



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/01973/2015

Date of order : 17.07.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

(1) Sunita Kumari Keshwani,
Daughter of Late Brilal Keshwani,
Aged about 50 years,
Working at P-7, Chowinghee Square,
Kolkata – 700 069 and
Residing at Halisahar Railway Boundary Road,
P.O. – Nabanagar, District – 24 Parganas (N),
Pin – 743 136.

(2) Smt. Nirupama Chakraborty,
Daughter of Sri Niranjan Biswas;
Aged about 53 years,
Residing at C/o Sri G. Chakraborty,
G-40, New Garia, Co-op Housing Society,
P.O. – Panchasayar,
Kolkata – 700 094.

(3) Smt. Somashree Bandhu,
Daughter of Late Shib Prasad Basu,
Aged about 49 years,
Residing at M.I.G. 9G2, Greenwood Nook,
369/2, Purbachal Kalitala Road,
Kolkata – 700 078.

(4) Sri Balaram Birua,
Son of Late Jagmohan Birua,
Aged about 44 years,
Residing at C/o Sri Sunaram Mardi,
Samayta – 2, Qt. No. 102, 1st Floor,
Near Dharsa Tel. Exchange, Post – GIP Colony,
Howrah – 711 112, West Bengal.

(5) Smt. Saswati Ghosh,
Daughter of Sri Dhiraj Kanti Roy Talukdar,
Aged about 40 years,
Residing at C/o Sri Sudarshan Ghosh,
3, Sri Arabinda Nagar,
P.O. – Naktala, Kolkata – 700 047,
West Bengal.

hsl

(6) Smt. Sudha Singh,
Daughter of Sri Ghan Shyam Singh,
Aged about 42 years,
Residing at 195, N.S. Bose Road,
Sugam Park,
D-401, Narendrapur,
Kolkata – 700 103.

(7) Smt. Anita E. Marandi,
Daughter of Sri N.V. Jumde,
Aged about 45 years,
Residing at Street – 33,
Q.N. 11/2D, Area – 5, Chittoranjan,
Dist. – Burdwan,
Pin – 713 331, West Bengal.

---Applicants

-Versus-

1. The Union of India,
Through the Secretary,
Ministry of Finance,
Union of India,
North Block,
New Delhi.
2. The Chief Principal Commissioner of Income Tax,
Central Revenue Building, I.P. Estate,
New Delhi – 110 002.
3. The Principal Chief Commissioner of Income Tax,
West Bengal & Sikkim, Ayakar Bhawan, P-7,
Chowringhee Square, Kolkata – 69.

---Respondents

For the Applicant : Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel

For the Respondents : Ms. P. Goswami, Counsel

[Signature]

ORDERPer Dr. Nandita Chatterjee, Administrative Member:

Aggrieved by non-extension of higher pay scale of Rs. 5500-9000/-, Rs. 6500-10500/- and Rs. 7500-12000/- as consequent upon judgement passed in SLP (Civil) No. 17419/2009, the applicants have prayed for the following specific relief in the instant application:-

- "(I) An order do issue directing the respondents to fix the pay of the applicants 1 to 3 in the posts of Junior Hindi Translator in the scale of Rs. 5500-9000/-, Senior Hindi Translator in the scale of Rs. 6500-10500/-, Assistant Director (OL) in the scale of Rs. 7500-12000/- at per the Official Language cadre of CSOLS.
- (II) An order do issue directing the respondents to fix the pay of applicants No. 4 to 6 in the post of Hindi Translators in the Scale of Rs. 5500-9000/-, Senior Hindi Translator in the Scale of Rs. 6500-10500/- at per with the Official Language Leduc of CSOLS.
- (III) An order do issue directing the respondents to grant arrears and other consequential benefits.
- (IV) Leave may be granted to file this Original Application jointly under Rule 4(5)(a) of the CAT procedure Rule, 1987."

2. The applicants have prayed for leave to file the Original Application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987. Ld. Counsel for the applicants submits that the applicants have a common interest and common cause of action and, accordingly, leave is granted for joint prosecution under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

3. Heard both Ld. Counsel, examined pleadings and documents on record.

4. The applicants' case, in brief, and as canvassed by their Ld. Counsel, is as follows:-

That, the applicants were initially appointed in the post of Junior Hindi Translator and subsequently promoted to the post of Sr. Hindi Translator and some of them have been promoted subsequently to the post of Assistant Director.

