

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

W.P.(C) No. 574-75 of 2004

%

Reserved on : March 17, 2009

Pronounced on: April 20, 2009.

Union of India & Another

. . . Petitioners

through :

Mr. R.V. Sinha, Advocate

VERSUS

Shri Megh Raj Singh & Others

. . . Respondents

through

Mr. L.R. Khatana, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The respondents herein are the employees of the Department of Agriculture and Cooperation working in various Divisions thereof. This department comes under the Ministry of Agriculture, Government of India. The dispute relates to the date from which they are entitled to the grant of pay scale of Rs.6,500-10,500/-, which

was introduced pursuant to the recommendations of the 5th Central Pay Commission.

2. It so happened that the 5th CPC made recommendations in Para 56.10 of its Report, for reconstructing the cadre of Senior Technical Assistants (STA) and upgradation of 50% of the post of STAs working in the Ministry of Agriculture in the upgraded pay scale with their re-designation as STA Grade-I. Before 01.01.1996, the post of STA carried the pay scale of Rs.1640-2900. Recommendation of the Pay Commission was that 33 out of 66 posts (i.e. 50%) should be placed in the pay scale of Rs.2000-3500/- and re-designation as STA Grade-I. Implementing these recommendations, orders dated 29.09.1999 were issued by placing 50% posts in the re-designated grade of STA Grade-I and giving them corresponding pay scale of Rs.6500-10500/-. However, the grievance of these respondents about that order was that the pay scale of Rs.6500-10500/- was given w.e.f. 27.09.1999 (corresponding to pre-revised scale of Rs.2000-3500/-). The respondents, under these circumstances, filed OA before the Tribunal under Section 19 of the Administrative Tribunal Act claiming the benefit of revised pay scale w.e.f. 01.01.1996 instead of

27.09.1999. The Tribunal has allowed the prayer of the respondents. Feeling dis-satisfied with this outcome of the OA, the present writ petition is preferred by the petitioner impugning the aforesaid judgment dated 04.09.2003.

3. Submission of learned counsel for the petitioner was that the grant of upgradation of 50% posts of STAs to that of STA Grade-I was not automatic. This could only be done after restructuring of the cadre. Consequently, after the recommendation of the 5th CPC, restructuring exercise was undertaken and only after this exercise orders dated 29.09.1999 were issued. Such orders, therefore, had to be prospective in nature which stipulation was specifically mentioned in the said orders. He also submitted that such prospective operation was in consonance with the CCS (Revised Pay) Rules, 1997 and particularly part (b) thereof, the relevant portion of which reads as under:

“In certain other cases where there are conditions prescribed by the Pay commission as prerequisite for grant of these scales to certain posts such as cadre restructuring, redistribution posts, etc, it will be necessary for the Ministries/Department concerned to not only accept these pre-conditions but also to implement them before the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have **to take prospective**

effect and concerned posts will be governed by the normal replacement scales until then.”

4. The learned counsel submitted that the Tribunal exceeded its jurisdiction while exercising its power of judicial review by giving retrospective operation to orders dated 29.09.1999. Ignoring the fact that the Competent Authority had taken a conscious decision, as a policy matter, keeping in view the recommendations of the expert body like Pay Commission. He also relied upon the following observations of the Supreme Court in the case of *Government of Andhra Pradesh & Ors. Vs. N. Subbarayudu & Ors.*, JT 2008 (4) SC 282, which is as under:

“7. There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide **State of Bihar v. Ramjee Prasad** [JT 1990 (2) SC 225; 1990 (3) SCC 368], **Union of India & Anr. v. Sudhir Kumar Jaiswal** [JT 1994 (3) SC 547; 1994 (4) SCC 212] (vide para 5), **Ramrao & Ors. v. All India Backward Class**

Bank employees Welfare Association & Ors. [JT 2004 (1) SC 331; 2004 (2) SCC 76] (vide para 31), **University Grants Commission v. Sadhana Choudhary & Ors.** [JT 1996 (9) SC 234; 1996 (10) SCC 536], etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result.

9. As has been held by this Court in **Divisional Manager, Aravali Golf Club & Anr. v. Chander Hass & Anr.** [JT 2008 (3) SC 221] and in **Government of Andhra Pradesh & Ors. v. Smt. P. Laxmi Devi** [JT 2008 (2) SC 639] the Court must maintain judicial restraint in matters relating to the legislative or executive domain.”

His submission was that a conscious decision was taken by the Ministry of Finance giving approval from prospective date on the ground that in the instant case, since the redistribution of post was involved, the benefit of higher pay had to be extended on the prospective basis only.

