
(2013) 07 DEL CK 0056

In the Delhi High Court

Case No : Writ Petition (C) 6504 of 2011

S.N. Sharma and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : (2014) 1 SCT 37

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

**Advocate : Jyoti Singh, Mr. R.N. Singh and Ms. Sahila Lamba, for the Appellant;
Ali Hasan Naqvi and Mr. M.P. Singh, for the Respondent**

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—Order dated February 18, 2011 dismissing O.A. No. 247/2010 filed by the petitioners as also the order dated March 15, 2011 dismissing R.A. No. 61/2011 are under challenge in the instant writ petition. The brief facts are that pursuant to the recommendations of the 3rd Central Pay Commission, the Ministry of Science and Technology, Government of India issued a circular dated May 28, 1986 whereunder it introduced Flexible Complementing scheme in the scientific organizations. This scheme provided for in situ promotion for scientists of certain categories in scientific organizations within the prescribed period from lower grade to the higher grade subject to the procedure prescribed. The circular provided that the scheme would be applicable to the scientific departments where the induction of scientists is in the scale of Rs. 650-1200.

2. It may be mentioned here that the aforesaid circular dated May 28, 1986 was amended by an Office Memorandum dated November 09, 1998, pursuant to the recommendations of the 5th Central Pay Commission which suggested number of recommendations modifying the existing scheme issued in terms of circular dated May 28, 2006. The following were the decisions taken vide Office Memorandum dated November 09, 1998:

(a) The criteria for identifying institutions/organizations as scientific and technological institutions as well as for defining scientific activities and services, scientists and engineers and the scientific posts shall be as prescribed in Annexure 1 to this Office Memorandum. The FCS shall not be applicable where the criteria specified vide this Office Memorandum are not fully met.

(b) A revised assessment procedure as prescribed in Annexure II to this Office Memorandum shall henceforth be followed by all Scientific Ministries/ Departments for considering advancement under FCS.

(c) The recommendations of the Pay Commission that the existing disparities in the operation of Flexible Complementing Scheme in various scientific and technical departments in the matter of designation of post, the number of pay scales and the residency period should be removed and there should be uniformity in this regard has been accepted. Accordingly, all the posts covered under the Flexible Complementing Scheme shall carry the following uniform scales of pay, designations and the minimum residency linked to performance:-

3. The petitioners herein were appointed as Research Assistant in the respondent No. 2 organization i.e. Central Soil and Materials Research Station under the respondent No. 1 Ministry of Water Resources on January 01, 1990 and March 16, 1988 respectively. They were promoted to the post of Assistant Research Officer on February 04, 1997 and January 24, 1995.

4. The petitioners along with some other similarly placed officers filed an Original Application before the Tribunal in the year 2002 inter alia praying for implementation of the Flexible Complementing Scheme in their favour and the same was registered as O.A. No. 1964/2002. The same was disposed of by the Tribunal vide its order dated November 11, 2003 directing the respondent No. 1 to take a decision on the benefits sought by them and pass a speaking order. Pursuant to certain supplementary representations, the respondents passed an order dated June 09, 2004 whereby the request of the petitioners for grant of Flexible Complementing Scheme in their favour was not agreed to.

5. The order dated June 09, 2004 was challenged before the Tribunal in O.A. No. 93/2005. On completion of pleadings the said original application was also decided by the Tribunal vide its order dated March 15, 2007 whereby the Tribunal on a limited request on behalf of the applicants in the Original Application (including the petitioners herein), that a limited direction be given to the respondents to refer the matter to the Ministry of Finance and DOP&T who would consider the applicability of Flexible Complementing Scheme to the applicants in the Original Application, necessary directions were issued in that regard in the original application referred above. Pursuant to the directions in Original Application No. 93/2005 dated March 15, 2007, the respondent No. 1 made a reference to the DOP&T/Department of Science and Technology. The said reference was answered by the Department of Science and Technology wherein it was observed that Ministry of Finance, Department of Expenditure has not

agreed to its implementation. Accordingly, the petitioners herein were conveyed the decision by the respondent No. 1 vide its office memorandum dated January 22, 2008. A further representation was made by the petitioners to the respondents which was came to be disposed of vide letter dated September 08, 2009 wherein the respondents have taken the following stand:-

The DST's O.M. dated 28.5.1986 does not provide for extension of FCS to Group "B" post of Research Assistant and Assistant Research Officer in CSMRS for whom the nodal deptt. for such matter is DOPT. Further, the Guidelines issued by DOPT, vide OM No. 2/41/97-PIC dated 9.11.1998 do not provide for extension of the benefits of FCS to Group "B" posts in any department. The said OM clearly stipulates that:-

The relevant provisions of Department of Science and Technology Office Memorandum NO. A.42014/2/86-Admn. I (A) dated the 28th May 1986 stand amended to the extent the provisions of the Office Memorandum are at variance with the provisions of the said Office Memorandum.

