

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3074/2012
M.A.No.2581/2012
M.A.No.2582/2012
M.A.No.2411/2016

Order reserved on 2nd November 2016

Order pronounced on 19th November 2016

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Mr. S K Tomar (Instt. Mech.)
Geo Physical Wing (G&RB)
Survey of India
17, E C Road, Dehradun
2. Mr. B S Negi (Instt. Mech.)
MGW (G&RB)
Survey of India
17, E C Road, Dehradun
3. Mr. S K Sharma (Instt. Mech. High Skilled)
CSMW (G&RB)
Survey of India
17, E C Road, Dehradun
4. Mr. C P Sahani (Instt. Mech.) (G&RB)
Survey of India
17, E C Road, Dehradun
5. Mr. Narendra Kumar (Instt. Mech.)
MGW (G&RB)
Survey of India
17, E C Road, Dehradun
6. Mr. V S Panwar (Instt. Mech.)
MGW (G&RB)
Survey of India
17, E C Road, Dehradun
7. Mr. Anand Singh (Instt. Mech.)
HPL Wing (G&RB)
Survey of India
17, E C Road, Dehradun
8. Mr. S K Kalyania (Instt. Mech.)
MGW (G&RB)

Survey of India
17, E C Road, Dehradun

9. Mr. L.M. Gairola (Instt. Mech.)
Project Suy Wing (G&RB)
Survey of India
17, E C Road, Dehradun

..Applicants

(Mr. Piyush Sharma, Advocate)

Versus

1. Union of India through Secretary
Ministry of Personnel & Training
North Block, New Delhi

2. Secretary
Ministry of Finance
Department of Expenditure
North Block, New Delhi

3. Secretary
Ministry of Science & Technology
Department of Science & Technology
Technology Bhawan, New Mehrauli Road
New Delhi – 16

4. The Surveyor General of India
Survey of India
Hathibarkala Estate, Dehradun
Uttrakhand

..Respondents

(Mr. Rajinder Nischal, Advocate)

O R D E R

Mr. K.N. Shrivastava:

M.A. No.2581/2012

M.A. seeking joining together in a single petition is allowed.

O.A. No.3074/2012

This instant O.A. has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main reliefs:-

“a) set aside order dated 12.5.2009 whereby the case of the applicant was rejected for giving them the higher pay scale;

b) Direct the respondents to implement the report of the Ad hoc Anomaly Committee which has recommended the higher pay scale to the applicants herein”

2. Brief facts of the case are as under:-

2.1 The applicants are Instrument Mechanics (Highly Skilled/Semi Skilled) in Survey of India. The Instrument Mechanic cadre has been placed in the pay scale of `3050-4590 (5th CPC). The applicants had represented to the respondent-organization (Survey of India) to grant them the pay scale of `4500-7000. Their representation for higher pay scale was considered by the Departmental Anomaly Committee, who, vide its Annexure A-2 recommendations, had recommended grant of the pay scale of `4500-7000 to the Instrument Mechanic cadre.

2.2 The respondents in consultation with the Ministry of Finance examined this matter and declined to accept the recommendations of the Anomaly Committee.

2.3 Some of the Instrument Mechanic staff members approached Madras Bench of this Tribunal by filing O.A. No.747/2006 praying for therein the following reliefs:-

“To seek the clearance and concurrence for the anomalies rectified in item No.1 and 7 in the Adhoc Anomaly Committee Meeting held on 11.7.2005 in so far as the pay scale of the applicants in the category of Surveyors and Officer Surveyors as discussed and approved and to grant consequential monetary benefit from the date on which such anomalies crept in the pay scales of Surveyors and Officer Surveyors within the time frame to be fixed by this Hon’ble Tribunal and to grant such further or other reliefs as this Hon’ble Tribunal may deem fit and proper in the facts and records of the case and thus render justice.”

2.4 The Madras Bench of this Tribunal disposed of the said O.A. on 04.05.2007 (Annexure A-4) with the following directions to the respondents:-

“22....We direct the respondents not to delay any longer the decision relating to the pay scale of Officer Surveyors as also that of Surveyors and consider the Anomaly Committee’s report in the light of the Hon’ble Apex Court Judgments referred to supra and take appropriate decision on the pay scales of Surveyors and Officer Surveyors Independently and without referring to the VI CPC so that, it does not get delayed further and issue necessary orders to that effect within a period of two-months from the date of receipt of a copy of this order. The OA is allowed as above with no order as to costs.”