5. Mr. L.R. Khatana, learned counsel for the respondents on the other hand argued that totally wrong twist is sought to be given, otherwise a plain and simple issue. He referred to the recommendation of 5th CPC relating to upgradation of these posts as per which 33 out of 66 posts (i.e., 50% posts) were to be upgraded to STA Grade-I. There

was no requirement or necessity to undertake any or reconstruction, before granting this grade. However, without any rationale, rhyme or reason, it was made effective from 27.09.1999 whereas the recommendations of 5th Pay Commission were enforced, as a policy decision, from 01.01.1996. According to him, there was no reason to fix any other date. He also submitted that as per recommendations of 5th Central Pay Commission itself, the matter only related to re-designation. The post of STA Grade-I was, in fact, even being treated as non-functional. Therefore, the conditions stipulated in the Revised Pay Rules which were relied upon by the learned counsel for the petitioner were not applicable in the instant case. On the contrary, according to him, Para 56.10 of the Central Pay Commission's recommendations was complete answer and clearly spelled out as to how the pay scales were to be upgraded. He further submitted that this para related to the Scientific and Technical staff in all Government Ministries and Organisations and therefore, had to be followed by everyone in the same manner. Instead, it was only in respect of the department of Agriculture and Cooperation where the respondents were employed that the dated of 27.09.1999 was fixed

for giving effect to the recommendations. In other organizations and the Government Departments, the date was fixed and thus even amounted to even hostile discrimination, which was not permitted as held by the Supreme Court way back in the year 1973 in the case of *Purshottam Lal and Others Vs. Union of India and other*, (1973) 1 SCC 651.

6. After hearing the counsel for the parties and going through the records of this case, we find ourselves in agreement with the submissions of the learned counsel for the respondents and are of the view that the Tribunal in the impugned order has decided the issue rightly. We may, in the first instance, reproduce Para 56.10 of the Report of the 5th Central Pay Commission as that is the genesis of the trigger point:

“56.10 Among the scientific and technical staff, there are 12 Technical/Jr. Technical Assistants in the scale of pay of Rs.1400-2300. While 9 of them are required to possess a degree in agriculture as the minimum qualification 3 of them, working in the Credit Division have been recruited with qualifications in Economics and Statistics. **We recommend that posts of Technical Assistants where a degree in science is the minimum essential qualification may be placed in the scale of Rs. 1600-2660.** 66 Senior Technical Assistants (including 6 in Economics and Statistics and 2 in Law), most of whom are direct recruit post-graduates and graduates in Agricultural Sciences with direct

promotion avenues to Group A in their respective Divisions, after rendering 5-8 years of service, are in the scale of pay of Rs. 1640-2900. They have represented that over a period of time both Section Officers, as well as Assistants of the Central Secretariat Service have been upgraded. A degree in Agriculture or Agricultural Sciences does not take less than 4 years of education. **We recommend that 33 posts of Senior Technical Assistants should be placed in the scale of pay of Rs.2000-3500 and be re-designated as Senior Technical Assistant Grade I, retaining the balance 33 posts in the existing pay scale but with the designation of Senior Technical Assistant Grade II.** The next higher grade comprises 10 posts of Technical Officers, Assistant Directors and Assistant Development Officers in the scale of pay of Rs.2000-3500. **As direct recruitment already exists at the two lower levels of Senior Technical Assistant and Technical Assistant, this grade may be retained as a 100% promotion grade for the Senior Technical Assistants and placed in the scale of pay of Rs.2500-4000.** The next higher level will be the Central Agriculture Service proposed in para 62.13. Like all the organized Group A services, the Central Agriculture Service may provide for a percentage of promotion not exceeding 50%."

7. The recommendation in Para 56.10 of the Report of 5th Central Pay

Commission includes:

- a) 9 out of 12 posts of Technical/Junior Technical Assistant in the pay scale of Rs.1400-2300/- be placed in pay scale of Rs.1600-2660/-. It was to be done on those cases where a degree in Science is the minimum essential qualification.
- b) In respect of STAs with which we are concerned, Pay Commission noted that there were 66 posts in STAs most of whom who manned these posts were direct recruit Post-graduates and Graduates in Agriculture Science.

These were in the pay scale of Rs.1640-2900/-, which they got after rendering 5-8 years of service.

