

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00598/2015

HYDERABAD, this the 23rd day of February, 2021

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



M.V.Sudhir Kumar S/o M. Govardhana Rao,
Aged about 48 years, Occ : Assistant Director (IMT),
Micro Small & Medium Enterprises Development Institute,
Masab Tank, Hyderabad.

...Applicant

(By Advocate : Mr. M R S Srinivas)

Vs.

1. The Government of India,
Rep by its Secretary, Ministry of
Micro Small & Medium Enterprises,
Udyog Bhawan, New Delhi.
2. Additional Secretary & Development
Commissioner (MSME), Ministry of
Micro Small & Medium Enterprises,
Nirman Bhawan, New Delhi.
3. Deputy Director (NG),
Government of India,
Ministry of Micro Small & Medium Enterprises,
O/o Development Commissioner,
Nirman Bhawan, New Delhi.
4. Director,
MSME – Development Institute,
Ministry of Micro Small & Medium Enterprises,
Bala Nagar, Hyderabad - 37.Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed questioning the impugned proceedings dt. 7.10.2014 of the 3rd respondent and to grant upgraded scale to the applicant w.e.f. 08.4.2004 or 27.01.2005, with all consequential benefits.



3. Brief facts of the case are that the applicant has been selected as Small Industries Promotion Officer (SIPO) which is in the grade of Group B. The 5th pay commission has enhanced the scale of pay of the SIPO from Rs.5500-9000 to Rs.6500-10,500. The post of SIPO and IMT (Industrial Management and Training) have been upgraded and re-designated as Asst. Director Gr. II. Consequent to the up-gradation, amended recruitment rules (RR) were formulated in 2004. Thereafter, respondents issued the proceedings on 27.1.2005 stating that no selection is required for grant of higher scale. Applicant completed the residency period of 3 years by 29.1.1996 and hence has to be given the upgraded scale from the said date with consequential benefits. However, respondents have issued the letter dated 8.10.2004 stating that the applicant was found unfit for the upgraded scale. Challenging the decision OA 16/2005 was filed which was dismissed for default on 1.4.2005 and even the restoration petition filed faced the same destiny. Thereupon, WP 20454/2006 was filed and while dismissing the Writ Petition, Hon'ble High Court has observed that since the OA has been dismissed for lack of prosecution, the applicant can represent to the respondents for redressal of the grievance as per Rules. Accordingly,

applicant represented, which was rejected on 7.10.2014 informing that the applicant is eligible for higher scale from 17.7.2006 as per rules. Aggrieved, the OA is filed.

4. The contentions of the applicant are that the impugned order was issued without application of mind. The proceedings dated 27.1.2005 do not warrant the formation of DPC to grant the higher scale. Similarly placed employee Sri Mukesh Chandra Mathur was given the higher scale without DPC.

5. *Per contra*, respondents state that the applicant was appointed as SIPO on 29.1.1993 in the pay scale of Rs.5500- 9000. This pay scale was increased to Rs 6500- 10,500 on 28.11.2003, which was concurred by DOE/DOPT with a rider that the upgraded scale and the re-designation would be available only from the date the relevant RR (Recruitment Rules) are notified in the official Gazette. Accordingly the RR for the post of AD Group -II (Group -B) were framed and published on 17.7.2004. The RR requires that the employee has to be fit to be given the scale. Hence DPC met and gave the upgraded scale along with the re-designation to eligible 206 SIPs on 23.9.2004, who were found fit. Applicant was not fit for the years 2004 and 2005 and only in 2006 was fit and he was granted the benefit from 17.7.2006. Similarly, Sri Mukesh Chandra Mathur was found fit by the DPC and hence given. Comparing with SIPO (Economic Investigation and Statistics) is incorrect as it belongs to a different cadre.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about non grant of higher pay scale from 1996 to the applicant, consequent to 5th Pay Commission recommendations. The issue was initially contested by filing OA 16/2005 which was dismissed for default and the application filed for restoration was rejected, resulting in filing WP No.20454/2006, where in the Hon'ble High Court directed the applicant to represent to the respondents since the OA was dismissed on grounds of default. Applicant did represent, as directed, and the same was rejected on 7.10.2014.

