OA 1125/1996

Present : Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri S.Biswas, Member (A)

Tapan Kumar Mitra and Ors.
..... Applicants

Vs

Union of India and Ors

.... Respondents

For the applicants : Shri R.V.Dev,learned senior counsel
with Sh.S.Bhattacharya,counsel

For the respondents : Shri M.S.Banerkee

Date of order 13.1.2003

O R D E R (ORAL)

(Smt.Lakshmi Swaminathan,Vice Chairman (J)

In this application, the applicants, who are working
as Chief Safety Officers (CSOs) and Safety Officers(SOs), have
prayed for a declaration that they are entitled to the status,
rank and pay scales (Rs.3700-5000/- and Rs.3000-4500/-),
respectively) and other conditions of service as applicable to
the next senior post in the office of respondents.

2.   The applicants have relied on the Factory Order No.49
dated 4.3.1995 (Annexure A.5). The relevant portion of this
order reads as follows:

> " The above re-designation will in no way effect
> present grade, scale of pay or give him any advantage
> whatsoever in matter relating to promotion,
> recruitment, special pay etc. The re-designation
> would only involve the changes in respect of duties
> and responsibilities only as far as the
> implementation of various provisions of the State
> Govt.Act. Laws are concerned without effect of
> financial aspect and cadre structure of the
> individual".

The above order refers to applicant No.1. Learned
counsel for the applicants submits that similar orders have
also been issued with respect to other applicants. The

applicants are aggrieved that on redesignation of their posts they have not been given the benefits of the grade, rank and status which are due to them. In fact, learned counsel, has submitted that the applicants are performing statutory duties in the higher posts and the respondents have exploiting their situation by not granting them the higher pay scale or giving them the status. They had made a representations in 1995 to which they have not received any reply. Hence this application.

3. Learned counsel for the respondents has submitted that the applicants have accepted the aforesaid redesignated posts and in redesignation order it has been clearly stated that they cannot claim a higher pay scale and status after they have accepted their redesignation as CSOs and SOs. He has, therefore, contended that the applicants cannot now go back on the options which they have exercised in accepting the posts of CSOs and SOs. He has also raised a preliminary objection that the OA is not maintainable on the ground that the officers belong to two different categories and, therefore, they cannot file one application under Rule 4 (5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987. Further he has submitted that no cadre of CSOs and SOs has been formed.

4. We have heard Shri R.K.Dev, learned senior counsel with Shri S.Bhattacharya, counsel for the applicants and Shri M.S.Banerjee, learned counsel for the respondents and perused the relevant documents on record.

5. With regard to the preliminary objection taken by the learned counsel for the respondents, we find that the relevant facts and issues raised in this application are common with
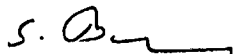
regard to the persons holding the posts of CSOs and SOs, namely, they claim for additional benefits by way of pay and status in the redesignated posts. In this view of the matter, the preliminary objection taken by the respondents is rejected. Apart from that, learned counsel for the applicants has also submitted that OA also stands admitted by order dated 4.3.1998. This is also relevant.

6. With regard to the claims made by the applicants for higher pay, status and grade commensurate with their duties and responsibilities, which according to them, they are discharging in the redesignated posts of CSOs and SOs, we are not impressed by the submissions made by the learned counsel for the respondents that they have not made any rules or created the cadre and so on. This is a matter which is primarily within the scope of executive functions. The respondents have clearly stated in their Factory Order No.49 dated 4.3.1995 that redesignation would involve the change in respect of duties and responsibilities only as far as the implementation of various provisions of the State Govt.Acts, Laws are concerned without effect of financial aspect and cadre structure of the individuals. If in fact, there is change of duties and responsibilities in respect of implementation of statutory functions as laid down in the West Bengal Acts, it will be incumbent upon the respondents to consider the issues and take an appropriate decision in the matter. Learned counsel for the respondents has submitted that the statutory functions performed by similar officers of various other States have the higher also to be looked into in order to grant pay and status. However, the representations made by the applicants are not self-contained ones. It is relevant to note that the respondents have not filed any reply to these representations till date.

7. In the facts and circumstances of the case and having regard to the settled law it will be for the respondents to take an appropriate decision in the matter of pay scales having regard to the nature of duties and responsibilties discharged by the applicants which have been placed on them under the State Govt.Notifications/rules and instructions. In view of this, this OA is displosed of with the following directions:-

‹ › The respondents shall consider the aforesaid representations of the applicants treating the grounds taken in the instant OA also as part of the representation and pass appropriate orders with regard to their claims, as expeditiously as possible and in any case within a period of four months from the date of receipt of a copy of this order in accordance with law.

No order as to costs

(S.Biswas)

Member (A)

(Smt.Lakshmi Swaminathan)

Vice Chairman (J)

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