaly in those cases where TTT-A (if allowed pay scale of Rs. 5,000-8,000) are not considered fit for classification in Division I (i.e., Surveyor) and they are offered classification in Division-II who are placed in the pay scale of Rs. 4,500-7000. Because in such a situation, TTT-A (Rs. 5,000-8,000) would by enjoying higher scale before final classification in Division II (Rs. 4500-7000). This will hit Rule 2(D) classification of the Survey of India Circular Order No. 436 (Admn.) regarding "Rules relating to Recruitment and Promotion of personnel in Division-I of the Group-C Service."

From the above, it is clear that the Government itself has accepted that in future it may create an anomaly after the classification. But the Central Administrative Tribunal in its first order has categorically held that it is an anomaly. It was also rightly held by Central Administrative Tribunal at the first instance that the Government has rightly referred to the committee and as the committee has given report correctly, the same ought to have been accepted by the department. But on the other hand, the Department has taken up a different view while passing the second order dated 21.4.2010 that there was no functional justification for grant of such remedy. In our opinion, the said opinion of the department is also not correct and proper.

12. We have carefully perused the order of the Central Administrative Tribunal passed earlier dated 12.02.2010. The point raised by the department is that the 5th Central Pay Commission has only revised the scales but not fixed any pay so far as the training period is concerned. It is worth to note here that the Central Administrative Tribunal in its earlier order dated 12.2.2010 has made an observation at paragraph 14 that the salary i.e., proposed to be paid to the TTT-A and TTT-B during the training period is not categorised as training allowance or stipend but it is termed as the salary and the same is evidenced from the appointment order issued to the applicants. One of such order was also quoted by the Central Administrative Tribunal, issued to the 5th applicant therein which reads as follows:

"You have been selected for appointment in this department as a TTT-A in the temporary unfixed Group-C Establishment on pay scale of Rs. 1,150/- per month in the scale pay of Rs. 1,150-25-1500/-, you will be entitled to draw DA and other allowances at the rate as admissible from time to time."

It clearly discloses that the appointment order itself shows that they were paid with salary during the training period but not the full salary which is equivalent to the regular cadre or post for which they are appointed. The Central Administrative Tribunal in the said order also turned down the submission made that the TTT-A is not a Group-C Division-I establishment.

13. Further, it is also observed at paragraph 15 of the order of Central

Administrative Tribunal that the Government has rightly referred the matter to the ad hoc anomaly committee as the Government felt that the anomaly falls within the definition contained in the second clause i.e., item (b) at paragraph 43.15 of the 5th Central Pay Commission. The Central Administrative Tribunal has also observed that all the points/grounds raised by the Government have been turned down by the Central Administrative Tribunal at the first instance. Therefore, the question of not granting the pay scale attached to the surveyor even during the course of training on the ground that there is no anomaly and that there is no functional justification is not proper. Those grounds have already been meticulously considered and turned down by the Central Administrative Tribunal at the first instance. The said order passed in OA No. 47/2008 has logically reached the finality on the said point and the same is binding on the department. Consequently, the department should have strictly adhered to the directions issued by the Central Administrative Tribunal.

14. In fact, the Central Administrative Tribunal has accepted the ad hoc anomaly committee''s report as reasonable, fair and justifiable. Further, the department has accepted to implement the same and sought for time to implement the same. Strangely, instead of implementing the order of CAT in O.A. 47/08, it passed a second order on untenable grounds that, there was no functional justification.

15. It is worth to note here the question of functional justification, which cannot be applied unilaterally to all the TTT-As and TTT-Bs. It is seen from the records that during the course of training period, so far as it relates to TTT-B trainees, they are paid with the pay scale of Rs. 3,050-4,590/- with all DA and increments. After they become subordinate staff, i.e., after successful training, they would get the pay scale of Rs. 3,200-75-4900. Therefore, during the training period only Rs. 150/- less is paid as against the pay they are going to receive after completion of their training period. If the same analogy is applied, the TTT-A trainees after completion of the training period successfully, would get the pay scale of Rs. 5,500-175-8,000/-. Therefore, proportionate deduction ought to have been made during the training period in comparison with the TTT-B trainees. Therefore, ad hoc anomaly committee has rightly suggested less Rs. 500/- to the scale of pay they are entitled to after the training. Therefore, it was recommended, during the training period, they are entitled for Rs. 5,000-150-8,000/-. In this line also, if the contention of the department is accepted, there is a total disparity in the pay scale at the time of training between TTT-As and TTT-Bs as noted above.

16. It is quite acceptable that during the course of the training, as admitted and submitted by the learned counsel for the department that, the training of TTT-As is altogether different. It is very rigorous, very educative and also stringent as compared to the training that would be given to TTT-Bs. Therefore, in that respect also there cannot be any parity of pay scale with that of TTT-Bs. Therefore, it can be safely said that there is no justification in not giving such

pay scales to the petitioners. Considering the above said facts and circumstances of the case, the ad hoc anomaly committee has rightly suggested the said pay scale. The Government ought to have accepted the same when they have not questioned the said finding of the Central Administrative Tribunal in OA No. 47/2008.

17. Coming to the impugned orders, though the Central Administrative Tribunal has not accepted the ground raised by the department that there was no functional justification for acceding the request of the petitioners, Central Administrative Tribunal has erred in holding that they are mere trainees and therefore, they are not entitled for the salary attached to the cadre. It is needless to say that when it is not pleaded by any party, such contention has not been taken by the department, a new corollary has been invented by the Central Administrative Tribunal which should not have been done as it is nobody''s case.

18. It is worth to note here that the petitioners'' appointment is to the cadre of Surveyor. There is no cadre of TTT-As. and TTT-Bs. as such as per the Survey of India Circular No. 435 (Adm.) dated 1.8.1950 and subsequent circulars and orders. The surveyors are categorised as Group-C Surveyors of Survey of India. When there is no cadre by name TTT-A or TTT-B Groups, it should be taken that the said training period is only prelude for the cadre attached to Surveyor. As it is rightly observed by the Central Administrative Tribunal earlier that there is no mention in the order issued in favour of the petitioners appointing them as against the post of surveyor with two years of training and during that period of training, they would be called as TTT-As. Merely because a separate nomenclature has been given during the training period, when there is no pay scale specifically attached to the TTT-A or TTT-B, it is the pay scale i.e., attached to the substantive post has to be taken into consideration. If that is the legal implication, the report of the ad hoc anomaly committee rightly recommended that proportionate pay scale has to be given to the TTT-As, as compared to the TTT-Bs. Therefore, we once again fortify and confirm that the recommendation made by the ad hoc anomaly committee to pay the pay scale of Rs. 5,000 - 8000/- during the period of training is just and reasonable. The department has to implement the same in its letter and spirit. Therefore, we do not find any strong reason to sustain the order of the Central Administrative Tribunal which is impugned in these petitions. Hence, we proceed to pass the following:

ORDER

The Writ Petitions are allowed. The order passed by the Central Administrative Tribunal in OA No. 132/2011 dated 24.9.2012 is hereby set aside. Consequently, we direct the respondents to strictly implement the report of the ad hoc anomaly committee dated 19.7.2005 as per Annexure-A11 within four months from the date of receipt of the copy of this order.