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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 229/90

Date of Decision : 14-2-92

T.A.No.

Sri K.Appa Rao and Smt K.Jayalakshmi Petitioner.

Sri C. Suryanarayana Advocate for the
petitioner (s)

Versus

Accountant General, AP, Hyderabad Respondent.

Sri G. Parameswara Rao Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. T. CHANDRASEKHARA REDDY, MEMBER (JUDICIAL)

THE HON'BLE MR. ----

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

T. T. M.
(HTCR)
M (T)

(19)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.229/90

DATE OF JUDGEMENT: 14th FEBRAURY, 1992

BETWEEN

1. Sri K. Appa Rao
2. Smt K. Jayalakshmi .. Applicants

AND

1. The Accountant General (A&E)
Andhra Pradesh, Hyderabad
2. The Comptroller & Auditor General
of India,
New Delhi
3. The Secretary, Min. of Finance
(Dept. of Expenditure)
Government of India, New Delhi .. Respondents

Counsel for the applicants :: Sri C. Suryanarayana

Counsel for the respondents:: Sri G. Parameswara Rao
S. C. for I.A. and A.D

CORAM:

THE HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

T. C. Reddy

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JUDGEMENT OF THE SINGLE MEMBER BENCH DELIVERED
BY THE HON'BLE SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed under Section 19 of the Administrative Tribunals Act, to direct the respondents to pay them the arrears of pay w.e.f.1.8.1987 the date on which their pay has been stepped up consequent to the anomaly, by granting them increments and all other incidental and consequential benefits on account of such stepping up of pay.

The facts giving rise to this application in brief may be stated as follows:

1. Applicants 1 & 2 are the Accounts Officers working in the Office of the Accountant General (A&E), AP, Hyderabad.
2. The Comptroller & Auditor-General of India, New Delhi, the 2nd respondent herein, issued orders dated 6.2.1989 (Annexure A-2 to the application) in consultation with the Ministry of Finance (Department of Expenditure), Government of India, New Delhi (3rd respondent) on the question of removal of anomaly in the pay fixation of Accounts Officers of the Indian Audit and Accounts Department drawing less than their juniors, who were first promoted in the Assistant Accounts Officers grade and then got their promotions as Accounts Officers. The said order (Annexure A-2) however directed that the actual benefit of stepping up would be available with effect from 10.1.1989 or the date of anomaly whichever is later even though the stepping up of pay

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would be done with effect from the date of promotion of the junior to the higher grade. It is consequent to the above order that the ~~order~~ ^{at} Annexure A-1 was passed stepping up the pay of the Applicants and fixing it at Rs.2,975/- with effect from 1.8.1987 but restricting the benefit from 10.1.1989 only.

The applicants seem to have made representations to the Competent Authorities that they are entitled to the arrears of salary w.e.f. 1.8.1987, as their juniors ~~had drawn~~ more pay than them, prior to 10.1.1989 and w.e.f. 1.8.1987, even though they ~~did~~ the ~~same~~ same work as those of the juniors. Anyhow, the Competent Authority did not consider the request of the applicants and restricted the monetary benefit w.e.f. 10.1.1989 only after stepping up the pay notionally w.e.f. 1.8.1987....The said rejection order by the Competent Authority dated 7.11.1989 at Annexure A-4 has been addressed by the Second respondent to the first respondent herein, who in turn communicated the same to the applicants vide his letter dated 3.10.1989 at Annexure A-5.

In view of the said rejection, the present OA

~~is filed by the applicants for the reliefs as already indicated above.~~

The respondents have filed ~~of~~ counter ~~Opposing~~ ~~the application. In their counter it is maintained that certain individuals working as Accounts Officers in the Office of the Accountant General (A&E), AP.,~~

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promoted as such directly from the cadre of Section Officers before the introduction of the intermediary cadre of Assistant Accounts Officers, were drawing less pay compared to their Juniors who entered the cadre of Accounts Officer through the cadre of Assistant Accounts Officers. In order to remove this anomaly, a decision was taken in consultation with the Government of India, to step up the pay of such senior officers on par with the pay of their juniors subject to fulfilment of certain conditions. The monetary benefit was, however, allowed w.e.f. 10.1.1989. So, it is the case of the respondents that giving monetary benefit from the date on which the anomaly arose does not arise. It is also, the case of the respondents as seen from the counter, that once the pay of the Senior Officer is stepped up to set right an anomalous situation, it would be incorrect to assume that the principle of equal pay for equal work is violated only because the monetary benefit was not given from the same day. It is also contended in the counter of the respondents that the Government of India's decision issued in O.M.No.F.2(78)-E.III(A)/66 dated 4.2.1966 of the Ministry of Finance, Govt. of India and incorporated in the FRs, below FR 22-C provides for stepping up of the pay of the senior from the date of promotion of the junior to the same or identical scale. In the instant case, the pay of the applicant was stepped up from the date of his junior was drawing more pay, and thus the action is strictly in accordance with the rules. Further the rule/provide payment of arrears. However in the instant case, the arrears were paid w.e.f. 10.1.1989

