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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CIRCUIT AT PORT BLAIR

O.A.NO. 149 A&N OF 2014

IN THE MATTER OF:

An application under section 19 of the Central
Administrative Tribunal Act, 1985.

-And-

IN THE MATTER OF:

Mohammed Mansoor S/o Late Mohammad Shafi
working as Workshop Superintendent, Dr.
B.R.Ambedkar Institute of Technology, Phargaon, Port
Blair, R/o of Gararacharma, Port Blair Tehsil, South
Andaman District.

.....Applicant

-Versus-

1. Union of India through the Secretary, Ministry of
Human Resource Development (Education
Department), Govt. of India, Shastri Bhavan, New
Delhi -110001.
2. The Lt. Governor, Andaman & Nicobar Islands, Raj
Niwas, Port Blair-744101.
3. The Chief Secretary, Andaman & Nicobar
Administration, Secretariat Building, Port Blair.

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4. The Secretary (Education) Andaman & Nicobar
Administration, Secretariat Building, Port Blair.

5. The Principal, Dr. B.R. Ambedkar Institute of
Technology (erstwhile known as govt. Polytechnic),
Pahargaon, Port Blair.

6. The Administrative Officer, Dr. B.R. Ambedkar Institute
of Technology (erstwhile Known as Dr. B.R. Ambedkar
Govt. Polytechnic), Pahargaon, Port Blair.

7. Shri Utpal Shrama, Principal, Dr. B.R. Ambedkar
Institute of Technology (erstwhile Known as Dr. B.R.
Ambedkar Govt. Polytechnic), Pahargaon, Port Blair.

8. Smti Kailash Kumari, Administrative Officer, Dr. B.R.
Ambedkar Institute of Technology (erstwhile Known as
Dr. B.R. Ambedkar Govt. Polytechnic), Pahargaon, Port
Blair.

.....Respondents.

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No. O.A. 351/00149/2014

Date of order: 21. 09 .2017

Present: Hon'ble Mr. A.K. Patnaik, Judicial Member
Hon'ble Ms. Minnie Mathew, Administrative Member

For the Applicant : Mr. R. Singh, Counsel

For the Respondents : Mr. T. Lall, Counsel
Mr. M. Lall, Counsel

ORDER

A.K. Patnaik, Judicial Member:

Applicant, Mohammed Mansoor, working as Workshop Superintendent in the erstwhile Government Polytechnic which has been renamed as Dr. B.R. Ambedkar Institute of Technology has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the reliefs as under:

"A) An order be passed quashing the impugned order No. 06 dated 02.04.2014 (Annexure 9), Order No. 458 dated 23.7.2014 (Annexure - 11), Order No. 687 dated 10.9.2014 (Annexure - 12) and Memorandum dated 13.10.2015 (Annexure - 14).

B) An order be passed directing the respondent authorities to fix his pay in the scale of Pay in Pay Band Rs. 37000-67000/- with AGP of Rs. 9000/- with effect from 1.1.2006 in accordance with AICTE Regulations, 5.3.2010.

B) An order be passed directing the respondents to pay arrears of pay, consequent to fixation of pay in Pay Band Rs. 37000-67000/- with ACP of Rs. 9000/-, with interest at the rate as this Hon'ble Tribunal deem fit and reasonable with effect from 1.1.2006.

C) Any such order or orders be passed and or direction or



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directions be given as this Hon'ble Tribunal may deem fit and proper.

C) Cost and incidentals to this application."

