

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**OA No. 945 of 2016
MA No. 95 of 2018**

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Bimal Kumar Bisi, aged about 55 years, S/o Late M.P.Bisi, President, Rourkela Steel Plant Executive Association, At Qr. No.A/50, Sector-5, Rourkela. Now working as DGM, SAIL, representing to the affected persons/Executives as Employee under SAIL, Rourkela Steel Plant, Rourkela, Dist. Sundargarh.
2. Purna Chandra Pradhan, aged about 61 years, S/o Sri Krutibas Pradhan, Qr.No.MIG-II, 278 Chhend Colony, Kalinga Vihar, Rourkela, Dist.-Sundargarh.
3. Prasanna Kumar Dash, aged about 61 years, S/o Late Hanuman Dash, Plot No. NN-11, Civil Township, Rourkela, Dist.-Sundargarh.

.....Applicants.

VERSUS

1. Union of India, represented through its Secretary, Department of Steel, Govt. of India, Udyoga Bhawan, New Delhi.
2. Chairman, Steel Authority of India Limited, Ispat Bhawan, Lodhi Road, New Delhi.
3. Director (Personnel), Steel Authority of India Limited, Ispat Bhawan, Lodhi Road, New Delhi.
4. Chief Executive Officer, Rourkela Steel Plant, At/PO-Rourkela-II, Dist. Sundargarh.

.....Respondents.

For the applicant : Mr.A.K.Tripathy, counsel
Ms.U.R.Padhi, counsel

For the respondents: Mr.S.Das, counsel

Heard & reserved on : 14.1.2020 Order on : 13.02.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicants in the present OA have sought for the following reliefs :

“To allow this original application and notice to show cause to the Respondents why the applicant’s case shall not be considered for Basic Pay fixation on the basis of 9% MGB i.e. (30%-21%) with effect from the date of promotion or 17% MGB of Basic Pay with effect from 01.01.2012.

AND

There by to pass appropriate order directing the Respondent No. 1 to 3 to consider the representation made by the applicant pertaining to legal entitlement towards revised pay fixation which has not yet disbursed the applicant No.2 and 3 along with all other similarly situated beneficiaries of the RSPEA Rourkela keeping in view of anomaly circular vide Annexure A/1 dt. 11.1.2016.

AND

Thereby to pass appropriate order directing the Respondent No.2 and 3 to take initiation for disbursement of differential amount at the rate of 9% MGB along with all arrears from date of promotion onwards or 17% MGB of Basic Pay w.e.f. 01.01.2012 onwards keeping in view of office order vide Annexure A/2.

AND

Thereby to pass appropriate order may be deemed just and proper in the facts and circumstances of the case and allow this OA with cost."

2. The applicant no. 1 is the President of the Association for the Executives of Rourkela Steel Plant (in short RSP) and he represents the common grievance of 381 executive employees of RSP including the applicant nos. 2 and 3, who were promoted to the executive cadre from non-executive cadre between 1.1.2007 to 31.12.2011 arising out of the manner in which their pay fixation was done on promotion. It is averred in the OA that they were allowed the Minimum Guaranteed Benefit (in short MGB) of 21% on promotion as against the MGB of 30% allowed to other executives as per the order dated 21.11.2009 (Annexure-A/2 of the OA). It is stated that the action of the respondents is discriminatory and violative of the Article 14, 16 and 21 of the Constitution of India. In this regard, the clarification of the Respondent no. 2 in his letters dated 29.12.2015 and 11.01.2016 (copy at Annexure-A/1 series) have been contested by the applicants.

3. Counter filed by the respondents resisted the OA stating the following:-

5. That while claiming re-fixation of basic pay with 9% more MGB retrospectively from the date of promotion of the Junior Officers, the applicants refer to terms to the pay revision of the Executive of the Respondent Company made effective from 01.01.2007 as per the Office Memorandum issued by the Committee of the Public Enterprises (Annexure-A/4) which is also applicable to employees of other CPSEs and implementation of the same vide Office Order dated 21.11.2009 issued by SAIL(Annexure-A/2) in pursuance of the 'Presidential Directive' received from the Ministry of Steel, Govt. of India. The Junior Officers of 2008/2010 batch, who are not executive as on 01.01.2007 have absolutely no locus standi to claim benefit in terms of the above directives of the Central Govt and on that score maintain an application as laid. Further, the applicant can not be permitted to seek a relief so as to change the scope and ambit of the 'Presidential Directive' and claim coverage under the same.

