

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 2027/2011

Reserved on: 9.08.2016
Pronounced on: 19.08.2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

1. Romesh Kumar Puri
S/o Late Shri K.C. Puri
Economic Officer, Tariff Commission
Department of Industrial Policy and Promotion,
Ministry of Commerce and Industry
Lok Nayak Bhawan, New Delhi-110011
2. Chetan S. Jayant
S/o Shri Ram Swaroop Jayant
Economic Officer, Tariff Commission
Department of Industrial Policy and Promotion,
Ministry of Commerce and Industry
Lok Nayak Bhawan, New Delhi-110011 Applicants

(Through Shri S.K. Das, Advocate)

Versus

Union of India : through

1. The Secretary,
Ministry of Finance,
Department of Economic Affairs
IES Division, North Block,
New Delhi-110001
2. Secretary
Department of Industrial Policy and Promotion
Ministry of Commerce and Industry,
Udyog Bhawan, New Delhi-110011
3. The Member Secretary,
Tariff Commission
Department of Industrial Policy and Promotion
Ministry of Commerce and Industry,
Lok Nayak Bhawan, New Delhi-110011
4. The Union Public Service Commission
Through the Secretary, Dholpur House
Shahjahan Road, New Delhi-110011 ... Respondents

(Through Shri R.V. Sinha, for respondents 1 and 2
Shri V.S.R. Krishna, for respondent 3)

ORDER

Mr. P.K. Basu, Member (A)

The applicants were appointed as Senior Investigator in the Bureau of Industrial Costs and Prices (BICP) in the year 1996. The BICP was later merged with the Tariff Commission and the applicants became employees of the Tariff Commission in April 1999. According to 1961 Recruitment Rules (RRs) for Indian Economic Service (IES), recruitment to this service was 60% by direct recruitment and 40% from among officers serving in offices under the government in statistical posts recognized for this purpose by the Controlling Authority. The applicants were eligible to apply at that point of time.

2. Learned counsel for the applicants has also produced seniority lists circulated on 31.10.1986, 8.02.1991, 10.04.1991 and 21.05.1991 to demonstrate that in all seniority lists of incumbents of feeder posts for promotion to IES, Senior Investigators of BICP were indeed considered for induction into IES.

3. The applicants grievance is that vide OM dated 30.05.2008, Department of Economic Affairs wrote to all ministries which are recognized as participating ministries, however, this did not include BICP.

4. The Tariff Commission has 17 cadre posts of IES officers. However, it also has two posts of Economic Officers in its own cadre, outside the IES, which are occupied by the applicants.

5. Senior Investigators were later designated as Economic Officer. It is stated by the applicants and not countered by the respondents that the applicants who are Economic Officers in the Tariff Commission, have no other avenue of promotion and they would retire in the same post of Economic Officer. In this background, the learned counsel cited the judgments of the Hon'ble Supreme Court in **M/s Ujagar Prints etc. etc. Vs. Union of India and others**, AIR 1989 SC 972, **Council of Scientific and Industrial Research and another Vs. K.G.S. Bhatt and another**, (1989) 4 SCC 635, **Dr. Ms. O.Z. Hussain Vs. Union of India**, 1990 Supp. SCC 688, **State of Tripura and others Vs. K.K. Roy**, (2004) 9 SCC 65, **Food Corporation of India and others Vs. Parashotam Das Bansal and others**, (2008) 5 SCC 100, to state that government has to provide promotional avenues for its employees.

