

(2022) 07 KL CK 0247

In the High Court Of Kerala

Case No : Original Petition (CAT) NO. 133 Of 2020

Union Of India

APPELLANT

Vs

M.S.Unnikrishnan Nair

RESPONDENT

Date of Decision : 27-07-2022

Acts Referred:

Citation : (2022) 07 KL CK 0247

Hon'ble Judges : A.K.Jayasankaran Nambiar, J; Mohammed Nias C.P., J

Bench : Division Bench

Advocate : A.Dinesh Rao, Vinu T.V., Martin G.Thottan

Final Decision : Dismissed

Judgement

Mohammed Nias.C.P. J

1. The Union of India and the officials of the Southern Railway have filed the original petition being aggrieved by the order of the Central Administrative Tribunal (CAT), Ernakulam, which allowed the Original application filed by the respondents/applicants directing to provide the upgraded pay scales with effect from 1.1.1996 on actual basis instead of 19.2.2003 fixed as per the decision of the Government dated 7.3.2003.

2. The brief facts leading to the original petition are as follows:-

Pursuant to the recommendations of the Fifth Central Pay Commission, the account staff in the Railways were granted normal replacement scales. The Government later on, revised the scales with effect from 1.9.1996 notionally but granted the benefits only from 19.2.2003. This was challenged before the Tribunal wherein relying on the orders earlier passed by the CAT, Ernakulam, the judgment of this Court as well as that of the Patna High Court both of which were not interfered with by Supreme Court of India, allowed the application. The applicants have contended that they were appointed in the various grades in the accounts department of the Southern Railway, whose grades were upgraded by

Annexure A1 dated 7.3.2003 with a rider that the revised pay scale shall be notional from 1.1.1996 and actual payment will be made only on 19.2.2003. Aggrieved by the denial of the higher pay scale from 1.1.1996 itself on par with the other categories including in the same department to get higher scale, the original application was filed. They also relied on the judgment of the Patna High Court, Annexure A6 apart from Annexure A2 order of the Tribunal and Annexure A3 of this Court, the SLP filed against which was rejected as per Annexure A4 order of the Supreme Court.

3. The respondents contended that there are contradictory orders passed pointing out that the principal Bench had rejected a similar claim and though the Supreme Court confirmed the orders of this Court and that of the Patna High Court, the question of law was left open and therefore, the applicants cannot take advantage of those judgments. The Tribunal, however did not accept the contentions of the appellant in the original petition and allowed the original application, by the order impugned holding that similarly situated persons were granted the benefits by the Tribunal the same was upheld by this Court and Supreme Court and there was no reason to treat the applicants who are similarly situated differently and accordingly allowed the application.

4. Heard Sri.Vinu, the learned Central Government counsel for the appellants and Sri.Martin G.Thottam, the learned counsel for the respondents and perused the records

5. The learned counsel for the petitioners argued that the applicants contentions were solely based on the earlier orders of the Tribunal, the High Court and the Supreme Court and since the question of law was left open, the applicants cannot rely on the same. He argues that no claim can be based on negative equality. We are not in a position to accept the said argument. We do not find that the orders mentioned above in any way to be illegal for the principle of negative equality to step in. It is his further argument that the Government has the power to fix a cut off date while granting scales of pay or incentives and relies on the judgment of the Supreme Court in *Union of India v. Arun Jyoti Kundu and ors* [MANU/SC/7866/2007] to contend that the very right to their benefit arose because of the decision of the Government to extend to them a particular benefit not specified in the Fifth Pay Commission Report and therefore, it is not possible to postulate that the decision of the Government must be given retrospective effect and if no such effect is given, the tribunal or the court can interfere and direct the giving of such retrospective effect, which was in a case pertaining to the employees of the Railways in the Typist cadre. The learned counsel for the respondents contends that the issue as far as they are concerned is squarely covered in their favour and no interference is called for. The Tribunal had considered all the above contentions and rightly granted the declaration sought for.

6. At the outset we note that the employees working in the very same department of the Railways had claimed very same benefits and the same was

granted by the Tribunal. Though the Railways challenged the same before this court, the same was dismissed and SLP filed against the same was rejected by Annexure A7 dated 25.2.2013.

7. These judgments specifically held that there is no legal or valid grounds for interference accordingly it was dismissed. It is not in dispute that the applicants in the present case are similarly situated as that of the employees who had approached the Tribunal, which resulted in Annexure A2 judgment and confirmed by the High Court and the Supreme Court as mentioned above. We accordingly feel that the Tribunal cannot be faulted for following the said decisions and not taking a different stand with respect to the applicants herein. Since admittedly, the case of the applicants in the earlier cases are not different from that of the present application, there is no reason not to afford similar treatment to the applicants, herein as law does not allow the employer to apply rules differently in relation to persons who are similarly situated. We also note that the same view has been taken by the Supreme Court in the decisions in *Sadasivan Nair v. Cochin University of Science and Technology* [2021 (6) KLT 746 (SC)]

In such circumstances, we do not think that any interference is called for in the present case. The OP (CAT) fails and is accordingly dismissed.