- c) The Pay Commission also noted that they had represented that over a period of time both Section Officers as well as Assistants of the Central Secretariat services had been upgraded. It takes normally 04 years of education to obtain degree in Agriculture or Agricultural Science. On this basis, the Commission recommended 50% of STAs to be placed in the pay scale of Rs.2000-3500/- by re-designating them as STA Grade-I and remaining 33 posts to be retained in the existing pay-scale with the designation of STA Grade II.
- d) The specific recommendation is: "We recommend that 33 posts of Senior Technical Assistants should be placed in the scale of pay Rs.2000-3500/- and be re-designated as Senior Technical Assistant Grade-I"

8. The impugned order dated 29.09.1999 *inter alia* stipulated as under:

"In pursuance of the recommendations of the Fifth Central Pay Commission vide para 56.10, as accepted by the Government vide Part C First Schedule of Ministry of Finance (Department of Expenditure) Notification No. F.50(1)/IC/97 dated 30.09.99, and with the approval of Competent authority, 50% posts of Senior Technical Assistant (Group 'B', Non-gazetted, Non-ministerial) in various disciplines in the Department of Agriculture and Cooperation have been re-designated as Senior Technical Assistant (Agriculture) Grade-I (Group 'B', Non-gazetted, Non-ministerial) and granted upgraded pay scale of Rs.6500-10500/-."

9. It is clear that the recommendation contained in Para 56.10 of the Report of the 5th CPC has been accepted per se by the Government vide Notification dated 29.09.1997 and 50% posts of STAs are re-designated as STA (Agriculture) Grade-I.
10. However, while granting the upgraded pay scale, the date of 27.09.1999 is stipulated from which date it is made effective. The justification sought to be given in this behalf was that restructuring exercise was to be done. We do not find that any such 'restructuring' was even required. It was a simple recommendation whereby 50% posts were to be "upgraded" by "re-designating" them. One has to keep in mind the distinction between 'restructuring' of a cadre after undertaking requisite exercise and 're-designation' of a post which is only a ministerial act. Justification for giving higher pay scale was given by the Pay Commission itself. Once this recommendation is accepted, there was no other exercise, which was needed. Therefore, stating that it could only be done after 'restructuring' or that re-distribution of post was involved is a ploy to deny the benefit from the date it is otherwise legitimately due. After upgrading the pay

scale, higher pay scale is given to 50% incumbents and upgradation of post is involved. Because of this reason, no amendment in the governing rules by which the respondents are involved was carried out.

11. The respondents had obtained information under Section 19(i) of Right to Information Act, 2005, which was given to them vide orders dated 10.10.2006. It is clearly mentioned that post of STA Grade-I was being treated as non-functional at present. The very basis for denying the benefit from a posterior date, thus vanishes.
12. No doubt, it is not the province of the Court to fix cut-off date. That is the prerogative of the employer/Government. However, it is the Government itself, which has fixed the cut-off date of 01.01.1996 while implementing the recommendation of 5th Pay Commission. Furthermore, in all other departments wherever upgradation of pay scale is involved, the benefit is given w.e.f. 01.01.1996. It is clear from the following chart provided by the learned counsel for the respondents at the time of hearing which fact could not be denied by the learned counsel for the petitioner:

**“Details of Senior Technical Assistant and Equivalent Post
who have been granted Upgraded Pay-scales with effect
from 1.1.1996**

S No	Name of the Post	Ministry/ Department	Upgraded Scales awarded	Date of Implementation	Order No.
1.	Senior Technical Assistant	Ministry of Agriculture Department of Agriculture & Cooperation (National Bio-Fertilizer Development Centre)	Rs.6500-10500/-	1.1.1996	6-34/97-Fert.plg. dated (Annexure-I) (Page 1)
2.	Research Investigator Grade (I) (Economics)	Ministry of Agriculture Department of Agriculture & Cooperation (Directorate of Economics & Statistics)	Rs.6500-10500/-	1.1.1996	13(7)/97/EST T. I-ES Dated 19.4.1999 (Annexure - II) (Page 2-3)
3.	Senior Technical Assistants (STA Drugs)	Ministry of Health and Family Welfare (Directorate General of Health Services) (Drugs Section)	Rs.6500-10500/-	1.1.1996	4-11026/2/97-D Dated 15.01.2001 (Annexure-I) (Page 4)
4.	Senior Technical Assistants and Investigating Officer	Ministry of Corporate Affairs, (Department of Company Affairs)	Rs.6500-10500/-	1.1.1996	6/13-97/-IC-II Dated 2.7.1999 (Annexure-IV) Issued by Ministry of Finance (Department of Expenditure (Page 5)
5.	Economic Investigator Grade-I	Planning Commission	Rs.6500-10500/-	1.1.1996	A-22011/1/97-Adm-IV Dated 26.11.98 (Annexure-V) (Page 7-9)
6.	Senior Investigator/ Economic Investigator (IES)	Ministry of Finance, (Department of Economic Affairs)	Rs.6500-10500/-	1.1.1996	14013/97-IES Dated 25.8.98 (Annexure-IV) (Page 7-9)