2.5 The Association of these applicants also approached this Bench of the Tribunal seeking direction to the respondents to implement the recommendations of the Anomaly Committee by filing O.A. No.2371/2007 (Annexure A-11), which was disposed of by the Tribunal vide order dated 26.05.2008 (Annexure A-12) with the following directions:-

“8. In our considered view, once a coordinate Bench in respect of other categories where anomaly has existed, in F.R Singh’s case (supra), relying on the decision of the Apex Court in Union of India and others v. Hiranmoy Sen and others, (2008) 1 SCC 630, in the light of the representation pending with the respondents to settle the anomaly and on the basis of the decision of the Guwahati Bench in Surendra Nath Deuri & others (supra), claim of the applicants on all fours is squarely covered. Accordingly, after considering the rival contentions of the parties, OA stands disposed of with a direction to the respondents to redress the grievance of applicants within 120 days by settling the anomaly as per the decision of the Committee dated 13.7.2005 in respect of various categories without referring it to the VI CPC. No costs.”

2.6 As Annexure A-12 order of the Tribunal was not implemented by the respondents, the applicants filed three C.Ps. (C.P.Nos.344, 345 and 363 of 2010) in O.A. No.2371/2007 (Annexure A-13). All these C.Ps. were closed

by the Tribunal in terms of the common order dated 16.08.2010 (Annexure A-14) with the following observations:

“7. What is to be considered by the respondents is recommendations of the anomaly committee and the dicta in F.R. Singh’s case (supra) where after hectic deliberations and relying upon plethora of cases an ultimate decision arrived at was to take up the case in settling anomalies. In fact, in the matter of pay and allowances and revision of pay it is only the expert body which could have jurisdiction, yet when we find that the anomaly committee having recommended the ultimate decision is of the Government, whether rightly or wrongly, consideration is not apt in law. The mere fact that consideration has arrived at different conclusion, which the applicants could not have been anticipated would not give them a right to assail the order on the ground that it is contumacious. A detailed discussion of which we do not go on its merit in the present form, the complaint of the applicant that a contempt has been committed is not tenable as per the decision of the Apex Court in P.M. Rangaswamy’s case (supra). However, giving liberty to the applicants to assail the memorandum dated 12.5.2009 in original proceedings, CPs are closed. Notices issued to the respondents are discharged.”

2.7 Aggrieved by the Annexure A-14 of the order, whereby the three C.Ps. were closed by the Tribunal, the applicants approached the Hon’ble High Court of Delhi in W.P. (C) No.8937/2011, which was hastily withdrawn by them and Annexure A-15 order dated 21.12.2011 to that effect was passed by the Court.

2.8 The respondents, in the meantime, acting on the orders of various Benches of this Tribunal, vide Annexure A-1 O.M. dated 12.05.2009, declined the request of the applicants to upgrade their pay scale to `4500-7000. The relevant portion of the said O.M., on the issue, is extracted below:-

“(xvii) It may further be observed that Instrument Mech. Highly Skilled and the Instrument Mech. Skilled would be placed in the same pay scale of Rs.4500-7000 if proposed upgradation is accepted

leading to further anomaly. The pay scales of these posts may also not be upgraded due to in adequate functional justification.”

The applicants have challenged Annexure A-1 O.M. of the respondents and have prayed for the implementation of the Anomaly Committee's recommendations in their case.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The respondents in the reply have raised the issue of limitation and have also questioned the recommendations of the Anomaly Committee. On the issue of limitation, the respondents have stated that the cause of action for the applicants arose on 12.05.2009 when the impugned Annexure A-1 O.M. was issued by the respondents declining their request for their pay scale upgradation. It is submitted that the applicants have filed this O.A. almost after a gap of three years on 07.03.2012, which is not permitted under Section 20 (2) of the Administrative Tribunals Act, 1985. It has also been stated that in terms of the ratio of law laid down by the Hon'ble Supreme Court in **D.C.S. Negi v. Union of India & others** (Civil Appeal No.7956 of 2011) decided on 07.03.2011, this O.A. suffers hugely with limitation of time and thus it cannot be adjudicated.

