

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

O.A. NO.4242 of 2018

This the 11th day of September 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Rohit Kumar Sethi
S/o Late Shri Dwijabar Sethi,
At : Basantpur, P.O. : Itipur,
Bhubaneswar, Orisha 751002.

.... Applicant
(By Adv.: Mr. Amrit Singh Khalsa for Mr. Prativa R. Verma)

VERSUS

1. President, National Water Development Agency,
Ministry of Water Resources
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110001.
2. Union of India,
through Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110001.
3. The Director General,
Ministry of Water Resources
National Water Development Agency,
18-20, Community Centre, Saket,
New Delhi-110017.
4. The Secretary, Dept. of Pension & Pensioners Welfare,
Ministry of Personnel, Public Grievances & Pensions,
Lok Nayak Bhawan, New Delhi.

.... Respondents
(By Advocate : Mr. Naresh Kaushik and Mr. S.N. Verma)

O R D E R (Oral)

Heard learned counsel for the parties.

2. By filing this OA, the applicant, who was holding the post of Driver (Special Grade) in National Water Development

Agency (NWDA) and retired on 30.6.2017, is seeking the following reliefs:-

- “a) To issue notice the Respondents directing the Respondent No. 1 and 3 Society to formulate and implement rules and regulations regarding Pensionary benefits akin to those being given to similarly placed societies, for its employees at the earliest;
- b) To direct that until such time the Respondent No.1 and 3 Society formulates and implements its own Pensionary benefit rules and regulations, the Applicant shall be awarded Pension as is applicable to Central Government Employees as has been specified clearly in the By-laws governing the Respondent Society.
- c) pass such further and other orders as this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.”

3. The applicant earlier filed Writ Petition (C) No.7510/2018 before the Hon’ble Delhi High Court seeking the same reliefs and the said Writ Petition was disposed of with liberty to the applicant to file appeal before the Tribunal and consequently the applicant has filed this OA.

4. The issue raised by the applicant in this case is more or less the same as raised by earlier in OA 2037/2018. Although the said OA was allowed by this Tribunal vide Order dated 8.2.2010, directing the respondents to implement OM dated 1.5.1987 in respect of applicants therein and treat them under Pension Scheme in terms of CCS (Pension) Rules, 1972 w.e.f. 1.1.1986 with all benefits, as applicable to other Central Government employees, but when the same was challenged

by the respondents before the Hon'ble Delhi High Court by filing Writ Petition (Civil) No.3197/2010, the High Court vide Order dated 6.1.2011 quashed the aforesaid Order of this Tribunal, the ratio of which reads as under:-

“20. The gist of the above discussion is that the impugned judgment and order dated 08.02.2010 passed by the Tribunal is faulty and deserves to be set aside and we do so by formally directing that the impugned judgment and order dated 08.02.2010 allowing the Original Application filed by the respondents is set aside. However, in view of the discussion contained in paragraphs 15 and 16 above, we direct the Ministry of Water Resources to consult the matter of the issuance of an order similar to the Office Memorandum dated 1.5.1987 for the employees of NWDA with the Department of Pensions and Pensioners' Welfare and thereafter take an appropriate decision in said regard within four weeks from the date of receipt of the copy of this order. Needless to state, while taking necessary decision, the Ministry of Water Resources and Department of Pensions and Pensioners' Welfare shall examine the concerns raised by the Department of Expenditure, Ministry of Finance in the letter dated 16.03.2000.

2.1 The instant petition is allowed in the above terms.

Thereafter applicant's predecessors filed Review Petition No.90/2011 in the said Writ Petition before the Hon'ble Delhi High Court, which was dismissed by the High Court vide Order dated 18.3.2011.

5. The NWDA after consulting all the Nodal Authorities issued an Office Memorandum bearing No.8/82/2010-Admn/6977-82 dated 24.5.2011 stating categorically that '**it is not possible to agree to extend the benefits of pension**

***to the employees of NWDA on Govt. of India pattern w.e.f.
01.01.1986.'***

6. Thereafter the said predecessors of the applicant filed Civil Appeal Nos.712-713 of 2015 (Arising out of SLP (C) Nos.3106-3107 of 2012) before the Hon'ble Supreme Court challenging the aforesaid Orders of the Hon'ble Delhi High Court dated 6.1.2011 in the said Writ Petition and dated 18.3.2011 in the said Review Petition and the Hon'ble Supreme Court vide Judgment dated 20.1.2015, the relevant portion of the said Judgment reads as under:-

“14. In light of the facts and circumstances of this case and the submissions made by the learned counsel on both sides, it can be concluded that NWDA had framed its regulation the CPF Rules, 1982 and they were duly approved by the Governing Body of NWDA. As NWDA is an autonomous body under the Ministry of Water Resources, it has framed its own bye-laws governing the employees. It has been time and again reiterated that the Court must adopt an attitude of total non-interference or minimal interference in the matter of interpretation of Rules framed by autonomous institutions. In *Chairman & MD, Kerala SRTC vs. K.O. Varghese and Others*, (2007) 8 SCC 231, this Court held:

“KSRTC is an autonomous corporation established under the Road Transport Corporation Act, 1950. It can regulate the service of its employees by making appropriate regulations in that behalf. The High Court is not correct in thinking that there is any compulsion on KSRTC on the mere adoption of Part III of KSR to automatically give all enhancements in pension and other benefits given by the State Government to its employees.”