X X X X X X X X X

9. That apart from the above, it is pertinent to bring to the kind notice of the Hon'ble Tribunal that in consideration of the representations made by the Steel Executives Federations of India(SEFI) as at Annexure-6 series, the grievance of the Junior Officers that they receive less salary, i.e. basic pay and DA as compared to their erstwhile batch mate in nonexecutive grade has been duly redress and differential amount has been paid by necessary directives issued from the corporate office of SAIL on 29.12.2015. Modalities were accordingly stipulated as per the circular in Annexure-A/1. The Junior Officers of 2008/2010 batch voluntarily applied in the prescribed format and have received the amount. Since the junior officers have already applied and availed the financial benefits in

redressal of their grievance, filing of the present original application by seeking interference of this Hon'ble Tribunal in to the matter becomes infructuous and not maintainable at the threshold. A sample copy of the application dated 20.12.2016 of one of the 2010 batch junior officer namely Dushasan Behera is annexed herewith as Annexure-R/3.

10. That further it is relevant to submit here that the applicants make a comparison of 2008/2010 batch of junior officers with their erstwhile batch mate in non-executive cadre taking into account the basic pay and DA they receive. However, if the gross salary is compared including the perquisites, as a percentage of basis pay which an executive receives, it would not be less than the total salary received by the nonexecutive employees of the respondent company. Therefore, even otherwise the applicants cannot claim to have any grievance at all.

11. That the applicant no.2 and 3 have been superannuated from the services of the company on 30.03.2016 and 31.05.2015 respectively. Therefore, by the time the present application was filed, i.e. In December, 2016, no junior officer on the roll of the company is a party to the present case.

The Counter has also raised the issue of delay in filing of the OA by the applicant.

4. The Rejoinder filed by the applicants stated the following while denying the contentions of the respondents in the Counter:-

4.....Fact remains that the JO's were promoted after the effective date of pay revision for executive came into force but the averments that the JOs were not executive as on 01.01.2007 and therefore have no locustandie to claim the benefit in terms of the directives of the Central Government or to maintain the present application is wrong and without any merit. The respondents in one hand submits that the JOs having been promoted to executive cadre are not entitled to the benefits under the pay revision made applicable to the non-executive and on the other hand they maintain that the JOs were non-executive as on 01.01.2007 and therefore are not entitled to pay revision benefits applicable to the executives. The respondents are estopped to a probate and reprobate at the same vain.

X X X X X X

8. That with reference to the averments made in paragraphs 5,6,7 and 9 of the counter affidavit, it is humbly submitted that the averments are without any merit and contrary to the rule/policy vis-a-vis the pay revision implemented for the non-executive employees in two phases during 01.01.2007 and 01.01.2012, covering the Junior Officers. The Junior Officers are considered as executive (Officer) but were made to suffer certain disabilities as far as pay structure/pay revision of the executives grade are concerned. In the executive pay revision implemented vide office order dated 21.11.2009 (Annexure-A/2) purposefully the JOs are placed in a separate footing in order to deprive them their legitimate dues available under the pay revision and a separate procedure was prescribed under Clause 2.3.3 of the officer order dated 21.11.2009(Annexure-A/2).

9. That the averments made in paragraphs 10 and 11 of the counter are misleading and the gross salary drawn by an employee is not the parameter to show that the grievance was addressed in conformity with the policy/circular and guideline on fitment. Similarly superannuation of any employee is no grounds to deprive his legitimate dues to which he

is entitled to during his employment. When the Officers Associations is applicant number 1, it is not necessary to add each individual member as a party to the application or file separate application for the same cause of action against the same opposite parties/respondents. It will lead to multiplicity of proceeding/litigation which this Hon'ble Tribunal has always discouraged. Be that as it may the applicants have annexed the list of affected JOs of 2008 and 2010 batch to the Original Application.

5. Heard learned counsel for the applicants who submitted that the applicants' pay on promotion to executive cadre was fixed like a non-executive and the benefit of pay fixation in respect of the MGB was not allowed to the applicants, which amounted to discrimination. It was submitted that although such anomalies were accepted by the authorities in view of the letters dated 29.12.2015 and 11.1.2016 (Annexure-A/1 series), these were not addressed by the authorities. He also submitted that in view of the letters at Annexure-A/1 series, the OA cannot be said to be barred by limitation.

6. Heard learned counsel for the respondents who stated that the applicants had joined against the promotional post in the year 2009 accepting the pay as fixed vide the copy of the acceptance at Annexure-R/2. No dispute was raised till filing of this OA in 2016, for which the OA is stated to be barred by limitation. It was also submitted by the respondents' counsel that as stated in para 9 of the Counter, the applicants having accepted the terms and conditions of promotion cannot dispute the same in the OA. Learned counsel for the respondents also submitted that the pay anomalies of some of the non-executives have already been addressed by the respondents in view of the decision in the circulars at Annexure-A/1 series of the OA.

