

13
O.A.No.117 of 2006

Akshya Kumar Mishra Applicant
Versus
Union of India & Others Respondents

Order dated 24/11 November, 2009.

C O R A M

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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Applicant Shri Akshya Kumar Mishra, working as Technical Officer, T(7-8) in the Office of the Central Rice Research Institute Cuttack/Orissa by filing the present Original Application under section 19 of the A.T. Act, 1985 seeks to quash the Office Memorandum under Annexure-A/20 dated 18-03-2005 denying induction at par with technical personnel holding the pay scale of Rs.425-700/- (pre-revised) into grade T-4 (Rs.550-900/-) as per Industrial Tribunal judgment vide ICAR Circular No.5-6/91-Estt.IV dated 22.2.1991 and 5.11.1993 and further intimating that as the benefits were erroneously granted by the Council to others, no other employee can claim such benefit by showing parity. He also seeks to quash the letter under Annexure-A/23 through which his request for reconsideration of the letter of rejection under Annexure-A/20 was turned down by reiterating the earlier stand taken by the Respondents. His specific contention is that he is entitled to be inducted in the Technical Grade in Category II, T-4 in the pay scale of Rs.550-900/- w.e.f. 01.10.1975, thereafter to get merit promotion to category II, T-5 in the pay scale of Rs.650-1200/-

1

w.e.f. 01.07.1976 and consequently to be inducted to Scientific Grade S-2 in the pay scale of Rs.1100-1600/- (pre-revised) w.e.f. 01.07.1976 and other consequential service and financial benefits as has been given to other similarly situated employees; as his case is fully covered by the decisions of Industrial Tribunal confirmed by the Hon'ble Apex Court, this Tribunal as well as the decision of the Principal Bench of the Tribunal.

2. Respondents by filing counter have opposed the stand taken by the Applicant in this Original Application both on merit as also on the ground of limitation. By stating the facts and gist of the decisions relied on by the Applicant in support of his prayer, it has been stated by the Respondents that since the facts/issues involved in those cases are distinct and different the same are not applicable to the present case. Further stand of the Respondents is that as the benefit which has been claimed by the Applicant in this OA was given to others erroneously, the Applicant cannot claim as a matter of right to get the same because law is well settled that benefits given erroneously can give hardly any right to other to claim such benefit. It has been stated that the applicant has approached this Tribunal earlier in OA No. 182 of 1991 along with others. This Tribunal in order dated 23.06.1994 allowed the prayer of the Applicant by directing the Respondents to place the applicant in category II-T(IV) in the pay scale of Rs.550-900/- with effect from October 1, 1975 or from the date of their respective appointment. Respondents challenged the said order of this Tribunal before the Hon'ble Apex Court in SLP (C)

No.23741 of 1995 and the Hon'ble Supreme Court set aside the above part of direction of this Tribunal and, therefore, the Applicant is not entitled to the relief claimed in this OA. Besides, the above, it has been stated by the Respondents that another set of employees of the Respondents' department filed OA Nos.92 & 213 of 2007 praying the relief as claimed by the Applicant in the present OA. But the said OA was dismissed by this Tribunal in order dated 21.01.2009. Accordingly, Respondents prayed for dismissal of this OA.

3. Heard the matter at length and perused the materials placed on record.

4. It is seen that earlier the Applicant along with others approached this Tribunal in OA No. 182 of 1991 seeking direction to the Respondents to fix their pay in the scale of Rs.425-600/- with effect from 1.1.1973; to confer on them the scale of Rs.550-900/- w.e.f. 1.10.1975; award all resultant benefits arising there from and pay the arrears consequent on the re-fixation of their pay scales. This Tribunal disposed of the matter on 23.06.1994 with the following directions:-

“14. To sum up, all the basic issues involved in this case have already been addressed by earlier judicial pronouncements and there are no new insights to be had or any fresh inputs to be made, and ipso facto, no new conclusions to be drawn. What is crystal clear is that complete jurisdiction exists for accepting the prayer of the applicants in this case. It is, therefore, directed that the applicants S/Shri Bibhuti Bhushan Nayak, Madan Mohan Das and Akhaya Kumar Mishra be placed in the pay scale of Rs.425-600/- with effect from 1.1.1973 or from the actual date of their respective appointment to the post of Computers. Further they should be placed in Category II-T(IV) in the scale of Rs.550-900/- with effect from 1.10.1975 or from

the date of their respective appointment. This part of the direction of their placement in relevant pay scales will be completed within 60 days of the date of receipt of a copy of the judgment. The arrears on account of the difference in pay scale that may become due to these applicants as a result of the revised placement in the scales as indicated above will be calculated and disbursed to them within 90 days from the date of receipt of a copy of the judgment."

