

(2017) 01 DEL CK 0412

In the Delhi High Court

Case No : 9025 of 2015

SUNITA RAJU & ORS

APPELLANT

Vs

UNION OF INDIA & ORS

RESPONDENT

Date of Decision : 27-01-2017

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) 01 DEL CK 0412

Hon'ble Judges : Sanjiv Khanna, Chander Shekhar

Bench : DIVISION BENCH

Advocate : A. K. Trivedi, Bharathi Raju, Rajeev Sharma, Radha Krishna, T. Rajat Krishna, Pratishth Kaushal

Judgement

1. Subject matter of challenge in the aforementioned writ petitions is the common order dated 07.07.2015 of the Principal Bench of the Central Administrative Tribunal whereby the O.A. Nos. 3520/2010 and 674/2011 filed by the petitioners before us have been dismissed.

2. The petitioners in the said O.As. had impugned different orders by which their pays were re-fixed and consequently reduced. The argument that the pay was rightly stepped up to the level of their juniors was rejected.

3. The petitioners in WP(C) No.9025/2015 were originally appointed as Production Assistants on contract and were regularised in December, 1992 and granted scale Rs.1400-2600.

4. Pursuant to the investigation conducted by the CBI, services of fourteen direct recruit Production Assistants appointed in 1984 were terminated on account of malpractices like favouritism, nepotism etc. in their selection.

5. The terminated Production Assistants led by Anoop Sharma had filed OA

No.1441/1988, which was dismissed vide order dated 5.11.1993. The order of termination became final.

6. Subsequently, these terminated Production Assistants were reengaged vide order dated 06.01.1994 on the direction issued by the Ministry of Information and Broadcasting. The appointments were treated as fresh appointments from the date of issue of the order. They were not given benefit of previous service for seniority.

7. Subsequently in 1999, the past services of the reengaged terminated employees were taken into account for the purpose of grant of increments resulting in a higher salary than the salary of the petitioners who were senior to them.

8. The petitioners had a grievance that they were senior to those appointed vide order dated 06.01.1994, and yet they were drawing a lower pay scale. The petitioners filed the O.A. No. 1191/2001 which was disposed of vide order dated 07.05.2002, recording as under:- "12. It is further surprising that though the appointment letter shows that they were appointed afresh on sympathetic grounds and it was made clear at the time of appointment on 6.1.1994 that their past services will not be taken into consideration for the purpose of seniority still on the basis of their past services subsequent to the appointment those applicants were given increments and their pay was fixed higher than the petitioners in the O.A.

13. Further still surprising the respondents had audacity to admit that even out of the present 34 applicants, 11 of them had been appointed prior to 6.1.1994 and can be said to be senior to those appointees who were appointed on sympathetic consideration on 6.1.1994. So by fixing those candidates at higher salary even these 11 applicants have been affected and their salary is fixed at a lower stage than those appointees who had not come through proper selection and who had come only on sympathetic consideration.

14. Thus this administrative action on the part of the respondents fixing the salary of those appointees at a higher stage definitely discriminate the petitioners as equals have been treated in an unequal manner. Thus there is clear violation of fundamental rights as enshrined in Articles 14 and 16 of the Constitution of India so we have no hesitation to allow the OA. Accordingly, we allow the O.A and direct the respondents to re-examine the case of the applicants and those applicants who had been appointed prior to 6.1.1994 their pay should be fixed at par, with their juniors and whatever criteria had been adopted to give increments those applicants that may be applied to all the applicants. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs."

Thus, the Tribunal felt that the action of the respondents in fixing the salary of those appointed on 6.1.1994 at a stage higher was discriminatory. There was a clear violation of fundamental rights as enshrined in Articles 14 and 16 of the

Constitution of India. The OA was allowed, albeit with the direction that salary those appointed prior to 6.1.1994 should be fixed at par with their juniors and whatever criteria had been adopted to give increments to these juniors would be applied in the case of the petitioners.

9. The respondents challenged the aforesaid directions vide Civil Writ Petition No. 5271/2003 which was dismissed on 24.09.2003. The respondent/UOI filed SLP (C) No. 4079/2004 which was also dismissed on 15.10.2004. In other words, the aforestated directions are final and binding.

10. Consistent and for implementing the directions, the official respondents re-fixed the pay of the petitioners vide order dated 20.8.2004 and 17.8.2006 at par with their juniors.

11. The petitioners in WP(C) No.9031/2015 were appointed as Production Assistant on regular basis in the year 1992. These petitioners being senior to the terminated employees re-engaged vide order dated 6th January, 1994, relying on the decision in OA No.1191/2001 dated 7th May, 2002, had filed OA No.1653/2007, which was partly allowed by the Tribunal vide order dated 18th January, 2008 with the direction to the respondents to examine their case in the light of the earlier decision. By order dated 2nd June, 2008 the respondents implemented this decision by stepping up their pay at par with the juniors. Consequently Doordarshan Kendra, New Delhi vide order dated 20th June, 2008 re-fixed the pay of the said petitioners and also accorded them difference of pay and allowance towards arrears since the year 2008.

12. Some other similarly situated persons namely Rakesh Mathur and others filed OA No. 1636/2008 seeking benefit of stepping up of pay at par with their juniors, which was allowed by the Tribunal vide order dated 13.9.2010. W.P.(c) No. 2070/2010 filed before the High Court of Delhi was dismissed vide decision dated 25.03.2010. Rakesh Mathur and others then filed a contempt petition for implementation in which notice was issued. The respondents instead of implementing and granting benefit of stepping up of pay to Rakesh Mathur and others, decided and recalled their earlier orders granting stepping up of pay to the petitioners, Their pay was fixed at the same stage as was prior to passing of the order 20.8.2004.

13. As per the respondents, they had taken and sought advance from the DOP&T, who had opined that stepping up of pay in the case petitioners in WP(C) No.9025/2015 would amount to giving them benefit of the past contractual i.e. the period before their regularisation in 1992.

14. Even if, we were to assume that the contention of the DOP&T is correct, the respondents are prohibited and cannot go behind the order dated 07.05.2002 passed by the Tribunal in O. A. No. 1191/2001. The directions given therein have attained finality and would operate as resjudicata between the said petitioners and respondents. The respondents had challenged the order dated 07.05.2002 in the writ petition and then Special Leave Petition, but without success. Similar

benefits must be accorded to the petitioners in WP(C)No.9031/2015. Once it is accepted that the said petitioners were senior to the terminated Production Assistants, who were re-engaged vide order dated 1st June, 1994, benefit of the decision dated 7th May, 2002 passed in OA No.1191/2001, which was affirmed when the WP(C)No.527/2003 and the SLP(C)No.4079/ 2004 were dismissed, should be accorded and given. We also note that the order dated 18th January, 2008 passed in the OA No.1653/2007 by the Tribunal has also attained finality and has not been challenged. The respondents had earlier themselves granted the said benefit. Withdrawal of the said benefit would be improper and contrary to law.

15. In view of the above discussion, we hold that the Tribunal was not justified in rejecting and dismissing the OAs vide the impugned order dated 07.08.2015. The impugned order is accordingly set aside. The O.A. will be treated as allowed with the direction that the respondents would abide by their earlier orders dated 20.8.2004, 17.8.2006 and 2.6.2008 and compliance order dated 20.6.2008. It is pointed out that recoveries were not been made, but the petitioners were denied and not paid enhanced salary. The respondents would now pay to the petitioners' arrears of enhanced salary within the period of two months from the date of receipt of a copy of this order. In case of non payment within the said time, the respondents will pay interest in the rate of 8% p.a. from the date of this order till payment is made. No order as to costs.