4. On the issue of recommendations of the Anomaly Committee for grant of pay scale of ` 4500-7000 to the applicants, the respondents in their reply have submitted that the Anomaly Committee cannot have the last word on the issue involved. The recommendations of the Committee are explicitly inconsistent with the recommendations the Central Pay Commission (CPC). Nevertheless the issue has been considered by the respondents in consultation with the Ministry of Finance and finally vide

the impugned Annexure A-1 O.M. it was declared that the recommendations of the Anomaly Committee cannot be accepted.

5. We heard the arguments of learned counsel for the parties on 04.11.2016. We have considered the arguments and have also perused the pleadings /additional submissions and documents annexed thereto.

6. First we would like to deal with the issue of limitation raised by the respondents. The applicants together with this O.A. have also filed M.A. No.2582/2012 praying for condonation of delay in filing the O.A. It is submitted that this Bench of the Tribunal, vide Annexure A-14 order dated 16.08.2010, whereby three C.Ps. were disposed of, had given liberty to the applicants to assail the Annexure A-1 O.M. dated 12.05.2009. The applicants had challenged Annexure A-14 order of the Tribunal before the Hon'ble High Court of Delhi in W.P. (C) No.8937/2011, which was allowed to be withdrawn on 21.12.2011. Immediately thereafter, the applicants have filed the instant O.A. on 07.03.2012, i.e., within three months. As such, the embargo of limitation will not apply to the O.A.

7. The respondents, on the other hand, have stated in their reply that the cause of action arose to the applicants immediately after Annexure A-1 O.M. was issued by the respondents, whereas the instant O.A. has been filed after almost a gap of three years and hence the O.A. suffers from the vice of limitation.

8. Considering the fact that the Tribunal had granted liberty to the applicants to challenge the O.M. dated 12.05.2009 vide Annexure A-14 order dated 16.08.2010 and that the applicants had thereafter gone to the

Hon'ble High Court in W.P. (C) No.8937/2011, which was allowed to be withdrawn on 21.12.2011, we are of the view that the limitation will not apply to the O.A. since it has been filed within three months. Accordingly, M.A. No.2582/2012 seeking condonation of delay in filing instant O.A. is allowed.

9. Coming to the merits of the matter, we have gone through the orders of the Madras and the Principal Benches of the Tribunal. Both these Benches have only directed the respondents to consider the recommendations of Anomaly Committee and take appropriate decision. In compliance with these orders of the Tribunal, the respondents have issued the Annexure A-1 O.M. declining the request of the applicants.

10. Pay scales for various cadres across the Government Departments are considered and recommended by the CPC, which is constituted at periodical intervals. Indisputably, the CPC is the competent body to consider all such matters and make suitable recommendations to the Government. The CPC also provides opportunities to various Services, Associations and individuals to present their cases before it. In the instant case, the 5th CPC had recommended the pay scale of `3050-4590 for the Instrument Mechanics in Survey of India, which has been accepted by the Government and Notification to that effect was issued by the Government way back on 30.09.1997 itself. Later on, two more CPCs, i.e., 6th and 7th CPCs, came to be constituted and they too have submitted their Reports, which have been accepted and implemented by the Government. The applicants had liberty to represent their case before the 6th and 7th CPCs, who were the right *fora* to consider the matter.

11. The recommendations of the Anomaly Committee would carry no conviction unless such recommendations are accepted by the Government. In the instant case, the respondents, in consultation with the Ministry of Finance, have rejected the recommendations of the Anomaly Committee. In this view of the matter, we are of the view that there is no substance nor any merit in the O.A. and as such, the O.A. is liable for dismissal.

12. The O.A. is accordingly dismissed. No order as to costs.

13. In view of the aforementioned order, no order is required to be passed in M.A. No.2411/2016. M.A. stands disposed of.

(K.N. Shrivastava)
Member (A)

/sunil/

(Raj Vir Sharma)
Member (J)