That, consequent upon the judgment passed in SLP (Civil) No. 17419 / 2009 the pay of the applicants should have been fixed in the scale of pay of Rs.

hnl

5500-9000/-, Rs. 6500-10500/- and Rs. 7500-12000/- to the post of Junior Hindi Translator, Senior Hindi Translator and Assistant Director (OL) respectively in the Income Tax Department at par with the Official Language cadre of C.S.O.L.S.

That, the respondents cannot deny the benefits of the same scale of pay as extended in favour of Shri S.P. Maskey and Shri S.C. Kanojia, who were extended such benefits by the Chief Commissioner of Income Tax, Nagpur (Annexure A -1 to the OA).

That, the applicants represented before the concerned authorities for refixation of their pay citing the judgment issued by the Hon'ble Apex Court in SLP(C) No. 17419/2009 but as such representations have failed to merit any consideration, being aggrieved, the applicants have filed the instant application.

5. Per contra, the respondents have argued that since extending the benefit of upgraded pay scales to all similarly placed persons is a matter of policy, the Directorate of Income Tax (Public Relation, Printing Publicity and Official Language) had placed the matter relating to upgradation of pay scales of Junior Hindi Translators, Senior Hindi Translators and Assistant Directors (OL) (wherein the representation of the applicants were also included) working in attached and Subordinate offices of CBDT equivalent to Central Secretariat Official Language Services (C.S.O.L.S.) before the Central Board of Direct Taxes in a consolidated manner. The matter was thereafter referred to Department of Expenditure (DOE) through Integrated Financial Unit (IFU) for consideration. The DOE vide noting dated 29.7.2015 had stated as under:-

"The matter has been considered in this Department. This Department agrees to implement the live orders of CAT/Court, which are due for implementation, in the case of applicants/petitioners to avoid contempt."

Thereafter the file was again submitted to Department of Expenditure for further clarification in respect of extending benefit of upgraded pay scales to other similarly placed officials/officers. The DOE has communicated vide their noting dated 09.10.2015 as under:-

hsl

"The matter has been re-considered in this Department. The earlier decision conveyed vide this Department's UO note dated 29th July, 2015 is reiterated."

That, since decision of the Hon'ble CAT Nagpur Bench in O.A. No. 2138/2005 (Sh. S.P. Maske, Senior Hindi Translator) and O.A. No. 2139/2005 (Sh. S.C. Kanaujia, the then Junior Hindi Translator) was only in respect of the specific appellants (Judgment in personam), the benefits therefrom could not be extended to all the similarly placed persons.

That, since the judgment passed by Hon'ble Apex Court and various CAT Benches were only for the applicants judgment in personam, therefore, the same benefits cannot be extended to the applicants of this O.A. without any policy decision.

The respondents have also furnished in their support, the communication from the Department of Expenditure in an ID-Note No. 15 dated 29.7.2015 in which the Department of Expenditure had agreed to implement the live orders of CAT/Court which are due for implementation in the case of applicants/petitioners to avoid contempt.

ISSUE

6. The sole issue that has to be decided upon in the context of adjudication of the instant original application is whether the applicants deserve to be treated at par in terms of benefits of pay scale as extended in favour of Sh. S.P. Maske, Senior Hindi Translator and Sh. S.C. Kanaujia, Junior Hindi Translator as directed by the Chief Commissioner of Income Tax, (henceforth referred to as CCIT), Nagpur.

hsl

FINDINGS

7. The orders of the Office of Chief Commissioner of Income Tax, Nagpur annexed as Annexure A-1 to the O.A. are examined at the outset and the relevant portions are extracted below for record:-

"The applicants vide letters dtd. 2.8.2012 have requested to refix their pay notionally from 1.1.1996 with actual payment of arrears in the higher pay scale being made from 11.2.2003 as per the decision of Hon'ble CAT, Bench at Nagpur in O.A. No. 2138/2005 and O.A. No. 2139/2005.