Moreover, both the representations were not party to the OA No. 1032/1996 which was filed by some officers of CGWB in the Hyderabad Bench of the Central Administrative Tribunal.

6. It is this letter dated September 08, 2009 which was challenged by the petitioners before the Tribunal. The Tribunal dismissed the original application by holding that the decision of the respondents was a conscious decision and being a policy matter the Tribunal ought not to interfere with the same.

7. We have heard the learned counsel for the parties. Ms. Jyoti Singh, learned senior counsel for the respondents would submit that the Tribunal has erred in not appreciating the fact that the petitioners have met the requirement of grant of Flexible Complementing Scheme inasmuch as they have the prescribed scale of pay of Rs. 650-1200 and their appointment at the level of Research Assistant is by way of a direct recruitment. According to her pursuant to the recommendations of the 5th Central Pay Commission the post of Research Assistant has been upgraded to Rs. 6500-10500 which is equivalent to the pre-revised pay scale of Rs. 650-1200, with effect from January 01, 1996 and as such the condition of induction being in the grade of Rs. 650-1200 is met.

8. She also relied upon the judgment of the High Court of Andhra Pradesh of Hyderabad in WP(C) No. 22349/1999 and by referring to paras 2 and 9 of the said judgment would contend that the Flexible Complementing Scheme is applicable to the persons in the scale of Rs. 650-1200. On the other hand, Mr. Ali Hasan Naqvi, learned counsel for the respondents would submit that the Flexible Complementing Scheme in terms of circular of May 28, 1986 and the subsequent one dated November 09, 1998 would not entitle the petitioners the benefits of Flexible Complementing Scheme inasmuch as the petitioners were initially appointed in the scale of Rs. 550-900 and thereafter promoted to the post of Assistant Research Officer. The revised pay scale i.e. Rs. 6500-10500 was

granted to them with effect from January 01, 1996 for all purposes their appointment which is in the nature of induction was in the scale of Rs. 550-900 and as such the Flexible Complementing Scheme is not applicable at all in their favour. He would further urge that in terms of the Office Memorandum dated November 09, 1998 the Flexible Complementing Scheme was modified which envisages commencement of the scheme only from the grade of Rs. 8000-13500 and above and as on January 01, 1996 the pay of the petitioners being Rs. 6500-10500 and for that matter as on November 09, 1998 they continue to draw the same scale the benefit of Flexible Complementing Scheme could not be given to them. In terms of the recommendation of the 5th Central Pay Commission in para 51.22, the Flexible Complementing Scheme will not apply to personnel falling in the existing Group "B" Group "C" and Group "D" categories from whom the provision of the ACP will apply.

9. On consideration of the rival submissions it is clear that the Flexible Complementing Scheme in terms of circular dated May 28, 1986 is applicable to the posts beginning with the grade of Rs. 650-1200 and that too by way of induction. The petitioners were appointed in the scale of Rs. 550-900 (pre-revised). They got the revised scale of Rs. 650-1200 i.e. Rs. 6500-10500 with effect from January 01, 1996 by way of an upgradation pursuant to the recommendations of the 5th Central Pay Commission. Initial recruitment being in the scale of Rs. 550-900, it cannot be said that their induction/recruitment was in the scale of Rs. 650-1200. Prior to January 01, 1996 the petitioners did not get the benefit of the scale of Rs. 650-1200. This shows that Flexible Complementing Scheme is not applicable in their case. The subsequent Office Memorandum dated November 09, 1998 confines the grant of modified Flexible Complementing Scheme to the posts starting from Rs. 8000-13500 which scale they were not drawing as on November 09, 1998. Being a holder of group "B" post they got the benefit of Assured Career Progression Scheme. Even on that account the Office Memorandum dated November 09, 1998 would also not make the scheme applicable in their favour. We have also seen the recommendations of the 5th Central Pay Commission in paragraph 51.22 wherein it is clearly mentioned that Flexible Complementing Scheme will not apply to the personnel falling the existing group "B", "C" and "D" categories for whom the provision of the ACP will apply. In fact we note that the High Court of Karnataka in decision dated August 20, 2003 in Civil Writ Petition No. 3740-44/2003 has held that group "B" scientific posts are not entitled to the benefits of Flexible Complementing Scheme.

10. It appears from the perusal of para 5 of the impugned order the Tribunal has noted the submission of the counsel for the respondents that the Flexible Complementing Scheme is made applicable to Scientist B in PB3 (Rs. 15600-39100 and grade pay of Rs. 5400/-.) If that being the position, the Assistant Research Officer and for that matter the Research Assistant being in the lower grades would not be entitled to the benefit of Flexible Complementing Scheme.