6. The second prayer of the applicants is that they should be granted the upgraded pre-revised pay scale of Rs.2000-3500 with effect from 5.11.1996 (applicant no.1) and with effect from 31.12.1996 (applicant no. 2) i.e. the date when they were recruited as Senior Investigator through Union Public Service Commission (UPSC). This is claimed on the basis of the recommendations of the 5th CPC which recommended that all posts of Senior Investigators in the pay scale of Rs.1640-2900

may be given a replacement scale of Rs.2000-3500 and that all the lower level posts with economic functions be merged and constituted into a Subordinate IES. It is stated that the government agreed with the recommendations of the Pay Commission with regard to upgradation of pay scales. However, the replacement scale of Rs.2000-3500 was not granted to the applicants immediately. While all similarly situated persons were given the higher pay scale from 1.01.1996, the applicants were given this benefit from 20.03.2007, which according to the applicants, is arbitrary and discriminatory. The applicants have, therefore, prayed for the following reliefs:

- 8.1 allow the present application;
- 8.2 quash and set aside the communications dated 11.08.2010 (Annexure A-1), 18.12.2008 (Annexure A-2) and 9.03.2009 (Annexure A-3) in as much as they are detrimental to the applicants;
- 8.3 direct respondent no.1 to include the posts held by the applicants as feeder cadre posts for promotion to the lowest grade of the Indian Economic Service;

Or alternatively,

- 8.4 direct the respondents to provide promotional avenues to the applicants by decadering two posts in the Junior Time Scale of the Indian Economic Service in the Tariff Commission, and also decadering suitable number of posts

at higher levels of the Indian Economic Service in the Tariff Commission, and making the same available to the applicants for promotion as ex-cadre posts;

- 8.5 quash and set aside the communications dated 24.09.2010 (Annexure A-4) and 20.03.2007 (Annexure A-5) in as much as they are detrimental to the applicants;
- 8.6 direct the respondents to grant the upgraded pre-revised pay scale of Rs.2000-3500 to the applicant no.1 with effect from 5.11.1996 and to applicant no.2 with effect from 31.12.1996;
- 8.7 to issue any such and further order/directions this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case; and
- 8.8 to allow exemplary costs to the applicant.

7. Order dated 11.08.2010 is the order passed by the respondents denying inclusion of the post of Economic Officers of Tariff Commission into feeder grade of IES. Orders dated 18.12.2008 and 9.03.2009 are again letters reiterating the same decision. Order dated 24.09.2010 is passed in compliance of the order of the Principal Bench of the Central Administrative Tribunal in OA 3551/2009 on the issue of grant of upgraded pay scale of Rs.6500-10500 with effect from the date of joining of applicant no.2 and the request was rejected. However, vide office order dated 26.03.2007, both the applicants were redesignated as Economic Officer (Group B – Gazetted) in the pay

scale of Rs.6500-10500 with effect from 20.03.2007, instead of from the date of joining of the applicants.

8. Learned counsel for the applicants drew our attention to orders dated 27.06.2000 and 27.07.2004 issued by Department of Industrial Policy and Promotion (DIPP) by which Senior Investigators have been granted upgraded pay scale of Rs.6500-10500 with effect from 1.01.1996.

9. The learned counsel for the applicants further relied on order of this Tribunal in OA 1930/2011 in which two Senior Investigators of DIPP had made a similar claim of induction at the entry grade in the IES, as a feeder category. The said OA was allowed by the Tribunal and order also implemented vide OM dated 21.11.2012. The two applicants in the aforesaid OA, Shri S.L. Dave and Shri Moti Ram were included in the feeder list for induction into entry grade of IES from the date of issue of the order of the Tribunal i.e. 15.03.2012 after updating the feeder list (since the list was last updated on 1.04.2008). The applicants have also produced OM dated 26.12.2013 whereby Shri Moti Ram has been considered for next promotion as Assistant Director as well.

10. Learned counsel for the respondents states that the applicants had approached this Tribunal in OA 3551/2009 and vide order dated 29.04.2010, the said OA was disposed of without going into the merits of the case with a direction to consider the representation of the applicants and pass a reasoned and speaking order in accordance with law and that is

precisely what has been done by the respondents vide order dated 24.09.2010.