Legal opinion of Sr. Standing Counsel Shri R.G. Agarwal was received in this matter on 2.9.2013. As per the legal lopinion of Sr. Standing Counsel, Shri R.G. Agarwal, "In my opinion the judgements rendered by the Hon'ble Apex Court while dismissing the Special Leave Petitions is very clear and there is no ambiguity and according to me the applicants are entitled to the relief or benefit they have claimed in the Original Applications as per the judgment rendered by the Hon'ble Tribunal." (Annexure-D).

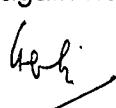
In view of the judgment of Hon'ble CAT dtd. 2.8.2012 and judgment of Hon'ble Supreme Court dtd. 25.7.2013, the applicant's are entitled to the scale of pay on par with that of the Translators in 'C.S.O.L.S.' "notionally from 1.1.1996 with actual payment of arrears in the higher pay scale being made from 11.2.2003 in terms of Annexure – 3 order issued by the Department of Expenditure, Ministry of Finance under the Government of India.

The Pay of the Shri S.P. Maske and Shri S.C. Kanojia, Sr. Hindi Translators may accordingly be refixed in view of the judgment of the Hon'ble CAT in the case of Shri Sunil Pundikrao Maske O.A. No. 2138/2005 & in the case of Shri Shankar Chamanlal Kanojiya O.A. No. 2139/2005 dated 2.8.2012 mentioned above and also in view of the Hon'ble Apex Court decision in the case of Dhananjay Singh SLP No. 3380/2009 later converted as Civil Appeal No. 1119/2013 dated 25.7.2013."

Further, the Hon'ble Apex Court in **SLP (Civil) No. 37255/2012**, in their order dated 25.7.2013, while dismissing the SLP filed by the respondent department, had observed as follows:-

".....However, having noted that no functional difference was shown in their work, we cannot find any fault with the judgments of this Tribunal and the High Court for the reasons stated in the earlier special leave petition. The special leave petition is, therefore, dismissed."

In SLP (Civil) No. 17419/2009 vide order dated 25.7.2013, the Hon'ble Apex Court had again held that,



"..... having noted that when no material was placed before the Tribunal about the functional distinction, in our view, the order of the Tribunal could not be faulted."

Also in Civil Appeal No. 1119 of 2013, in their orders dated 25.7.2013, the Hon'ble Apex Court had similarly held:

"..... what we find is that there is no functional distinction as far as the work of these translators is concerned. Therefore, we do not take a different view. The civil appeal is dismissed."

While tendering their oral arguments, neither the Ld. Counsel for the respondents nor the official representing the respondents, whose personal appearance was called for, could substantiate as to whether there was any functional distinction between the responsibilities of the applicants with those who were granted the higher pay scale by the Chief Commissioner of Income Tax at Nagpur. The sole grounds on which the upgraded pay scales have been denied to the applicants was that they had not been applicants/petitioners in favour of whom there were live orders of Central Administrative Tribunal/Court and that as the decision of CAT, Nagpur Bench in O.A. No. 2128/2005 granted the upgraded pay scales to Sh. S.P. Maske, Sr. Hindi Translator and in O.A. No. 2139 of 2005 to Sh. S.C. Kanojia, the then Jr. Hindi Translator, such upgraded scale was granted only in respect of specific applicants in pursuance to judgements thereto.

8. Hence, we are of the considered view that the respondents have not been able to establish any functional distinction between the applicants and the officials who have been granted the upgraded pay scale by the CCIT, Nagpur. It is hence unreasonable to accept that the applicants will be deprived of the upgraded pay scales as because they were not litigants and had not approached a Tribunal/Court on similar cause of action.

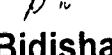
9. Accordingly, we direct the competent respondent authorities to consider the representation of the applicants (Annexure "A-4" colly.) and to grant the upgraded pay scale as prayed for in the said representations in accordance with

[Signature]

the ratio of the Hon'ble Apex Court vide its judgment dated 25.7.2013 and on the same lines as directed by the CAT, Nagpur Bench in O.A. No. 3128/2005 and O.A. No. 2139/2005 respectively.

10. With this the O.A. is disposed of. There will be no order as to costs.


(Nandita Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member

SP