2. The grievance of the applicant in a nut shell is that earlier he filed Original Application No. 412 of 1994 before this Tribunal praying for a direction to the Respondents to grant him the scale of pay of Rs. 3700-5700/- The said OA was disposed of on 23.3.1998 and, in pursuance of the direction of this Tribunal, he was allowed to draw salary in the pay scale of Rs. 3700-5700/- w.e.f. 1.1.1986. Subsequently, on implementation of the AICTE recommended revised scale of pay, his pay was fixed in the pay scale of Rs. 12000-420-18300/- with effect from 1.4.1999. All India Council of Technical Education Pay Scales, Service Conditions and Qualifications for Teachers and Other Academic Staff in Technical Institution (Diploma) Regulations, 2010 came into effect vide notification dated 05.03.2010. In the said regulation, it was provided that the Workshop Superintendent is to be treated at par with Lecturers and is to be considered for upward mobility similar to that of Lecturers. It has also been provided that incumbent Lectures who have completed three years in the pre revised scale of Rs. 12000-18300/- on 1.1.2006 shall be placed in Pay Band of Rs. 37400-67000/- with AGP of Rs. 9000/-. The contention of the applicant is that as he has completed three years service in the pay scale of Rs. 12000-18300 on 1.1.2006, as per Regulation, 2010, therefore, he should have been granted the pay scale of Rs. 37400-67000/- with AGP Rs. 9000/- w.e.f. 1.1.2006 at par with the Lecturers but instead of the scale of Rs. 37400-67000 with AGP Rs. 9000/-, the Respondents fixed his pay in PB Rs. 15600-39100/- with AGP Rs. 8000/- in terms of Rule 7 of CCS (Revised Pay Rules), 2008 vide order dated 19.6.2012 albeit other teaching staff of the



same institute has been extended the benefit of revised pay scale in terms of AICTE Regulation, 2010. Thereafter, again he filed OA No. 351/00013/2014 which was disposed of on 20.3.2014 giving liberty to the applicant to make a compressive representation to the appropriate authority and with a direction to the authority to consider and pass a reasoned order. It is the contention of the applicant that before any such representation is filed by the applicant, the authority concerned in supersession of the earlier order fixing the pay of the applicant in PB 3 Rs. 15600-39100 with GP Rs. 8000/- issued another order dated 2.4.2014 re fixing the pay of the applicant in PB 3 Rs. 15600-39100 with GP Rs. 7600/-. Thereafter the applicant submitted representation dated 11.3.2014, result of which was communicated to the applicant vide order dated 23.7.2014 against which applicant has sent a legal notice on the Respondents and, thereafter, filed the instant OA seeking the aforesaid relief.

According to the applicant, in terms of Regulations, 2010 the post of Workshop Superintendent is to be treated at par with Lecturers and is to be considered for upward mobility similar to that of Lecturers. As per the provisions embodied in the Regulations, 2010 lecturers (Selection Grade) who have completed three years in the pre revised scale of Rs. 12000-18300/- as on 1.1.2006 shall be placed in PB Rs. 37400-67000/- with AGP Rs.9000/- and, therefore, the applicant having completed three years as on 1.1. 2006 should have been granted the scale of pay in PB Rs. 37400-67000/- with AGP Rs. 9000/- w.e.f. 1.1. 2006. The Respondent Nos. 5 & 6 committed hostile discrimination in not granting him the benefit of pay scale in terms of Regulations 2010 and re fixing his pay under Rule 7 of CCS (RP) Rules, 2008 in PB Rs. 15600-29100 with GP Rs. 8000/- and again reducing the pay earlier granted by way of granting him GP Rs. 7600/-,

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by virtue of which, the Respondents nullified the earlier order of this Tribunal in compliance of which the applicant was earlier granted the benefit. Thus, according to the applicant the action of the Respondents is highly illegal, arbitrary and contrary to Rules and the mandate enshrined in Articles 14 and 16 of the Constitution of India.

3. The Respondents in their reply statement have submitted that AICTE vide notification dated 5.3.2010 revised the pay scales and service conditions of teachers of Diploma Level Institution. The above notification has been implemented in DBRAIT and benefit has been extended to all the employees fulfilling the condition prescribed by the AICTE. Clause 1 (B) of the said notification under heading Workshop Superintendent, the AICTE it has been mentioned that the Workshop Superintendent is to be treated at par with Lectures⁹ and is to be considered for upward mobility similar to that of Lectures and in clause 1 (a) the pay scale and service conditions of Lectures⁹ have been provided.