11. The Tribunal while deciding the original application in paras 7, 8 and 9 has held as under:-

7. The crux of the matter is that the grant of FCS depends on the recruitment rules of a particular post. The critical requirements were being in the scale of pay of (pre-revised) Rs. 650-1200, which should also be the entry grade for the post. The Applicants met the requirement of the scale of pay, but did not meet the requirement of their posts being in the entry grade. The posts are filled up 100 per cent by promotion. In this respect their case was distinguishable from the case of the Assistant Chemists and Assistant Hydrogeologists of the CGWB. It is for this reason that the judgment of the Lucknow Bench of this Tribunal and the judgment of the Honourable Andhra Pradesh High Court would not apply in the case of the Applicants. The expert committee also did not favour the grant of FCS to the Applicants and instead suggested Merit-Based promotion, which was not acceptable to the Ministry of Finance. The V and VI CPCs also did not recommend grant of FCS to the ROs and AROs of the CSMRS. Taking all these aspects into account, the Tribunal cannot interfere in this matter as it pertains to the domain of policy, which is the exclusive preserve of the executive. In *Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others*, , it has been held that:

It is neither legal nor proper for the High Courts or the Administrative Tribunal to issue directions or advisory sermons to the executive in respect of sphere which is exclusively the domain of the executive under the Constitution.

In *Tata Cellular Vs. Union of India*, it was held that:

113. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

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(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

8 We are also not in agreement with the Applicants that once the representation has been rejected on the ground that the matter is pending before the Supreme Court and once the Supreme Court has given favourable decision to the Applicants, the Respondents are bound to accept the pleas of the Applicants and cannot go beyond this contention in their order. *Mohinder Singh Gill* (supra) was invoked. Reference has been made to the order dated 09.06.2004, in which, inter alia, it has been stated:

(iv) The order passed by CAT, Lucknow Bench in O.A. 673/94 has stayed by Supreme Court and is still under their adjudication. The Karnataka High Court in CWP 3740-44/2003 dated 20.8.2003 has also set aside all the decisions of CAT in respect of granting FCS to Group "B" officers stating that the OM dated 28.5.86 cannot be relied upon for claiming any relief unless the Rules governing the recruitment in the organization are amended, incorporating the provision of the policy contained in the said memorandum."

The argument is totally misplaced. The order dated 0.06.2004 is a detailed order and the rejection of the Applicants' pleas is based on the consistent stand of the Respondents that the post of ARO is not the entry grade and the post of RO does not have the prescribed scale of Rs. 650-1200 (pre-revised). That the order of the Lucknow Bench had been stayed was a matter of fact. That judgment, in any case, was not relevant because it concerns the scientists of CGWB. Moreover, the order dated 09.06.2004 is not under challenge before us. It was also not necessary to amend the recruitment rules for ROs and AROs in the limited context of FCS, because FCS was not applicable to them.

9. Considering the above analysis we are of the considered opinion that the Respondents have taken a conscious decision not to grant FCS to the Applicants and being a policy matter, the Tribunal ought not to interfere with this. The OA is dismissed. No costs.

12. That apart, the benefit which the petitioners are seeking would be pursuant to the initial circular issued by the Government of India on May 28, 1986. Even if, the learned counsel for the petitioners confines the prayer for the benefit of Flexible Complementing Scheme with effect from January 01, 1996 the same is also highly belated or in other words it would relate back to almost 17 years, which we feel is too long a period for this Court to overlook, the petitioners would not be entitled to the relief as prayed for even on this ground. Further we cannot be oblivious of the fact that grant of a benefit of a scheme is purely in the domain of the Executive. The Court should be very circumspect in issuing directions for granting benefits which otherwise the petitioners are not entitled to, more so, when successive pay commissions did consider the issue of Flexible Complementing Scheme from time to time. In this regard reference is made to the judgment of the Supreme Court reported as Ramesh Singh Vs. Union of India (UOI) and Others, ., wherein in para 6 the Supreme Court has held as under:-

In view of what has been stated in Sukhdev Singh Gill's case (supra) and the fact that the 4th and 5th Central Pay Commissions considered the relevant aspects, we are of the view that the prayers as made cannot be accepted; more particularly, when there is no challenge to the recommendations of the 4th and 5th Central Pay Commissions. It needs no emphasis that even if such a challenge is made, the scope for interference is extremely limited because the Court does not normally substitute its views for those of expert bodies like Pay Commission unless some glaring infirmities are established.

13. We agree with the ultimate conclusion of the Tribunal and dismiss the present writ petition. No costs.