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The facts in the said decision would disclose that the petitioners therein who were employees in various faculties of trade as carpenter, mason, Upholsterer, plumber, sign writer, etc. under the Ministry of Defence under skilled grade in Military Engineering Services, commonly known as M.E.S. have assailed in that writ petition that the upgradation of some of the ~~xx~~ trades out of the 15 trades in the skilled grade on the basis of the recommendations made by the Expert Committee constituted by the first respondent in the said petition before the Supreme Court on the grounds inter alia that the fixation of higher scales of pay of some of these trades out of the 15 trades in the skilled grade ignoring the other trades is arbitrary, discriminatory and in contravention of the fundamental rights of the petitioners therein enshrined in Articles 14 and 16 as well as in Article 39(d) of the Constitution of India in as much as it purported to violate the right of equal pay for equal work. It will be relevant to extract para 11 of the said judgement at AIR 1989 SC 1215 - Bhagwan Sahai Carpenter & others (Petitioners) - vs Union of India and another (Respondents) - Page 1217 - which reads as follows:

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in accordance with the provisions contained in Rule 42A of General ~~.....~~ Financial Rules. So it is maintained in the counter by the respondents that there are no merits in this application and it is liable to be dismissed.

5. It is not in dispute in this case that the applicants were drawing less pay than their immediate juniors since 1.8.1987 in the cadre of ~~.....~~ Accounts Officer. As could be seen, the introduction of Assistant Accounts Officer cadre had been made w.e.f. 1.4.1987. It has been brought to the notice of the competent authority that cases have ~~.....~~ arisen where Senior Section Officers/ Selection Grade Section Officers promoted as Accounts Officers before 1.4.1987 were drawing less pay than their juniors who were first promoted in the Assistant Accounts Officers' Grade and then got their promotion as Accounts Officer. So, in order to remove this anomaly, OM dated 6.2.1989 was issued from the Office of the Comptroller & ~~.....~~ Auditor General of India, New Delhi to step up the pay of the seniors equal to that of juniors w.e.f. 1.4.1987, but to give monetary benefits only from 10.1.1989. As already pointed out, it is the case of the applicants that the said OM is arbitrary as they are denied pay equal to their immediate juniors w.e.f. 1.4.1987 upto 10.1.1989. So, in this context, it will be worthy to refer to the decision reported in AIR 1989 SC 1215 - Bhagwan Sahai Carpenter and others (Petitioners) Vs Union of India and another (Respondents).

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11. Considering all the facts and circumstances of the case, we are unable to accept the contentions advanced on behalf of the Union of India on the ground that the employees of the different trades in the skilled grade cannot be treated differently i.e. by allowing higher scale of pay to employees of some of the trades ~~if~~ from an earlier date and giving the same benefit to members of other trades in the skilled grade from a later date. This will per se be discriminatory and it will be contrary to the equity clause envisaged in Articles 14 and 16 of the Constitution as well as the fundamental right of equal pay for equal work. The petitioners are entitled to get the benefit of the skilled grade of Rs.260-400 from October, 16, 1981 instead of October, 15, 1984 as has been given to the employees of other trades in the skilled grade."

6. As could be seen from the said judgement, (See para 8 (of the said judgement) even though the Report of the Anomalies Committee

recommended to give the benefit of the recommendations w.e.f. 16.10.1981, the Government issued orders giving the benefit of the scale pay w.e.f. 15.10.1984, and it is in that context, the Supreme Court ~~as~~ could be seen, had held ~~that~~ allowing higher scale of pay to employees of some ~~of~~ trades from an earlier date and giving the same benefits to members of other trades in the skilled grade from a later date cannot be accepted and it ~~is~~ further held as could be seen that ~~it~~ will be discriminatory and ~~as~~ contrary to the equality clause/ensured in Article 14 and 16 of the Constitution as well as the fundamental right of equal pay for equal work.

7. The fact that the applicants herein ~~were~~ seniors who were drawing lesser pay than their juniors from 1.4.1987 upto 6.2.89 even though the applicants ~~herein~~ and their immediate juniors were doing the same work and discharging the same responsibilities, is not in dispute.