It is the case of the Respondents that the case of the applicant was previously treated at par with the Head of the Department and the pay scale of Rs. ¹²⁰⁰1200-18300/- (pre revised 5th CPC) corresponding to Head of the Department was extended to him since 1986 based on the order of this Tribunal. However, with the implementation of AICTE notification dated 5.3.2010, the Workshop Superintendent is to be treated at par with that of a Lecturer. Therefore, his case was being examined for re-fixing the pay of Workshop Superintendent at par with the Lecture. In the meantime the normal replacement scale as per CCS (RP) Rules, 2008 in PB 3 Rs. 15600-39100 with GP Rs. 7600/- has been granted. Therefore the pay scale of the applicant shall be re fixed treating the post of workshop Supdt. at par with that of a lecturer and allowing the up graded scale of pay as per career

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advance scheme of AICTE notification dated 5.3.2010. Accordingly, the Respondents have submitted that there being no illegality in the decision making process of the matter, this OA is liable to be dismissed.

Learned Counsel for both sides have reiterated the stand taken in their respective pleadings and having heard them at length, perused the records.

4. The question that arises for our consideration is as under:

(i) Whether the authority concerned is competent to alter/modify the order granting a particular pay scale to the applicant in pursuance of the direction of the Division Bench dated 23.3.1998 in OA No. 412 of 1994;

(ii) Whether the present Division Bench is competent to do?

5. The answer to both the questions, as above, would obviously and axiomatically come to 'NO'. If so, automatically, the order re-fixing the pay of the applicant at this stage would automatically fall to the ground being contrary to the order of this Tribunal which has attained finality long since. Further we find that the Division Bench, took note of the fact that table-10 under the Heading Staff Salaries, the post of Workshop Superintendent has been clubbed along with the post of Head of the Department/Senior Lecturer Selection Grade/Training and Placement Officer and the pay scale prescribed Rs. 3700-5700/- which has been denied to the applicant and came to the conclusion as under:

"4. Normally the court or a Tribunal should not pass a positive direction on the Government to allot a particular pay scale to a Government employee or to a group of employees. But in this case we find that it is not a case of allotment of a particular pay scale; such allotment of the pay scale was already done by the All India

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Council for Technical Education as per norms and standard to which he is attached. It appears that the applicant has been denied the benefit of enjoying the pay scale of Rs. 3700-5700, only on analogy of the fact that in Dadra and Nagar Haveli in a similar post lower scale has been given. We would like to observe that right of a govt. servant does not arise for comparison but from the statutory rules and the law. And in this case we have no hesitation to hold that the statutory rules and law are in favour of the applicant. The rules prescribe that any person holding the post of Workshop Superintendent on a regular basis shall have to be given the pay scale of Rs. 3700-5700 and denial of this benefit amount to discrimination and arbitrary action on the part of the Government. In such a situation the Court has to interfere into the matter. We are of the view that in this case a suitable direction be given on the respondents to give the applicant the benefit of the enhanced pay scale.

5. In view of the above position, the application is allowed. The respondents are directed to give the benefit of the pay scale of Rs. 3700-5700 which has been prescribed for the post of Workshop Superintendent with effect from 1.1.86 from which he was given appointment by the respondents. However, since the application has been filed only on 4.4.94 the arrears of the said pay scale shall be given to him only with effect from 4.4.91 which is three years prior to the date of filing the application. With respect to the seniority, it should be fixed on 1.1.86. The above action shall be taken by the respondents within four months from the date of communication of this order."

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6. In compliance of the aforesaid direction of this Tribunal, Respondents fixed/refixed the pay of the applicant vide office order dated 11th January, 2001. Therefore, at this stage the Respondents are stopped to alter the said order or to deny the corresponding scale to the applicant. In view of the above, the impugned orders rejecting the representation of the applicant for pay refixation are quashed. The respondents are directed to refix the pay of the applicant keeping in mind the observations made above within a period of 90 days from the date of receipt of a copy of this order.

7. The OA is allowed as above. No order as to costs.

(MINNIE MATHEW)
ADMINISTRATIVE MEMBER

(A.K.PATNAIK)
JUDICIAL MEMBER

Dated: this the 2st day of September, 2017