7.	Junior Technical Officer (JTO)	Ministry of Communication, Department of Telecommunication	Rs.6500-10500/-	1.1.1996	1-1/97-PAT Dated 24.10.97 (Annexure-VII) (Page 10-11)
	Others				
1.	Assistant Director/ Technical Officers/ Assistant Development Officer	Ministry of Agriculture Department of Agriculture & Cooperation	Rs.7500-12000/-	1.1.1996	F.No.44011/4 /98-ESTT.V dated 24.3.2000 (Annexure-VIII) (Page 12)
2.	Technical Assistant	Ministry of Agriculture Department of Agriculture & Cooperation	Rs.5000-8000/-	1.1.1996	11014-3/97-E-IV dated 20.3.1998 (Annexure-IX) (Page 13-14)

“

13. Therefore, it is misconceived on the part of the petitioner to contend that the Tribunal has exceeded the power in fixing for changing the cut-off date. The entire case needs to be viewed from another angle, *viz.*, that of discrimination. Different cut-off dates could not be fixed for STAs in the various Divisions of the Department of Agriculture and Cooperation where the respondents are working. All their counter parts are given the upgraded pay scale of Rs.6500-10500/- w.e.f. 01.01.1996. Interestingly, the aforesaid chart would show that another centre in the same department, i.e., National Bio-Fertilizer

Development Centre has given same pay scale to the holder of the same post, viz., Senior Technical Assistants w.e.f. 01.01.1996. It is thus a case where dicta laid down by the Constitutional Bench in *Purshottam Lal (supra)* clearly applies. In that case, the Court found different treatment given while implementing report of the 2nd Pay Commission to different states of employees and held the same to be discriminatory and violative of Article 14 and 16 of the Constitution. It was held that recommendations would be applicable to all Central Government Employees being paid through Consolidated Fund of India. Employees of Forest Reserve Institute were given the revised pay since 1962 while other employees got it from 1959 as per recommendation of the Second Pay Commission. Striking it down the Court held the following view:

“15. Mr. Dhebar contends that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine which categories of employees should be taken to have been included in the terms of reference. We are unable to appreciate this point. Either the Government has made reference in respect of all Government employees or it has not. But if it has made a reference in respect of all Government employees or it has not. But if it has made a reference in respect of all Government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not implement the report regarding some employees only it

commits a breach of Articles 14 and 16 of the Constitution. This is what the Government has done as far as these petitions are concerned.”

14. We also find from the judgment of the Tribunal that it found that the STAs of National Bio-Fertilizer Development Centre were at par with the respondents. In fact, in respect of STAs and NBDC, Fifth Pay Commission had not even made any specific recommendation. Still after considering their representation and accepting the same, orders were passed on 29.09.1999 giving pay scale of Rs.6500-10500/-, making it effective from 01.01.1996. Taking note of the facts, the Tribunal further observed as under:

“While giving effect to the recommendations of the Vth CPC vide para 56.10 of the report, the respondents have allowed higher revised pay scale in the case of Technical Officers, Assistant Directors (Crops) and Assistant Development Officers (Manures) vide their order dated 24.3.2000 w.e.f. 1.1.1996. This relates to the next higher grade of STA Grade I. However, when the recommendations of the Vth CPC vide para 56.10 in the case of the applicants was being implemented vide their order dated 29.9.1999, the 50% of the STAs have been designated as STA (Group ‘B’ Non Gazetted, Non-Ministerial) in the scale of Rs.6500-10500 and the others in the replacement scale of Rs.5500-9000 have been granted upgraded pay scale w.e.f. 27.9.1999. **In spite of the specific pleadings taken by the applicants, the respondents have not given any cogent reasons for giving the effect from 27.9.1999 to the applicants instead of 1.1.1996 as in the cases of others.** We find that even in the case of STAs of NBDC where there was no recommendations, the pay scale has

been given w.e.f. 1.1.1996. The learned counsel of the applicants at the time of arguments also invited attention to certain other orders in other organizations where the upgradation has been given effect to w.e.f. 1.1.1996. For example in Central Drugs Standard Control Organizations, the Directorate General of Health Services had issued office orders dated 15.1.2001 giving the revised upgraded pay scale to STAs w.e.f. 1.1.1996. No specific legal impediment has been shown to us for implementation of the recommendations of Vth CPC vide para 56.10 accepted by the Govt. of India w.e.f. 1.1.1996, we find that the date from which the orders have been implemented is prima facie, arbitrary and discriminatory. We, therefore, quash and set aside the order dated 29.9.1999 to this limited extent that the same be made effective from 1.1.1996 instead of 27.9.1999. As a consequence of this order, the applicants will be entitled to arrears of pay and allowances, if any, due to them but without any interest. This may be paid to them within three months from the date of receipt of a copy of this order."

15. Expressing our agreement with the aforesaid reasoning, we dismiss the present writ petition as devoid of any merit.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

April , 2009.
pmc