As it appears, the above direction of this Tribunal was challenged by the Respondents before the Hon'ble Supreme Court in Civil Appeal No.6673 of 1997 (Arising out of SLP (Civil) No. 23741 of 1995. The Hon'ble Supreme Court disposed of the matter on 26th September, 1997 with the following directions:

"In view of the said decision of this Court, the direction given by the Tribunal that the respondents be placed in category II-T(IV) in the pay scale of Rs.550-900/- with effect from October 1,1975 cannot be sustained and has to be set aside. The respondents will, however, entitled to be considered for promotion in the said category II -T (IV) in the pay scale of Rs.550-900/- after fitment in the pay scale of Rs.425-600/- with effect from October 1, 1975 under the Rules of 1975.

The appeal is, therefore, allowed and the direction given by the Tribunal that the respondents be placed in category II -T (IV) in the pay scale of Rs.550-900/- w.e.f. October 1, 1975 or from the date of their respective appointment is set aside. No order as to costs."

5. The Applicant claiming that as the above benefits have been allowed to others direction be issued to the Respondents to induct the applicant in the pay scale of Rs.550-900/- in Category IIT-4 w.e.f. 1.10.1975 and merit promotion to category II T-5 in the pay scale of Rs.650-1200/- w.e.f. 1.7.1976 in the Technical Grade and thereafter to induct him in the Scientific Grade S-2 of the Agricultural Research Service (ARS) in the pay scale of Rs.1100-1600/- w.e.f. 1.7.1976. But we are

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19
not impressed with the submission advanced by Learned Counsel for the Applicant in view of the order passed by the Hon'ble Supreme Court setting aside the earlier order directing placement of the applicant in Category II-T (IV) in the scale of Rs.550-900/- with effect from 1.10.1975 and therefore the other relief claimed by the applicant being consequential in nature is bound to become redundant. The contention of the Applicant that similar benefit has been allowed to others is of no consequence in view of the order of the Hon'ble Supreme Court as also in view of the law that if some persons derive benefit illegally, other similarly circumstanced cannot claim the same on the ground of equality as that would amount to perpetuating the illegality through the judicial process, which the Court cannot do. Only a claim, which is just and legal, can constitute a ground for discrimination on the basis that it has been extended to some and denied to others -**State of Bihar and others v Kameshwar Prasad Singh and Another**, 2001 (1) SLJ 76 (SC); **State of Harayana and others v Ram Kumar Mann**, 1997 (3) SCC 321; **Secretary, Jaipur Development Authority, Jaipur v Daulat Mal Jain and others**, 1997 (1) SCC 35; **Gursharan Singh and others etc. v New Delhi Municipal Committee and others**, 1996 (2) SCC 459. Rights of employees to claim equity in case of some benefits given to others came up for consideration before the Hon'ble Apex Court in the case of **Kerala State Electricity Board v Saratchandran P. and Another**- (2008) 2 SCC (L&S) 915 in which it has been held by the Hon'ble Apex Court that Article 14

as is well known is a positive concept. The provisions of Article 14 cannot be invoked only because some illegality has been committed by an employer as a result whereof some employee has obtained benefit. The constitutional scheme of the equality clause would apply only in a case where the parties are similarly situated. No equity can be claimed on the basis of an illegality.

6. For the reasons stated above, we are not inclined to interfere in the matter. Hence, this OA stands dismissed by leaving the parties to bear their own costs.

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(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

Chakraborty

(C.R.MOHAPATRA)
MEMBER (ADMN.)