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HIGH COURT OF DELHI : NEW DELHI

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Judgment reserved on: 25.10.2007
Judgment delivered on: 08.08.2008

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W.P. (C) No.9903/2006

Union of India

...Petitioner

Through: Mr. Rajeeve Mehra with
Mr. Sumeher Bajaj, Advocates.

versus

M.L.Mehta

...Respondent

Through: Mr. Rakesh Dhingra, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.

1. By this writ petition the Union of India impugns the order dated 13.12.2004 passed by the Central Administrative Tribunal, Principal Bench, New Delhi(for short `The Tribunal') in OA No.3160/2003 whereby the respondent's original application has been allowed and the office order dated 9.8.2001 read with revised letter dated 28.8.2002 and the revised pension payment order (whereby the respondent's pension had been reduced and consequent recovery ordered) have been quashed. While passing the impugned order the

Tribunal relied on its decision in OA No.2388/2001 dated 1.5.2002 in ***S.V. Nagarajan vs. UOI & Anr.***, wherein a similar point had been raised, namely, whether the upgradation of one post of Advisor (Cost) to the post of Additional Chief Advisor (ACA) was a mere upgradation not involving a restructuring of cadre and assumption of higher responsibilities and, therefore, falling under para 4(a) of the OM dated 30.6.1999 bearing No.6/1/98-ICI issued by the Department of Expenditure, Ministry of Finance, Government of India, or, whether it falls under para 4(b) of the said OM, inasmuch as, the upgraded post of ACA tantamounted to restructuring of the existing cadre and carried with it higher responsibilities and, therefore, entailed a process of selection from amongst the eligible candidates. The said issue had a bearing on question whether the benefit of the upgraded post could be given retrospectively with effect from 1.1.1996, the date from which the 5th Central Pay Commission Report has made applicable, or whether the said post of ACA could be filled only prospectively.

2. The Tribunal had in its decision rendered in OA No.2388/2001 concluded that the upgraded post of ACA had to be filled under para 4(a) of the OM dated 30.6.1999 and had accordingly allowed the said OA filed by Shri Nagarajan granting him retrospective upgradation to the post of ACA with effect from 1.1.1996 upto 30.1.1998, the date of his superannuation. The petitioner had, while considering the case of Shri Nagarajan concluded that the upgradation to the post of ACA granted to the respondent herein Shri M.L. Mehta

and to one other officer Shri J.K. Puri was erroneous and had withdrawn the same vide notification dated 9.8.2001 which was impugned by the respondent herein before the Tribunal. The petitioner had issued consequential orders revising the pension and ordering recovery to be made against the respondent for the excess pension paid to him on account of the aforesaid upgradation. This was also challenged by the respondent before the Tribunal.

3. We have, by our judgment passed today in WP(C) No.4460/2002 **UOI vs. Shri S.V. Nagarajan** filed by the UOI against the decision of the Tribunal in OA No.2388/2001 allowed the same, and set aside the decision of the Tribunal. We have held that the upgraded post of ACA is not a mere upgradation of post or a change of nomenclature and that it entails restructuring of cadre and assumption of higher responsibilities. Consequently para 4(b) of the OM dated 30.6.1999 is applicable in respect of upgraded post of ACA and the upgradation could not be given retrospective effect from 1.1.1996.

4. The pension of the respondent was fixed on the basis of the upgraded pay granted to him. Learned counsel for the respondent has argued that once the pension has been fixed, even if an error in the fixation of the same has been committed, the same cannot be downwardly revised. The respondent seeks to rely upon Rule 70(1) of the CCS Pension Rules and on Ministry of Finance U.O. No.D-2776/E-V/52 dated 08.05.1959. Rule 70(1) of the CCS Pension Rules states that, subject to provisions of Rules 8 & 9, pension once authorised

after final assessment shall not be revised to the disadvantage of Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently. It is argued that admittedly in this case neither Rule 8 nor Rule 9 have any application and, therefore, there can be no downward revision of the respondent's pension, which he had been receiving for over six years. Merely on account of erroneous interpretation of paragraphs 4(a) & 4(b) of the O.M. dated 30.06.1999, the pension of the respondent cannot be reduced. It is argued that the wrong interpretation or wrong application of the said O.M. dated 30.06.1999 cannot be said to be a clerical error in fixation of the pension. The respondent has not placed on record the Ministry of Finance U.O. Dated 08.05.1959. We have called for the aforesaid U.O. However, the same is dated 08.05.1952. The said U.O. States that before pension is sanctioned, the sanctioning authority can reduce the amount due under Article 470 of the Civil Services Regulations and after it is sanctioned its continuance depends on future good conduct but it cannot be stopped for other reason.

5. We find force in this submission of the respondent. The error in the fixation of the pay of the respondent by application of para 4(a) of the O.M. dated 30.06.1999 and the consequential fixation of the respondent's pension upon his superannuation cannot be termed as clerical. Consequently, even though we hold that it was para 4(b) of the O.M. dated 30.06.1999, which was applicable in the case of the respondent, since the erroneous upgradation granted S/Shri Mehta and

Puri was the doing of the petitioner and the said officers had no role to play in the said upgradation, we direct that no recovery in respect of any excess payment made to Shri M.L. Mehta towards arrears of pay or enhanced pension be effected from him. We further direct that the pension of Sh. M.L. Mehta, the respondent, as already fixed shall also not be reduced to his disadvantage and he shall continue to draw the same as already being drawn by him.

6. With these observations this writ petition is also disposed of leaving the parties to bear their respective costs.

(VIPIN SANGHI)
JUDGE

(A.K. SIKRI)
JUDGE

August 08, 2008
aj/as