11. According to the respondents, the list of participating ministries recognized for feeder grade of IES does not include Tariff Commission and this is a policy decision of the government arrived at after taking into consideration various factors. Learned counsel for the respondents relied on the following judgments of the Hon'ble Supreme Court in this regard to state that the settled law is that Tribunals and Courts will not interfere in policy matters and to the extent that even if the Court feels that a better policy could be in place, it shall not give any directive to the government in this regard:

- i) **Ekta Shakti Foundation Vs. Govt. of NCT of Delhi**, AIR 2006 SC 2609
- ii) **P.U. Joshi and others Vs. Accountant General, Ahmedabad and others**, (2003) 2 SCC 632
- iii) **Mallikarjuna Rao and others Vs. State of Andhra Pradesh and others**, (1990) 2 SCC 707

12. Learned counsel for the respondents also raised the issue of multiplicity of reliefs as relief sought in para 8.6 regarding grant of upgraded pre-revised pay scale of Rs.2000-3500 from the back date does not arise as a consequence of reliefs sought in para 8.2 to 8.5. It is stated that on this ground, relief sought in para 8.6 is not maintainable in accordance with Rule 10 of the

Central Administrative Tribunal (Procedure) Rules, 1987. Moreover, it is argued that this is an order which was issued in 2007 and hence this OA is time barred as well as per provisions of Section 21 of the Administrative Tribunals Act. It is argued that after that 5th, 6th and 7th Pay Commissions have been constituted and their recommendations also have been implemented by the government. Thus this OA is hit by limitation.

13. According to the learned counsel for the respondents, the order of the Tribunal in OA 1930/2011 (supra) does not declare a law. Moreover it is against the ratio laid down by the Hon'ble Supreme Court in P.U. Joshi (supra) and Mallikarjuna Rao (supra).

14. Learned counsel for the respondents further argued that judgment of the Hon'ble Supreme Court in **Narender Chadha Vs. Union of India and Ors.**, 1986 SCC (L&S) 226 relied upon by applicants pertains to years prior to 1996, when the applicants joined and, therefore, would not be applicable.

15. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused judgments cited by either side.

16. The admitted facts are that the applicants were appointed as Senior Investigator in the BICP after appearing through the UPSC. The BICP was merged with Tariff Commission and thereafter, they became employees of Tariff Commission. They

were re-designated as Economic Officers and granted pay scale of Rs.6500-10500 from 20.03.2007. Earlier, they had scope of entry into IES which is demonstrated from the RRs and various seniority lists produced by the applicants. From 2008, the respondents came out with a new list of eligible feeder cadres, which did not include Economic Officers in Tariff Commission. As a consequence, access for the two applicants before us into IES was blocked, as a result they will continue as Economic Officers and will retire as such with no avenue of promotion. The only substantive objection of the respondents is that this is a policy decision of the government and in the light of the Supreme Court judgments, the Tribunal should not enter into policy matters. However, this policy decision is clearly in violation of the law settled by the Hon'ble Supreme Court in M/s Ujagar Prints (supra), K.G.S. Bhatt (supra), Dr. Ms. O.Z. Hussain (supra), K.K. Roy (supra) and Parashotam Das Bansal (supra).

17. Even otherwise, as a model employer, the government cannot take a decision that two employees, who are Post Graduates and recruited through the UPSC, should have no avenue of promotion. We are convinced that the applicants have a genuine case and their grievance needs to be redressed. This litigation has been going on since 2011 and, therefore, we also do not think that any useful purpose will be served by making these two applicants run around this Tribunal for another five years to get their prayer at 8.6 granted.

18. In the interest of substantive justice, we overrule the objection of the respondents that prayer 8.6 cannot be entertained for reasons stated by them. We, therefore, allow this OA and quash impugned orders dated 11.08.2010, 18.12.2008 and 9.03.2009, directing respondents to include both the applicants as feeder cadre for IES and also grant them the pay scale of Rs.6500-10500 from 1.01.1996, as has been given to all other similarly situated persons. We fix a time frame of 90 days from receipt of a certified copy of this order for implementation of our directions. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

/dkm/