Thus, as the appellants are governed by the CPF Rules 1982, the O.M. applicable to Central Government employees is not applicable to them.

15. On the issue of parity between the employees of NWDA and Central Government employees, even if it is assumed that the 1982 Rules did not exist or were not applicable on the date of the O.M. i.e. 01.05.1987, the relevant date of parity, the principle of parity cannot be applicable to the employees of NWDA. NWDA cannot be treated as an instrumentality of the State under Article 12 of the Constitution merely on the basis that its funds are granted by the Central Government. In *Zee Telefilms Ltd. & Another v. Union of India & Ors.*, (2005) 4 SCC 649, it was held by this Court that the autonomous bodies having some nexus with the Government by itself would not bring them within the sweep of the expression 'State' and each case must be determined on its own merits. Thus, the plea of the employees of NWDA to be treated at par with their counterparts in Central Government under sub rule (6)(iv) of Rule 2009 of General Financial Rules, merely on the basis of funding is not applicable.

16. Even if it is presumed that NWDA is "State" under Article 12 of the Constitution, the appellants have failed to prove that they are at par with their counterparts, with whom they claim parity. As held by this Court in *Union Territory, Chandigarh v. Krishan Bhandari*, (1996) 11 SCC 348, the claim to equality can be claimed when there is discrimination by the State between two persons who are similarly situated. The said discrimination cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12. Thus, the employees of NWDA cannot be said to be 'Central Government Employees' as stated in the O.M. for its applicability.

17. Thus, by reason that the employees are governed by NWDA CPF Rules, 1982, the O.M. dated 01.05.1987 is not applicable to the appellant-employees. Further, as they have not established that they are Central Government employees, at par with their counterparts, their claim of parity with Central Government Employees is also defeated.

18. In view of the discussion in the foregoing paragraphs, we do not find any merit in these appeals which are accordingly dismissed. There shall be no order as to costs."

7. During the course of hearing, leaned counsel for the applicant made his submissions in furtherance of the Grounds (5.1 to 5.10) as taken in the OA. On the other hand, counsel for the respondents by referring to the aforesaid decision of the Apex Court in **T.M. Sampath** (supra) submitted that OM dated 1.5.1987 issued by the Department of Pension and Pensioner's Welfare for change over of employees from CPF Scheme to Pension Scheme w.e.f. 1.1.1986 is applicable only to Civilian Central Government employees and ***the employees of Autonomous Bodies are not automatically covered by that OM*** and the NWDA issued OM dated 24.5.2011 in compliance of the directions of the Hon'ble Delhi High Court and decided that "***it is not possible to agree to extend the benefits of pension to the employees of NWDA on Government of India pattern w.e.f. 1.1.1986***", as a matter of Policy, Ministry of Finance has not been agreeing to introduction of pension scheme on GOI pattern in the Autonomous bodies. Further, the Government of India has introduced a new Defined Contribution Pension Scheme known as the New Pension Scheme (NPS) w.e.f. 1.1.2004 and the same has already been extended to the employees of autonomous institutions. Hence, no reason exists for extending the old pension scheme to the employees of autonomous bodies. Ministry of Finance has also issued instructions vide Order dated 30.6.2009

under which the employees of autonomous bodies who were recruited before the date of 1.1.2004 can also be covered under NPS. In view the factual position of this matter as noted above, this Tribunal does not find any of the grounds as raised in the OA acceptable or sustainable in the eyes of law.

8. It is further to be noted that the Apex Court specifically held in the said Civil Appeal Nos.712-713 of 2015 (**T.M. Sampath and others vs. Secretary, Ministry of Water Resources and others**) that the autonomous bodies having some nexus with the Government by itself would not bring them within the sweep of the expression 'State' and each case must be determined on its own merits. Thus, the plea of the employees of NWDA to be treated at par with their counterparts in Central Government under sub rule (6)(iv) of Rule 2009 of General Financial Rules, merely on the basis of funding is not legally correct and further held that the claim to equality can be claimed when there is discrimination by the State between two persons who are similarly situated. The said discrimination cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12. Thus, the employees of NWDA cannot be said to be 'Central Government Employees' as stated in the O.M. for its applicability.

9. In ***P.U.Joshi vs. Accountant General*** (2003) 2 SCC 632, the Apex Court held as under:

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

Further in ***Indian Drugs & Pharmaceuticals Ltd. vs. Workman, Indian Drugs & Pharmaceuticals Ltd.***, (2007) 1 SCC 408, the Apex Court held as follows:-

“When the State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize quo any matter which under the constitution lies within the sphere of the legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers”.

The courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on these posts, regularization, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. The relevant case law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in *Rama Muthuramalingam vs. Dy. S.P.* AIR 2005 Mad 1, and we fully agree with the views expressed therein.”

10. In the result, for the foregoing reasons, this Tribunal is of the considered view that issue raised by the applicant in this OA is no more *res integra*, as the same has already been adjudicated and decided by the Apex Court in ***T.M. Sampath*** (supra) and it is also settled law that while exercising power of judicial review of administrative action, the court is not an appellate authority and the constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize quo any matter which under the constitution lies within the sphere of the legislature or executive, provided

these authorities do not transgress their constitutional limits or statutory powers. Thus, the present OA is dismissed accordingly. There shall be no order as to costs.

**(Nita Chowdhury)
Member (A)**

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