7. We have considered the pleadings and submissions made on behalf of both the parties. The circulars dated 29.12.2015 and 11.1.2016 at Annexure-A/1 series of the OA point out to some anomalies in pay fixation of the non-executives promoted to the executive cadre. These circulars give rise to fresh cause of action and this OA having been filed within one year of the circular dated 29.12.2015 is, therefore, held to be filed within time. Hence, the objection in the Counter on the ground of limitation is not acceptable.

8. On merit, it is noticed that the OA has not challenged any of the policy circulars/orders at Annexure-A/1 series and Annexure-A/2 issued by the respondents although the applicants are aggrieved by these circulars/orders. Hence, the question to be decided is whether the applicants' pay, on promotion to executive cadre, was fixed in accordance with the circular dated 21.11.2009 (Annexure-A/2).

9. The paragraphs 2.3.1 and 2.3.3 of the circular dated 21.11.2009 (A/2), relevant for this case, state as under:-

2.3.1 The executives on the rolls of the company as on 1.1.2007 will be fitted in the corresponding revised scales of pay as per the following fitment formula:

- i) Basis Pay (including stagnation increment, if any) in the pre-revised Scale of Pay multiplied by a common factor of 1.782;
- ii) Fitment benefit@ 30% of amount arrived at (i) above.

The aggregate amount arrived would be rounded off to the next ten rupees and would be the revised Basic Pay as on 1.1.2007. If the amount arrived is less than the minimum of the revised pay-scale, basis pay shall be fixed at the minimum of the revised pay scale.

Sample illustrations are enclosed (Annexure-IA, IB and IC)

The executives who have joined after 1.1.2007, their pay would be fixed as under:

- i) Basis pay of executive/Management Trainees appointed/absorbed in SAIL pay scale after 1.1.2007 who were allowed basic pay at the minimum in the pre-revised scales of pay shall be fixed at the minimum of the corresponding revised scales of pay.
- ii) In case of the executives/Management Trainees who have been allowed higher start in the pre-revised scales of pay, their pay shall also be re-fixed at the minimum of the corresponding revised scale of pay and payments made would be adjusted/recovered accordingly.
- iii) Employees promoted/appointed after 1.1.2007 from non-executive grade to the executive grade shall draw provisionally the minimum revised basis pay in the relevant executive grade pending revision of pay structure of employees in non-executive category subject to the following conditions.
 - a) In such cases, if sum of revised Basic pay and Dearness Allowances on the date of appointment/promotion is less than sum of pre-revised Basis Pay. Dearness Pay and Dearness Allowance, then the difference of the same shall be allowed as personal pay, which shall be considered for all payments linked to Basic pay.
 - b) On revision of pay structure of the applicable non-executive category personal pay so granted shall be adjusted/recovered against arrears payable.

10. Thus the provision of the MGB of 30% has been provided for the executives who were on rolls of the RSP as on 1.1.2007. Undisputedly, the applicants who were promoted to executive cadre after 1.1.2007, were not covered by the paragraph 2.3.1. For then the provisions of the paragraph 2.3.3 are applicable and they have been allowed the MGB as applicable for the non-executives as per the provisions of the paragraph 2.3.3 (iii) (b). In case the reliefs sought for by the applicants in this OA are allowed, that will effectively imply that the benefits of the paragraph 2.3.1 of the circular dated 21.11.2009 would be allowed to the applicants, which are impermissible since they were not on the rolls of the RSP as executive on 1.1.2007.

11. Since the circular dated 21.11.2009 (A/2) has not been challenged by the applicants in this OA, it will be squarely applicable to the applicants. The

distinction between the executives who were on rolls of the company as in 1.1.2007 and those who were inducted after 1.1.2007 for the purpose of extending MGB at the time of pay fixation cannot be said to be unreasonable and hence, there is no violation of the Article 14 of the Constitution of India. Further, the respondents have addressed some anomalies of pay fixation of the executives who were promoted from non-executive cadre by extending the benefits as per the circulars at Annexure-A/1 series which have also not been challenged by the applicants in this OA.

12. In the facts and circumstances as discussed above, we do not find any infirmity in the decision of the respondents and the grounds furnished by the applicants in the OA do not justify any interference of the Tribunal in the matter. The MA No. 95/2018 which has been filed against the action of the respondents for interdepartmental transfer the applicants, pertains to different cause of action and it is liable to be dismissed. Hence, the MA and the OA are accordingly dismissed and the interim order passed in this OA stands vacated. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

pms