8. It may be appropriate to look into another decision of the Supreme Court ~~which~~ reported in Services Law Reporter ~~which~~ - 1988(1)SLR - Page 5 - Sri Parameswaran and ~~others~~ (Petitioners) Vs Secretary to the Govt. of India (Respondent) wherein it is held as follows:

" The Petitioners who were Field Publicity Officers Grade IV were upgraded to Grade III (persuant to the recommendations of the Third Pay Commission. The scale of salary was also revised but effect was given to the revision from October, 1, 1975 instead of from January, 1, 1973 as in the case of all other persons. It has been pointed out in the writ petition that in the case of Field Publicity Officers (Border) effect was given to the revised grade and scales from January 1, 1973. These facts are admitted in the counter-affidavit filed on behalf of the government, but it is stated that the petitioners could not be given the revised scales with effect from January, 1, 1973 on account of some administrative difficulties. We do not think that it is open to the Government to deny the benefit of the revised grade and scale with effect from January 1, 1973 as in the case of all other persons merely because of some administrative difficulties. To do so, will be discriminatory. A direction will, therefore, issue to the respondents to give effect to the revised grade and scales from January, 1, 1973 to the petitioners. Writ petition is disposed of accordingly.
Petition Allowed."

9. In another decision reported in [] All India Reporter 1990 at [] AIR 1990 SC 495 - UP Rajya Sahakari Bhoomi Vikas Bank Ltd, UP (Appellant) Vs Its workmen* (Respondents) - the Supreme Court has again emphasised as follows:

" The Tribunal's finding that both the groups were doing the same type (of) work has rightly not been challenged by employer-bank as it is a pure finding of fact. If irrespective of classification of junior and senior groups, the same work was done by both, the principle of equal [] pay for equal work is definitely attracted and on the finding of [] fact, the Tribunal was justified in applying the principle

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to give the same benefit to those who have been left out. We see no justification in the stand of the employer-bank and the challenge is without merit....."

10. As could be seen from the above said decisions of the Supreme Court, both senior and junior employees doing same type of work, one group getting higher pay from a back date whereas the other group at a later date cannot be accepted on the principle of equal pay for equal work. It is also quite evident from the above said judgements that the action of the respondents in not giving the monetary benefit from 1.8.1987 - the date from which their immediate juniors got, is discriminatory and affects very much Article 14 and 16 of the Constitution of India and violates the fundamental right 'equal pay for equal work.'

11. As a matter of fact, the respondents as already pointed out, have given notional benefit to the applicant w.e.f. 1.4.1987, restricting monetary benefits with effect from 10.1.1989. As already pointed out, the applicants, as of right, are entitled for monetary benefit w.e.f. 1.8.1987, on which date the pay of their immediate juniors with monetary benefits was stepped up. Hence, for the above said reasons, this application is liable to be allowed.

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12. In the result, the respondents are hereby directed to pay the arrears of salary from 1.8.1987 upto 9.1.1989 to the applicants by stepping up their pay on par with their immediate juniors w.e.f. 1.8.1987. The said arrears shall be paid to the applicants within three months from the date of issue of this order. The application is allowed accordingly. In the circumstances of the case, the parties shall bear their own costs.

T. Chandrasekhara Reddy
(T. CHANDRASEKHARA REDDY)
Member (Judicial)

Dated: 14 Feb., 1992

S. D. 29/2/92
Deputy Registrar

To

1. The Accountant General (A&E) A.P. Hyderabad.
2. The Comptroller & Auditor General of India, New Delhi.
3. The Secretary, Min. Finance
(Dept. of Expenditure) Govt. of India, New Delhi.
4. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd. Bench.
5. One copy to Mr.G.Parameswara Rao, SC for ^{3rd and} A.D. CAT.Hyd
6. One spare copy.
7. Copies to all Registrars as per the Standard List of CAT, Hyderabad.
8. 1 copy to Deputy Registrar (Jail) CAT.Hyderabad.

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WTS 10/12/92
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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. T. Chandrasekhar Rao

AND -

THE HON'BLE MR. _____

M(J)

AND -

THE HON'BLE MR. R. Balasubramanian M(A)

AND -

THE HON'BLE MR. _____

M(J)

DATED: 14-2-1991

ORDER/ JUDGMENT:

M.A./R.A./C.A. No. _____

O.A. No. 229/90, ⁱⁿ

T.A. No. _____

(W.P. No. _____)

Admitted and Interim directions

Issued. _____

Allowd. _____

Disposed of with directions

Dismissed. _____

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

In order as to costs.