After carefully going through the details of the case, we observe that the Ministry of Finance and DOPT have approved the proposal of upgrading the pay scale of Rs.5500-9000 to Rs.6500- 10,500 and re-designating the post of SIPO as AD with a proviso that the up-gradation and re-designation will be given effect from the date the new RR are published in the official Gazette. Accordingly, respondents came up with the AD Group II (Group-B) RRs on 17.7.2004. On the basis of the recommendations of the DPC, 206 SIPOs who were eligible, were re-designated as AD and given the upgraded pay scale on 23.9.2004. Applicant was also considered but was found fit in the year 2006 and not in the years 2004 and 2005. Hence, he was re-designated as AD and granted the upgraded pay on 17.7.2006.

II. Applicant claims that he has to be given the benefit from 29.1.1996 since he has completed the residency period by the said date for being considered for re-designation as AD, as per respondents letter dated 27.1.2015. We are not persuaded by this contention as the RRs state as under:

“Note1: The existing incumbents of the post of Small Industry Promotion Officer (IMT) in the scale of pay of Rs.5500-9000 with three years regular service in the grade shall be considered for placement in the upgraded pay scale of Rs.6500-10500. In case he/she is found fit, the post shall be deemed to have been filled by promotion. In case he/she is not found fit, his/her case will be reviewed every year. Till such time he/she will continue to hold the post of Small Industry Promotion Officer (IMT) in the pay scale of Rs.5500-9000.”



The RR requires that the employee has to be fit and hence to examine the aspect of fitness a DPC has to meet. Therefore, the action of the respondents is in accordance with statutory rules. Statutory rules have primacy over executive instructions as observed by the Hon'ble Supreme Court in **Union of India & Ors vs Somasundram Viswanath & Ors** on 22 September, 1988 - **1988 AIR 2255, 1988 SCR Supl. (3) 146**, as under:

It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued ;under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail, and if there is conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails.

Therefore, the respondents letter dated 27.01.2005 and the DOPT memos appended to the OA are not of much help to the applicant. The DOPT memo dated 8.2.2002 speaks about supersession where as in the instant case the applicant was found unfit and not superseded. The RR rules of 2004 prevail over the DOPT instruction dated 4.2.1992/ 9.3.2009 relied upon by the applicant, in view of the legal principle cited supra.

Incidentally, we must observe that it was DOPT/MOF which have laid the condition that the re-designation and upgraded scale be granted after framing of the RR. Moreover, DOPT, being the nodal Ministry, as per the Business Allocation Rules under Article 70 of the Constitution, the RRs are approved with the concurrence of DOPT. Therefore, the DOPT memos relied upon by the applicant are of no assistance as per rules and law.



III. DPC found the applicant fit in 2006 and accordingly, was granted the benefit on 17.7.2006. The MOF/DOPT have stipulated the condition that the benefit sought would have to be granted from the date of formulating the RR, which is 17.07.2004 and therefore, applicant cannot seek the benefit from 1996. Other similarly situated employees were subjected to screening by the DPC. Even in regard to Sri Mukesh Chadra Mathur, with whom the applicant compared, was given the benefit without DPC, is incorrect, since the DPC found him fit along with Sri Prasad Kulkarni and therefore was granted the benefit in 2004 with the approval of the competent authority.

IV. Pay Commission recommendations are specific to each cadre and therefore, the applicant seeking implementation of the recommendation of the 5th CPC as was done for SIPO (Economic, Investigation & Statistics) which is a different cadre, is not in the realm of reason.

V. Other contentions made were also gone through and as they were not relevant, they were not touched upon.

VI. Lastly, we must also observe that it is the decision of the respondents to hold a DPC as a matter of policy. The Tribunal would not

interfere in policy matters unless the policy itself is malafide. We do not find the policy to be malafide since the object of having a DPC is to allow the benefit to the fittest among the fit. We are supported by the observations of the Hon'ble Supreme Court in regard to adjudication on policy matters as under:



In **BALCO Employees' Union (Regd.) v. Union of India, (2002) 2 SCC 333**, held as under:-

42. While considering the validity of the industrial policy of the State of Madhya Pradesh relating to the agreements entered into for supply of sal seeds for extracting oil in ***M.P. Oil Extraction v. State of M.P.*** (1997) 7 SCC 592, the Court held as follows:

“41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere *ipse dixit* of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere *ipse dixit* of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not out-step its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in out-stepping its limit by unwarranted judicial activism being very often talked of in these days.

The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.”

(emphasis added)

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46. *It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.”*

VI. Thus, there being no merit in the OA, it is dismissed, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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