

(2019) 02 CAT CK 0136
In the Central Administrative Tribunal
Case No : Original Application No. 253 Of 2014

Sh. M.S. Chauhan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0136

Hon'ble Judges : V. Ajay Kumar, J; Aradhana Johri, J

Bench : Division Bench

Advocate : Shrigopal Aggarwal, Avinash Kaur

Final Decision : Dismissed

Judgement

V. Ajay Kumar, J

1. Applicants, 20 in number and working as Senior Statistical Officers and Assistant Directors, as the case may be, in the 2nd respondent-National Sample Survey Organisation (in short 'NSSO'), filed the OA seeking the following reliefs:-

"(i) That Ministry of Statistics and Programme Implementation in OM No.C-18013/II/2002-Admn-III(Vol.II) dated 08.10.2013 may be quashed (Annexure A-1).

(ii) The respondent No.1 may be directed to allow revised rate of special pay of Rs.150/- per month all Asstt. Supdt. who have been promoted on or after 01.01.1986 in refixation of their pay in the revised pay scale of Rs.1600-2660.

(iii) The respondent No.1 may also be directed to pay DA on the special pay of Rs.150/- to all Asstt. Supdt. from their date of promotion (on or after 1.1.1986) as it was to be treated as pay for all purposes for the period up to 31.12.1995.

(iv) Any other relief which may be appropriate in the circumstances of this case.

(v) Cost of the case may also be kindly awarded".

2. Heard Shri Shrigopal Aggarwal, the learned counsel for the applicants and

Mrs. Avinash Kaur, the learned counsel for the respondents and perused the pleadings on record.

3. O.A. No. 827/2002 filed by one Shri B. Anil Kumar and 3 others, all working as Assistant Superintendents in the NSSO was allowed by this Tribunal on 22.01.2003 (Annexure A-7) and the relevant paragraphs of the same read as under:-

"1. This application is filled by the applicants seeking for a declaration, that the action of the Ist respondent Government of India in issuing the proceedings dated 04.07.1989 and the consequential proceedings dated 8.8.1989 and 27.8.1989 and refusing to refer the item viz., the entitlement of the applicants for special pay after 1.1.1986 to the Joint Consultative Machinery/Board of Arbitration as arbitrary and illegal and consequently declare that the petitioners are entitled to the special pay of Rs. 75/- as per the Award of the Board of Arbitration, dated 5.1.1989 in C.A. Ref. No. 3 of 1985, after 1.1.1986 and the same be given effect to for fixation of the pay scale in the IVth and Vth Pay Commission and tender all consequential benefits arising there from.

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9. It is the main contention of the applicants in the present O.A. that the Special Pay of Rs. 75/- granted by the award of the Board of Arbitration in C.A. Ref. No. 3/1985 dated 5.1.1989 was given to the Assistant Superintendents of National Sample Survey Organisation (Field Operation Division), Government of India at the existing scale of Rs. 470-750/-shall count as Pay for all purposes as per rules, as clarified in the award itself. While refixing their pay as per the report of the IV Pay Commission, the said Special Pay of Rs. 75/- p.m. should have been added to their basic pay which they were drawing in the existing pay scale of Rs. 470-750/-and the next corresponding pay scale of the IV Pay Commission.

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17. For the above reasons, we are satisfied that the said anomaly led to the incorrect fixation of Pay at various pay revisions effected on the basis of the IV Pay Commission recommendations as they were granted lesser pay and lesser increments than their entitlement. As rightly pointed out by the learned counsel for the applicants, the IV Pay Commission has no occasion to take into account the Special Pay of Rs. 75/-per month granted to the Assistant Superintendents of the National Sample Survey Organisation as the said recommendation was made by the Board of Arbitration only on 5.1.1989 in the award passed which has been accepted by the Central Government only on 4.7.1989. Thus, it is clear that the revised pay scale of Rs. 1600-2660 has been granted to the said cadre officers on the basis of the recommendations of the IV Pay Commission as the corresponding equivalent pay to the then existing scale of pay of Rs. 470-750/-without taking into consideration the Special Pay of Rs. 75/- p.m. which has been subsequently granted in the award of the Board of Arbitration. Thus, a clear case is made out by the applicants for rectification of the said anomaly and

corresponding refixation of their pay scales and in the revised scales of pay recommended by the IV and V Pay Commissions.

18. Having regard to the above factual position, we find that the letter dated 4.7.1989 issued by the first respondent and the consequential proceedings dated 8.8.1989 and 27.8.1989 refusing to refer the above said anomaly to the Joint Consultative Machinery/Board of Arbitration is arbitrary and illegal. We find that the applicants are entitled for refixation of their pay on the basis of IV Pay Commission recommendations by taking into consideration the Special Pay of Rs. 75/- granted under the award of Board of Arbitration dated 5.1.1989 which is to be merged with the Basic pay for the purpose of fixing the corresponding revised pay scales.

