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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Review Application No.1/2005
Miscellaneous Application No.43/2005
in
Original Application No.439/2003 ✓
&
Original Application No.1564/2003

New Delhi, this the 27th day of January, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. Kuldip Singh, Vice Chairman (J)
Hon'ble Mr. S.A.Singh, Member (A)

Federation of All India ICMR Employees & Ors. ... Applicants

Versus

Indian Council of Medical Research & Ors. ... Respondents

O R D E R (By Circulation)

By Mr. Justice V.S. Aggarwal:

A Bench of this Tribunal had referred the following two questions regarding which the Full Bench had been constituted:

“1. Whether in the event of civil consequences ensued to a Govt. servant in the matter of his pay and allowances and also retrospective alteration in the conditions of service a post-decisional hearing would be valid compliance of the principles of natural justice?

2. Whether approval of the Govt. to the recommendations made by the Governing Body Executive Committee of ICMR regarding pay scales to the employees is mandatory when a representative of the integrated finance is a Member in the Committee and also Rule 15 of the Rules and Regulations of ICMR read with clause 6 of bye-law prescribed such grant of pay scale, as well as Ministry of Finance OM dated 15.10.1984 and clarification in OM dated 16.3.1986 and also the decision of the High Court of Delhi in CWP No.122/2002 supports such grant?”

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2. The Full Bench answered both the questions as under:

“In the facts of the present case, the applicants cannot insist that there has to be compliance of the principles of natural justice or that they should have been heard while fixing their pay and allowances.”

.....

“The answer in the peculiar facts would be in the negative. The approval of the Government contemplated would be necessary.”

3. When the matter was put up before the Bench of this Tribunal again, the attention of the Bench was drawn to the fact that a decision of the High Court in Civil Writ Petition No.3610/2002 had wrongly been mentioned in the order of reference as Civil Writ Petition No.122/2002 and, therefore, a rectification should be made. The Bench felt that reference had already been answered and the order of reference merges into the order of the Full Bench and, therefore, it will not be permissible. The application was dismissed. This prompted the applicants to file the present application seeking review of the order contending that the said decision of the Delhi High Court had not been taken note of because it was, inadvertently, wrongly ~~been~~ typed in the order of reference though in the earlier part of the order it has been mentioned correctly.

4. We have gone through the application and we find that the same is totally without merit.

5. Perusal of the decision of the Delhi High Court in Civil Writ Petition No.3610/2002 reveals that the question for

consideration was, as mentioned in Paragraph 2 of the order, as to whether in pursuance of the recommendations of Fifth Central Pay Commission, the Senior Administrative Officers working in the Ministry of Information and Broadcasting were entitled to the scale of Rs.2500-4000 (pre-revised). It had been contended on behalf of the Petitioners before the High Court that once the recommendations had been accepted by the appropriate Ministry, the Ministry of Finance could not turn down the same. The Delhi High Court held:

“15. According to the learned counsel, having regard to the recommendations made by the V CPC, the Ministry of Finance could not be said to be the ultimate authority inasmuch as the functional requirement was required to be considered by the Cadre Controlling Authority, which have been made and the same having been accepted by the Central Government, it could not have been even interfered with by the Ministry of Finance. Our attention has further drawn to the fact that in furtherance of the report of the V CPC, the scale of pay at S-14 was fixed as follows:-

“S.No. Existing Scales of Pay
Grades Revised Scales of Pay 14.
Rs.2,500-4000 S-14 Rs.7,500-225-
12,000 (proposed new pre-revised
scale)”

The said scale of pay allegedly was to be granted to the Senior Administrative Officer or Inspector of Accounts.

16. We, having regard to the facts and circumstances of the case, are prima facie of the opinion that the submissions made by the learned counsel appearing on behalf of the petitioner appear to be correct.

If the Cadre Controlling Authority found that there was functional requirement for the post of S.A.O., there was no question of merger of the

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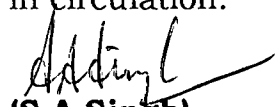
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said posts. Furthermore, if grant of such scale of pay leads to an anomaly, the same could have been referred to the Anomaly Removal Committee, but once the Cadre Controlling Authority found that there existed a functional requirement, it was not open to the Ministry to take recourse to the second part of the said recommendations. Such a methodology could be taken recourse to only if the first part of the recommendations of the said Commission cannot be given effect to which contingency will arise only when the Cadre Controlling Authority finds that there is no functional requirement of the post of Senior Administrative Officer. The respondents herein had not considered the matter from this angle."

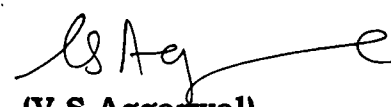
6. Perusal of the findings clearly reveals that the ratio decidendi is that once the recommendations had been accepted by the Central Government, Ministry of Finance could not interfere ^{in re -} ~~for~~ turning the recommendations.

7. This was not the question before us. The answer given by the Full Bench was that the approval of the Government contemplated would be necessary, keeping in view the facts and circumstances of that case. Therefore, the decision of the Delhi High Court in the case of **AKASHVANI & DOORDARSHAN ADMINISTRATIVE STAFF ASSOCIATION & ANR. v. UNION OF INDIA & ORS.**, CWP No.3610/2002 referred to above, is not at all relevant or applicable.

8. The Review Application, being without merit, is dismissed in circulation.


(S.A. Singh)
Member (A)


(Kuldip Singh)
Vice-Chairman(J)


(V.S. Aggarwal)
Chairman

/NSN/