19. In the result, we allow the O.A declaring that the applicants are entitled to the refixation of their pay by merging the Special Pay of Rs. 75/- with their basic Pay in the then existing pay scale of Rs. 470-750/- on the basis of the recommendations of the IV Pay Commission with effect from 1.1.1986 and for subsequent corresponding revised pay scales on the basis of the recommendation of the V Pay Commission. We accordingly direct the respondents to take steps to get the pay of the applicants re-fixed accordingly, and the applicants shall be paid all the arrears of salary as a result of refixation of their pay, if eligible.

We further declare that the action of the first respondent in issuing the proceedings dated 4.7.1989 and the consequential proceedings dated 8.8.1989 and 27.8.1989 are arbitrary and illegal.

We however, direct the respondents to complete the entire exercise within a period of 3 (three) months from the date of receipt of a copy of this order".

4. The W.P. (C) No.7596/2003 filed against the aforesaid order of this Tribunal was disposed of by the Hon'ble High Court of Andhra Pradesh at Hyderabad vide its judgment dated 12.08.2003 (Annexure A-3) as under:-

"Admittedly, all the applicants were promoted after 1.1.1986. Therefore they did not enjoy the special pay of Rs.75/- prior to 1.1.1986 as they were not promoted and the persons in the post Assistant Superintendents in the scale of Rs.470-750 had the benefit of Special Pay of Rs.75/- which will be merged in revised pay scales for purpose of re-fixation. Hence, the question of pay fixation of pay in revised pay scale of IV Pay Commission in respect of petitioners will not arise for obvious reason that they were promoted after 01.01.1986. Therefore, what is required to be considered is when they get scale of Rs.1600-2660. Whether they are entitled for special pay in view of the fact that benefits of special pay granted by virtue of the Award passed by the Board of Arbitration, all the persons who were promoted after 1.1.1986 shall continue to have the benefit of Rs.75 as special pay apart from the revised scale of Rs.1600-2660. The said special pay of Rs.75/- will count for all purposes as per Rules. However, the said special pay will be taken into consideration for fixation in the revised pay scale of V Pay

Commission. The order of the Tribunal on this extent stands modified.

Under those circumstances, we hold that the petitioner holding the post of Assistant Superintendents after 1.1.1986 by virtue of promotion are entitled to have the benefit of Rs.75/- special pay in the revised pay scale of Rs.1600-2660. But, however, in the further revised pay scale of V Pay Commission their pay has to be appropriately fixed taking into consideration the special pay of Rs.75/- and its merger in V Pay Commission scales.

With the directions indicated above, the Writ Petition is disposed of. No costs".

6. Civil Appeal No.8273/2004 filed by the Union of India against the orders of this Tribunal, as modified by the orders of the High Court of Andhra Pradesh, was dismissed by the Hon'ble Supreme Court of India on 11.05.2010 (Annexure A-9).

7. Annexures A-10(a) to A-10(b) reveal that the official respondents have complied with the orders of this Tribunal in B. Anil Kumar's case as modified by the Hon'ble High Court of Andhra Pradesh and as upheld by the Hon'ble Supreme Court not only to the parties to the said lis, i.e., original applicants as well as all the intervenors and also to all the identically placed persons.

8. When the respondents in furtherance of their action to implement the aforesaid orders issued Annexure A-1 Office Memorandum dated 08.10.2013, the applicants filed the OA challenging the said OM and sought for quashing of the same, as observed in para 1 above.

9. Shri Shrigopal Aggarwal, the learned counsel for the applicants submits that the impugned Office Memorandum, insofar as implementation of the orders in B. Anil Kumar is correct, but insofar as implementing the Award in C.A. Ref No.3/1985 dated 05.01.1989 is incorrect and hence liable to be quashed.

10. On the other hand, Mrs. Avinash Kaur, the learned counsel appearing for the respondents in addition to the technical objections, such as, maintainability of the OA on the ground of territorial jurisdiction of the Bench of this Tribunal etc., submits that the implementation of the Award was already considered in B. Anil Kumar (supra) up to the Hon'ble Apex Court and hence the contention of the applicants that the impugned Office Memorandum is against the said Award is unsustainable. The learned counsel further submits that the orders of this Tribunal in B. Anil Kumar, as modified by the Hon'ble High Court were implemented not only to the parties therein but also to the similarly placed persons including the applicants. The contempt petitions filed alleging violation of the orders in B. Anil Kumar were dismissed and that the I.A. No.5/2012 filed by one Shri Shymal Kumar Gan was also disposed of by the Hon'ble Apex Court on 15.04.2014. The applicants having benefited from the orders in B. Anil Kumar, though not party to the said litigation, cannot contend that the impugned action is, in any manner against the orders in B. Anil Kumar.

11. We find force in the submission made on behalf of the respondents. The applicants have not denied that the benefit of B. Anil Kumar was granted to all

the similarly placed persons of the respondents-NSSO. The implementation of the Award in CA Ref.No.3/1985 dated 05.01.1989 was elaborately considered in B. Anil Kumar and finally attained finality. Hence, the contentions of the applicants are unsustainable and accordingly rejected.

12. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA, which is accordingly dismissed.

13. Pending MAs, if any, stand disposed of. No costs.